

## CHAPTER 4

### DATA ANALYSIS, DISCUSSION AND FINDINGS

#### 4.1 Introduction

This chapter will illustrate the coding process all through the research. The data analysis procedure should begin with translating the interview transcript from the Malay language to English, as the interview was conducted among Malaysians. After that, the data collected will be computerised, and the categorised analysis of data will be carried out using the AtLAST.ti 8 software. In this analysis, the research will categorise the data collection according to the theme of responses in codes format. After receiving the entire theme from the data, this research will then classify the codes into sub-themes.

#### 4.2 Demographic Profile of The Informant

A total of five potential informants were identified and approached during the data collection period at the four areas that were visited. After obtaining permission to hold interviews with the *waqf* assets manager of four State Islamic Religious Councils (SIRC), at least two representatives of *waqf* managers in each state attended the interview sessions except for the *waqf* managers in Johor, where only one person was interviewed. Before the interview day, *waqf* managers will be provided with the interview questions via e-mail to have a rough idea of the questions to be asked, thus facilitating them to answer the questions. Based on Table 4.1, there is a list of

*waqf* managers from four SIRC. Tagging 1 and 2 represent the interviewees from Kedah State Islamic Religious Council, where they consisted of the head of the *waqf*, the head of the Baitumal and the head of the Real Estate Division. Moreover, informant 3 is the interviewee from Pinang State Islamic Religious Council, and he is the only representative from that particular SIRC. The tagging informant 4 is the interviewee who posits his role as assistant director of Johor State Islamic Religious Council. Last but not least, the tagging informant 5 is the interviewee from Terengganu State Islamic Religious Council.

**Table 4.1:** Details of Informant

Informant	Full Name	SIRC	Designation	Date of Interview
1	Syeikh Fakhrurrazi Bin Yub,Bck.	Kedah	Head of the <i>Waqf</i> Division of the State Islamic Religious Council	16 December 2019
2	Fairus Bin Abd Rahim	Kedah	Head of Property Development Division	16 December 2019
3	Fahkruddin bin Abd Rahman	Pulau Pinang	Representative of the Pinang State Islamic Religious Council	26 July 2019
4	Mohd Rilizam Bin Rosli	Johor	Assistant director of the State Islamic Religious Council section	6 Nov 2019
5	Umi Sayyidatul Habibah	Terengganu	<i>Waqf</i> Manager	9 Sept 2019

### 4.3 The Concept of Al-Tawriq Istibdaliah

Generally, *Al-Tawriq Istibdaliah* is a process of liquidation and selling off part of the *waqf* assets to obtain and support the development costs of other *waqf* assets. Fuadah et al. (2018) briefly explained that *Al-Tawriq Istibdaliah* is a solution to the lack of financial resources leading to undeveloped and idle *waqf* land without generating immense benefits for the benefit of the Muslim community in general. Thus, it can be understood from the point of view of *Al-Tawriq Istibdaliah* as it acts as an instrument that contributes to the development of idle and unproductive *waqf* assets, in which the *waqf* managers becomes the individuals responsible for managing these assets. Cash liquidity will also be channelled and expanded into profitable transactions to generate revenue for *waqf*. Thus, *Al-Tawriq Istibdaliah* differs from other *waqf* instruments. This would provide many benefits for Muslims in Malaysia, which indirectly posits the *Al-Tawriq Istibdaliah* instrument well handled by good and honest *waqf* management.

#### 4.3.1 The Early Rejection of SIRC Waqf Managers to The Concept of Al-Tawriq Istibdaliah

At the beginning of this study, the initial assumption is the concept of *Al-Tawriq Istibdaliah*, which is one of the solutions for developing idle and unproductive endowment assets. The SIRC is assumed as approving the instrument of *Al-Tawriq Istibdaliah*, at the very beginning. However, after analysis at the beginning of the interview, it proved that the SIRC had rejected the implemented *Al-Tawriq Istibdaliah* instrument. Two informants had rejected this *Al-Tawriq Istibdaliah* instrument, while three of the other informants accepted that *Al-Tawriq Istibdaliah*; according to them, it

had been introduced, given that there was a fatwa that allowed this (*Al-Tawriq Istibdaliah*) activity to be carried out. Two of the informants claimed that they had unconsciously implemented *Al-Tawriq Istibdaliah* instruments on *waqf* assets.

While examining interviewees' perceptions about the concept of *Al-Tawriq Istibdaliah* in the development of *waqf* assets provides a clear vision of the direction of *waqf* management, which is very effective in developing long-term *waqf* institutions in Malaysia. The beginning of the interview session also showed that the *waqf* manager had rejected the concept of *Al-Tawriq Istibdaliah* to be applied in the management of *waqf* assets in SIRC. The *waqf* manager seems to confirm that *Al-Tawriq Istibdaliah* has not been used to develop any unproductive and idle *waqf* assets. They adopted *Istibdal* to resolve issues relating to *waqf*, which need to be addressed immediately. They point out that *Al-Tawriq Istibdaliah* is similar to the concept of *Istibdal* that they have completely implemented in the activities of *waqf* administration and *waqf* development. Commenting on the *Istibdal* project, Informant 2 said:

*“What I understand in the concept of Al-Tawriq Istibdaliah is that we make a decision to liquidate waqf assets, but we do not make such a concept. However, if there are certain on-demand cases and a need to do so, we decide to implement them. So we know it as Istibdal”.*

At the beginning of the interview session, the interviewer gave a brief description and meaning of *Al-Tawriq Istibdaliah*, but informants rejected and argued on the illegal status of selling *waqf* assets based on Ibn Umar's hadith. The hadith revolves around the provision of *waqf*, as stated in Section 1.1.1. Informant 5 mentioned that the sale of *waqf* properties was forbidden. She said:

*"In my opinion, even from the point of view of the Shari'ah, it is forbidden to sell any waqf property, there is a hadith regarding that matter."*

#### **4.3.2 The Acceptance of Al-Tawriq Istibdaliah in Condition be Accepted by the Fatwa.**

However, the survey interview with SIRC's *waqf* manager shows the mixed perceptions of *Al-Tawriq Istibdaliah* concept in liquidating the idle and unproductive *waqf* assets. The concept of *Al-Tawriq Istibdaliah* is accepted in the form of *Istibdaliah*. At the beginning of the interview session, the interviewer only explained the concept of *Al-Tawriq Istibdaliah*. Some people solely rejected the concept of *Al-Tawriq Istibdaliah* while still accepting the conditions that are accepted by fatwa; and some informants admitted that they had already implemented the instrument *Al-Tawriq Istibdaliah* without them realising it. It means that the real concept in this study is the concept of *Al-Tawriq Istibdaliah*. The implementation of *Al-Tawriq Istibdaliah* in addressing the issue of *waqf* assets was accepted by most informants interviewed. However, some also expressed their opinions and changes to ensure the acceptance of *Al-Tawriq Istibdaliah* instruments is in line with fatwa and Sharia' requirements. In addition, this instrument also emphasises the situation or status of the *waqf* assets, especially *waqf* lands which often became inevitable in managing it. Informant 1 said:

*"Any initiative we undertake must go through a fatwa, which means that we will take into consideration the views of the mufti to support all project movements or improvements on waqf lands".*

For some *waqf* managers, the concept of *Al-Tawriq Istibdaliah* should emphasise on the principles and circumstances of *waqf*, as both are necessary for

ensuring the smooth process of *Al-Tawriq Istibdaliah* and enabling well-handled issues and problems in the *waqf* institution such as the liquidate of unproductive property and idle *waqf* asset. They insisted that the principles and circumstances of *waqf* are the key factors that will decide the process of *Al-Tawriq Istibdaliah* , which may or may not be carried out, as this issue also concerns the permission of *mauqif*. Informants indicated that the *waqf* manager should look at the *syurutul waqif* before executing the *Al-Tawriq Istibdaliah* phase by researching why the *waqf* assets are idle and unproductive. In addition, the purpose of the *waqf* needs to be given attention and if it is unable to meet the wishes and conditions of *waqif*, then SIRC will take action by building a project that can provide more maximum benefits. Informant 3 said:

*“Waqf managers need to look at syurutul waqif. What is the purpose of waqif endowing their property and why the waqf assets fail to be utilised? This may be due to management problems, location or it may be a reasonable issue of a trust for us to fulfil”.*

The concept of *Al-Tawriq Istibdaliah* means that *waqf* assets are converted or liquidated into a perpetual form of *waqf* assets. The endowment assets remain as per the enactment, which states that the endowment assets must be in a permanent form. This means that the idea of *Al-Tawriq Istibdaliah* must maintain the 'ayn and all informants agreed that *Al-Tawriq Istibdaliah* is acceptable by providing the fact that it maintains the 'ayn *waqf*; for an example, i.e., selling the *waqf* but its 'ayn remains. There are two aspects that the scholars have examined: first, the emphasis of the "perpetuity" concept; and second, the emphasis of the "benefit" concept on the property of *waqf* (Jasni Sulong, 2013). For religions, piety and charities, the aim of *waqf* property should be perpetuated and continued to assist the beneficiaries. Sells the *waqf* assets was not allowed on whatever grounds to achieve this principle, even if the

property is eventually broken and destroyed. By Ibn Aqil, the perpetuity of a *waqf* asset has been put into a different context. If this perpetuity cannot be extended to the asset's content, then the principle should be extended to the benefit of the asset (Ayub, 2003).

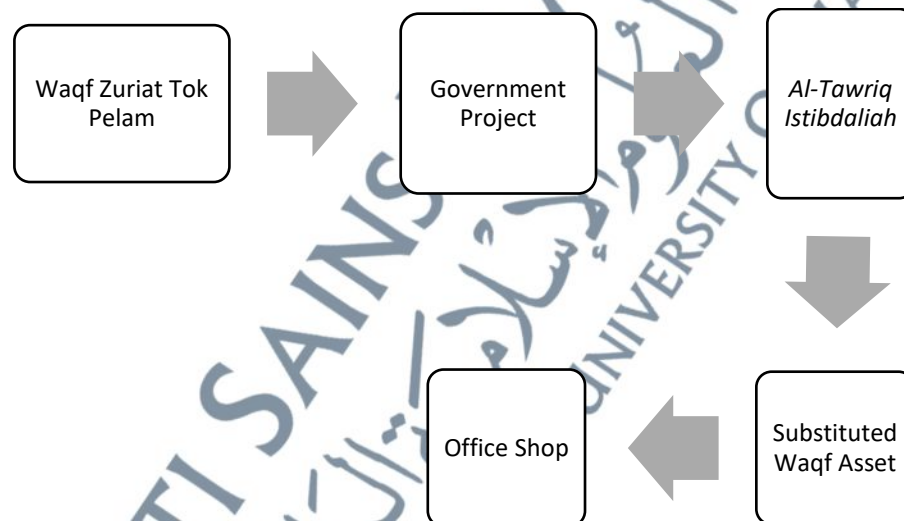
In this case, to ensure the perpetuity of the benefits of the *waqf* properties, *Al-Tawriq Istibdaliah* should be carried out, thus ensuring benefiting the community is the main aim of creating *waqf* (Jasni Sulong, 2013). Therefore, if the *waqf* does not function based on that basis, it will lose its function as a *waqf* asset. In this case, the goal of *Al-Tawriq Istibdaliah* is required in order to solve the problem and the asset must be replaced with a new and even more productive asset. Informant 3 mentioned his thought about the perpetuity of *waqf* asset:

*"I took the example of waqf Setee Aishah in Pulau Pinang, in the past people said that the land did not develop because it was in a swampy area. But now after the passage of time, and after 100 years, the land is now a strategic location because it is next to the highway. If proactively tried 100 years ago, the land has been sold for only RM 10 thousand ringgit and tens of acres, and that is the dilemma given the measure and the price is very cheap. Yes right, in terms of its legislation and protection, in terms of current problems, in terms of current causes, in terms of economics, we seem to be right, but debating for the long term, muabbad, perpetuate and so on, these issues become a dilemma and obstacles in taking the next steps to move aggressively. That is what happened, and that has been experienced by SIRC and the officers, especially the officers responsible for managing the matter".*

#### **4.3.3 Al-Tawriq Istibdaliah Has Been Unconsciously Implemented**

Analysis of the study shows that the informants gave different responses to the concept of *Al-Tawriq Istibdaliah*. Some informants rejected the *Al-Tawriq Istibdaliah* concept, while others accepted that the applicable fatwa is the most valid concept and

stressed that the *Al-Tawriq Istibdaliah* concept are informants who have just noticed that this concept has already been applied. In fact, for a long time, the idea of *Al-Tawriq Istibdaliah* has been practised in SIRC to solve issues related to idle or unproductive endowment assets. It is also applied to acquire *waqf* lands for government projects or for projects of the statutory body. Some informants can detect this by mentioning that they have been using the idea of *Al-Tawriq Istibdaliah* all this time without even noticing. An example of the concept of *Al-Tawriq Istibdaliah* that has been unconsciously implemented on the *Istibdal waqf* assets project will be discussed in this section.



**Figure 4.1:** The Concept of *Al-Tawriq Istibdaliah* that occurs in the *Istibdal* Project

Figure 4.1 shows the concept of *Al-Tawriq Istibdaliah* that was implemented in the *Istibdal* project. Zuriat Tok Pelam *waqf* land is situated in an urban area. The SIRC liquidated the *waqf* land of the descendants of Tok Pelam due to the land acquisition by the government to make government projects. SIRC with a fatwa decision has allowed the land to be liquidated and then converted into other *waqf* assets. The liquidity process is the concept of *Al-Tawriq Istibdaliah*. SIRC has

substituted *waqf* assets by purchasing office shop buildings using the full compensation that the government has given. Then, the office shop was rented out to the public, and its proceeds from the rental have been distributed to the descendants and heirs of Tok Pelam. Thus, the heirs of Tok Pelam can feel the benefits of *waqf*. The informant 5 mentioned about the amount of compensation provided by the government of RM9 million, and his statement can be found as below:

*“Total compensation money of RM 9 million is used to purchase another waqf land. We use the liquidity as best we can to purchase other waqf land as a substitute for the waqf land that the government has taken over”.*

The interview survey also confirmed that *Al-Tawriq Istibdaliah* has been in practice in several SIRC's unconsciously while meeting the urgent need to resolve issues related to *waqf* assets in each state. *Al-Tawriq Istibdaliah* instrument is used to resolve the issue of idle and unproductive *waqf* land, but it is also used for the issue of the acquisition of *waqf* land by the government to be used as housing for the people. The *waqf* projects carried out using the *Al-Tawriq Istibdaliah* instrument in the commercial sector have had multiple impacts on the community's socio-economic development. In addition, it opens opportunities for Muslim suppliers to provide halal supplies and services to the city (C.Mohd, 2015). In other words, a project related to the process of selling and replacing endowment assets with other endowment assets is the application of the *Al-Tawriq Istibdaliah* instrument practised. Commenting on project activities planned and carried out by SIRC, the informant 5 said:

*“So far there is only one process involving liquidity which is the acquisition of waqf land by the government. After getting the decision from the fatwa and the fatwa allowing Istibdal to be carried out, we will*

*do the next process. This Tok Pelam waqf land was originally in an urban area but the government wanted to take back the land to make a government project. So, we on the SIRC side had to sell the land to the government and the government gave us some cash to replace the waqf land”.*

While it is necessary for the SIRC to meet the needs of the government, the management of the *waqf* should obtain a decision from the fatwa council that enable the project to run smoothly to achieve potential benefits for the long-term interests of the public and beneficiaries.

#### **4.4 The Potential Implementation of Al-Tawriq Istibdaliah**

*Al-Tawriq Istibdaliah* is a method used for solving idle and unproductive *waqf* asset problems. Therefore, the feasibility of applying *Al-Tawriq Istibdaliah* to the SIRC would positively impact the development of the *waqf* assets. The analysis of the study has been made in this topic based on three themes, the first is to see the responsibility or role of SIRC to the implementation of *Al-Tawriq Istibdaliah*, the second theme is related to the comparison between the instrument *Al-Tawriq Istibdaliah* with *Istibdal* and the last theme is the impact of the implementation of *Al-Tawriq Istibdaliah* on socio-economic development in Malaysia.

##### **4.4.1 Responsibility of SIRC to Al-Tawriq Istibdaliah**

In carrying out its duties as a *waqf* property administrator, SIRC always takes a cautious approach and develops *waqf* property in the best way to ensure that the property would last and improve the socio-economic status of Muslims. In each state,

SIRC has a unit that specifically manages, develops, maintains and invests *waqf* property so that it grows and is beneficial for all Muslims (C.Mohd, 2015). In addition, some states have set up a *waqf* entity to handle *waqf* assets more efficiently and effectively.

*Waqf* managers focus on their role and responsibility in managing *waqf* properties since the SIRC has allowed the trustees to understand that original *waqf* purpose is to be valued and *waqf* property will benefit others. *Waqf* managers would ensure that the rights of each *waqf* land are fulfilled and the *waqf* objective is achieved. The SIRC empower the *waqf* manager, most important of which are the financial management, administration, technical and operations of the *waqf*, and the formulation of its policies and investments, based on the provisions of Islamic Sharia.

The *waqf* managers are also responsible for hiring legal accountants and making any asset-related decisions such as suspending, selling or replacing *waqf* assets. Informant 4 states the fact is based on an enactment in Section 89, where the SIRC is the sole trustee of the *waqf* assets in the state of Johor. The sole trustee means that each grant is written with the name of the Johor Islamic religious council on it, and that will enliven it as another entity, the Islamic Religious Department. Informant 4 said:

*“Although the State Islamic council of Johor is a large unit, there are entities under it such as the position of the Islamic Religious Council at the top and after the Islamic Religious Council again by dealing with matters about Islamic property, namely zakat, waqf, and baitul mal. The third is the mufti department and the fourth is the syariah court, so there are these four entities as a whole is under the Johor Islamic Religious Council.”*

He also said:

*“SIRC through the waqf committee are very careful about waqf property, although the condition of waqf land is sloping, meaning as long as under the state of Islamic religious council, they try to defend because this waqf property is the last bastion when we look at the waqf land lot now that reaching 4600 lots, and the acre has reached 13000 thousand acres from the smallest land we have in a few square meters until it becomes a grant reaching 1000 acres. One thousand acres are listed under one name of the Islamic religious council in Mersing, and we also have some land amounting to 3000 acres of oil palm land”.*

#### **4.4.2 The Comparative of Al-Tawriq Istibdaliah and Istibdal**

In general, the structure of *Istibdal* is similar to the structure and characteristics of *Al-Tawriq Istibdaliah* because the main purpose of these two instruments is to focus on the development of *waqf* assets. However, there are similarities between the two. In terms of process, *Al-Tawriq Istibdaliah* is the main process before *Istibdal*, and it focuses on liquidity because of the sale of *waqf* assets. Meanwhile for *Istibdal*, it is a process of converting or substitute *waqf* assets to other *waqf* assets. Informant 2 as *waqf* manager has mentioned the implementation process of *Al-Tawriq Istibdaliah* on projects carried out at SIRC. He said:

*“These two processes will be carried out at the same time as the selling of waqf assets is a main process and the SIRC will receive cash liquidity and after that the process of substitution waqf assets will also take place”.*

In terms of implementation, *Al-Tawriq Istibdaliah* focuses on liquidating the unproductive and idle *waqf* lands to obtain funds that could support and develop other *waqf* assets. This is like *Istibdal*, which focuses on the substituting *waqf* lands that cannot be developed into more productive *waqf* lands. Moreover, *Al-Tawriq*

*Istibdaliah* encourages the development and commercialisation of a *waqf* asset in the SIRC. As a result of the economic activities carried out based on *waqf* assets, the community can enjoy the benefits from the *waqf* assets more easily and concurrently help Muslims develop their business. For example, they acquire business areas that are strategically placed and enjoy low rental rates. However, *Istibdal* instruments differ because they do not require commercial activities. The method of replacing *waqf* assets will occur when the land is taken over by the government or the legislative body to create a project to provide people with convenience. Commenting on government projects with the recovery of *waqf* assets by the government, informant 5 has said his thought as below:

*"Istibdal projects will be implemented after obtaining approval from the Fatwa Committee. Usually, Istibdal occurs not for commercial purposes. Usually, Istibdal projects are carried out when it involves government projects, i.e., land acquisition by the government, and other projects have not existed so far".*

**Table 4.2:** The Similarities and Differences Between *Al-Tawriq Istibdaliah* Instrument and *Istibdal*.

Similarity	<i>Al-Tawriq Istibdaliah</i> Instrument	<i>Istibdal</i>
Process	It is the main process before the process of <i>Istibdal</i> , which focuses on liquidity as a result of the selling of <i>waqf</i> assets to get cash.	It is the next process after <i>Al-Tawriq Istibdaliah</i> , which converting <i>waqf</i> assets to other <i>waqf</i> assets.
Justification	It focuses on liquidating unproductive and idle <i>waqf</i> assets to obtain funds to support and develop other <i>waqf</i> assets.	It focuses on the substitution of <i>waqf</i> assets that cannot be developed into more productive <i>waqf</i> assets.

**Table 4.2, continued**

Difference	<i>Al-Tawriq Istibdaliah</i>	<i>Istibdal</i>
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	<b>Instrument</b>	
Commercialization	It encourages the development and commercialisation purpose of a <i>waqf</i> asset in the SIRC.	the It does not require and commercialisation activities. The method of replacing <i>waqf</i> assets will occur when the land is taken over by the government or the legislative body to create a project to provide people with convenience.

The explanation of these two instruments shows that they have their strengths and advantages, which makes these instruments relevant to be developed as an alternative mechanism to develop *waqf* assets. The mechanism of *Al-Tawriq Istibdaliah* also allows the management of *waqf* professionals to organize the management of assets and funds efficiently while ensuring maximum benefits to the community.

#### **4.4.3 The Impact of the Implementation of Al-Tawriq Istibdaliah on Socio-Economic Development in Malaysia**

*Waqf* plays a role in the economic and social growth of Muslims in general. The practice of *waqf* evidenced this during the Ottoman Empire when the era used various *waqf* instruments to minimise government expenditures and effectively provide facilities to the community. Similarly, in the present time, various *waqf* instruments are used and practised in Malaysia to demonstrate positivity and to resolve some of the difficulties related to unproductive and idle *waqf* properties that have not been developed. Based on the interviews conducted, there are four main benefits of the *Al-Tawriq Istibdaliah* instrument in Malaysia, as it could assist in (i) intensifying

economic activities, (ii) equipping places of worship and social, (iii) equipping infrastructure and (iv) financing the development of *waqf* assets.

According to a study by Fuadah Johari et al. (2018), in intensifying economic activities, *waqf* funds which are resulting from the application of *Al-Tawriq Istibdaliah* instruments can be used as a source of capital and invested in sectors that guaranteed high returns, such as the real estate sector, buying business premises, offices and etcetera to be leased to the Muslim community. Informant 1 also commenting on the purchase of shop building through the process of *Al-Tawriq Istibdaliah*, and the statement can be found as below:

*“MAIK sold waqf lands to the airport because the land was in the airport area, and with the money we got; the money that we collected from the Istibdal project, we bought a shop building and now we rent the shop house to many people.”*

The funds accumulated through the process of *Al-Tawriq Istibdaliah* can also be used to develop existing *waqf* property. At the same time, it can provide maximum benefits to the public with sufficient funding to develop *waqf* property. This instrument will reduce the burden of *waqf* managers, especially when there is still a problem related to undeveloped and non-beneficial *waqf* land appear in the community.

In previous studies, several elements including the lack of funds and experience of *waqf* managers, inadequate documentation and the importance of property endowment records are commonly cited as common phenomena in endowment institutions (Anwar Pitchay & Isa Abd Jalil, 2016). The interviewees stated that the financial and human capital constraints have contributed to a lack of development and

growth of *waqf* assets. For instance, informant 4 as the Assistant Director of SIRC has stated the lack of funds in his organisation. He said:

*“The main obstacle for us to develop waqf lands is funds or funding. I think other SIRCs also have the same problem, which is, we have many waqf lands but there is no money to develop them.”*

Although it is appropriate for SIRC institutions to meet the urgent needs and expectations of the community, *waqf* managers should do something by practising the *Al-Tawriq Istibdaliah* instrument as a source of funding *waqf* development projects in Malaysia.

#### **4.5 The Challenges of Implementing Al-Tawriq Istibdaliah**

Although the *Al-Tawriq Istibdaliah* instrument received good responses from the *waqf* managers, there are some challenges and problems that could impede the scope of its application, such as the lack of awareness among *waqf* managers of the existence of *Al-Tawriq Istibdaliah*, the challenges within the *waqf* land itself; and the lack of knowledge of the *Al-Tawriq Istibdaliah* implementation.

##### **4.5.1 Knowledge of the SIRC Waqf Managers**

*Al-Tawriq Istibdaliah* is a newly introduced instrument used to solve idle and unproductive *waqf* land issues. *Al-Tawriq Istibdaliah* is derived from the term *waraqa*, which signifies money (cash) coming from the diluted land and replacing the land with more valuable land that can benefit society. To ensure that this instrument

will operate smoothly in the right way and based on Islamic rules, understanding the concept of *Al-Tawriq Istibdaliah* is very important. As mentioned earlier, *Al-Tawriq Istibdaliah* is a process that takes place before the *Istibdal* process in which it is appropriate to liquidate the *waqf* property to cash liquidity in the first place then use the liquidity to buy other *waqf* land (*Istibdal*). Therefore, the *waqf* manager must understand *Al-Tawriq Istibdaliah* 's process with *Istibdal* and the difference between the two.

Informant 1 raised the question about what the real meaning of the concept of *Al-Tawriq Istibdaliah* is and whether the process by which they develop *waqf* property is the process of *Al-Tawriq Istibdaliah*. He also mentioned that there are 29 houses in the state of Kedah that have been named as *waqf* land (graveyard). In order to solve this problem, an instrument must be in place to allow SIRC to take action if the land is sold to homeowners, or to push them out to find another residence. These efforts will require the idea of *Al-Tawriq Istibdaliah*. Informant 1 said:

*“So far, there are 29 houses on the waqf land (graveyard), and to solve this matter, it is possible for the SIRC to take the land and it is possible and stand a chance whether to include the method of Al-Tawriq Istibdaliah or not”.*

Based on the above argument, it is clear that the informant 1 *waqf* manager does not properly understand the true meaning of *Al-Tawriq Istibdaliah*, and this will be a challenge for them to use the *Al-Tawriq Istibdaliah* instrument in future.

In addition, informants 1 have stated the effects of adopting the concept of *Al-Tawriq Istibdaliah* in Kedah. He said that the Malaysian community strongly adheres to the syafi'i scholar, which restricts the sale of *waqf* properties, as that would lead the community to act by blaming the *waqf* manager for selling the property they have

donated. It indicates that there is a public misunderstanding of the actual definition of *Al-Tawriq Istibdaliah*. Informant 1 said:

*“Our community is strongly committed to the syafi’i scholar. But, moreover, when it is as simple as the SIRC selling the waqf property, and they are going to scold the SIRC, he said we are not willing to see the SIRC sold the land we endowed, and this is a huge problem that we have to deal with.”*

In addition, informant 5 mentioned that a *waqf* land project of the descendants of Tok Pelam, Terengganu had to be replaced since the government took over the *waqf* land for developmental purposes. He stated that MAIDAM had agreed to substitute the descendants of *waqf* land with another *waqf* property based on the decision of the fatwa council. MAIDAM wanted to replace the *waqf* land of the descendants by buying an office building that could support the ummah. The quotes and the words that come out of informant 5 indicate a misunderstanding of the definition of *Al-Tawriq Istibdaliah*. They claim that *Al-Tawriq Istibdaliah* is *Istibdal*. *Al-Tawriq Istibdaliah* occurs before *Istibdal*, it is the phase of liquidating the *waqf* property. The idea of *Al-Tawriq Istibdaliah* among *waqf* managers is a challenge of misunderstanding. Informant 5 said:

*“So far, the management at MAIDAM, when it comes to liquidating waqf properties, we call it the Istibdal process”.*

#### 4.5.2 The Readiness of the SIRC and the Expertise

One of the challenges faced in implementing the *Al-Tawriq Istibdaliah* instrument is the challenge in terms of the readiness of the SIRC to have a *waqf* manager who possesses expertise in implementing this instrument. It is because an expert is required to ensure that this instrument works well with the right process. Analysis of the study shows that in acknowledging experts in handling *Al-Tawriq Istibdaliah*'s instrument, the informants have expressed their challenges. The Informant said that there were many elements of expertise, such as the competence and willingness of the *waqf* manager to handle the *Al-Tawriq Istibdaliah* instruments, since many parties are involved in this implementation process need specific expert engagement. Informant 3 commented on the readiness of SIRC in providing people who are specialised in operating the instrument *Al-Tawriq Istibdaliah*. Informant 3 said:

*“We have never liquidated waqf assets so far, but because problems related to unproductive and idle assets exist in our state, there is potential to liquidate that. But the challenge is the readiness of SIRC to liquidate these waqf assets because, in terms of its seriousness and its preparation, the procedure requires several elements in terms of its expertise. So many things need to be considered and not only liquidated, but we SIRC still need to look at the risk because we are the ones who will bear the risk as well”.*

*Waqf* managers are individuals responsible for monitoring *waqf* assets so that the community can still enjoy its benefits. However, a major challenge on behalf of the council is to select a capable *waqf* manager who can handle this instrument well.

The informant 3 also stressed that no one specialises in running this instrument on behalf of SIRC. Informant 3 said:

*“We are waqf managers at SIRC, not only managing waqf but we also need to be involved in projects that involve buying and selling waqf assets. Unfortunately, we have no knowledge and experience for that instrument, and we also do not have that expertise”.*

Several challenges managed to be detected, specifically in terms of readiness and time, whether the SIRC is proactive and aggressive in dealing with idle waqf assets using the *Al-Tawriq Istibdaliah* method, or the SIRC is only waiting for the right time and does not take any action in these few years where possible, or the waqf land is left idle and not developed, or perhaps the land can be cultivated and established in the next ten years. Informant 3 also said:

*“In terms of SIRC readiness as well, is SIRC ready to be more proactive and aggressive in resolving the issue of idle and unproductive waqf assets by using this Al-Tawriq Istibdaliah instrument? or just waiting for the right time”.*

Moreover, other informants expressed the readiness of the SIRC to implement the *Al-Tawriq Istibdaliah* instrument. He said that waqf lands that are currently not productive and idle might have great potential in the future; for example, even the current waqf lands are hard to reach in the forest and difficult for possible development, the results of forest exploration and clearing will turn them into hotspot areas in the future. Informant 1 said:

*“In my opinion, waqf land that is not productive at the moment, most likely in the future it will be productive, so we will have to wait for the right time only”.*

#### 4.5.3 Obligation to Fulfil Syurutul al-Waqif Intention

The analysis of the study has identified that the challenge for implementing the *Al-Tawriq Istibdaliah* instrument came from the challenge of obligation to fulfil *syurutul waqif* intention. The principle of *syurutul waqif* is an important issue to be examined and reviewed related to the implementation of this instrument. The implementation of *Al-Tawriq Istibdaliah* should be based on the principle of *syurutul waqif* or, in other words, the original purpose of the endowment assets is to be given either for general endowment purposes or specific endowment purposes. The challenges will exist if the *waqif* provides specific *waqf* assets, such as mosques or cemeteries. These sentimental issues are among the limitations on the liquidation of *waqf* assets because they involve the issue of the SIRC's compliance with the trust in the proper management of *waqf* assets. Informant 3 commented on the challenges in the issue of *syurutul waqif* that was related to specific *waqf*. Informant 3 said:

*“The difference between liquidating ordinary property and waqf property is related to the principle of syurutul waqif itself. In Syurutul, waqif is related to the problems, types of use and conditions of waqf. Therefore, we need to decide if the endowment assets are general or specific categories. The issue is specific endowment assets, such as cemeteries or mosques, which are more sentimental and limit endowment managers to liquidate them. That is, as endowment managers, we cannot see the endowment assets as a whole, and we even need to see the category of endowment”.*

While SIRC is the trustee in managing *waqf* assets, SIRC, particularly *waqf* managers, do not arbitrarily liquidate those idle and unproductive *waqf* assets, as it implies the credibility and risk they have to bear. Therefore, the desire of the *waqif* should be a priority to reduce the risk in the implementation of *Al-Tawriq Istibdaliah*. *Syurutul waqif* is the basic rules in implementing *waqf*, which means “*what is decided*

*by the waqif in the waqf agreement and willingly stand up to express its wishes and whatever is intended to decide its waqf and the process in which it is included in the matter of guardianship and distribution of the benefits of the waqf'*(Badran, 1982). The basic principle in terms of the *syurutul waqif* appears in the form of a contract on which the conditions of the transactions are applied (Ibn Taimiyyah, 1995).

#### **4.5.4 Timeframe of The Evaluation of Waqf Assets**

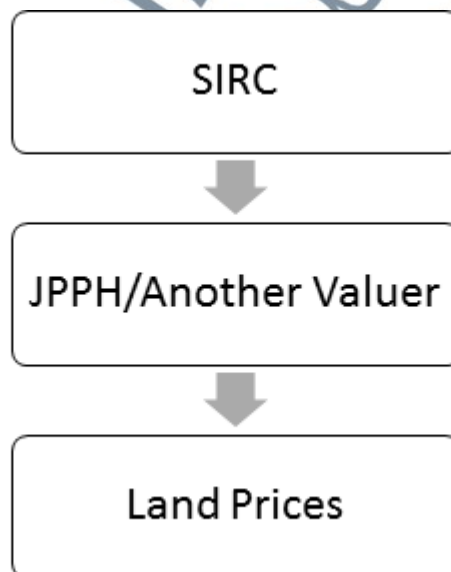
During the interview sessions, informants raised issues related to evaluating *waqf* assets before they were sold and replaced with other *waqf* assets. The valuation of *waqf* asset and performance review in *waqf* asset is simply a regular procedure involving various administrative layers. The *waqf* manager makes an effective assessment of the reliability and feasibility of a land to be developed following the current circumstances and sets out a comprehensive and detailed procedure before submitting the matter to the fatwa. The *waqf* manager then submits the results of the valuation of the *waqf* property made by the JPPH (Jabatan Penilaian dan Perkhidmatan Harta) or Valuation and Property Services Department to the fatwa office, as well as the land and clearing reports, the justification of the deviations from the projects being planned for approval by the fatwa office. The fatwa department reviews the reports and requests made by the *waqf* manager to develop *waqf* assets and decides whether to approve or disapprove the project. Informant 5 said:

*"In terms of management at MAIDAM, we have to wait for the decision of the fatwa committee. The Fatwa Committee is demanding for Istibdal, it is only the land of waqf that we will carry out. As long as we do not get a decision from the Fatwa committee we cannot do as we please".*

The overview of the reports and opinions of the fatwa council shall then be forwarded to the *waqf* manager to take further action if the fatwa project is approved. *Waqf* managers accept the reports and decisions of the fatwa council and then take the next step to negotiate on the final price of *waqf* land based on agreement with other *waqf* managers.

The *waqf* project's viability level that the *waqf* manager requires will depend on the decision-making and evaluation process between the *waqf* manager department and the required shariah committee after getting an explanation and views from the mufti's department. Informant 1 said:

*“most of us, if it is about waqf land, we are going to write a letter to get an opinion from the mufti department, for example, do we change the maahad tahfiz that does not move and that does not work, that burns, we all use fatwas because when we have a fatwa, it seems like we look strong even if the fatwa just gives an opinion, the decision we make, the fatwa is not binding in fact, it is just respect”.*



Source: Mohd Rilizam, 2019

**Figure 4.2:** Evaluation of *Waqf* Assets

Figure 4.2 shows the flow or process carried out by the SIRC in the valuation of *waqf* land. Most of the SIRCs interviewed reported that JPPH would evaluate *waqf* properties, where the existence of *waqf* land needs to be evaluated and listed for *Istibdal* purposes or other purposes such as alienation, the SIRC shall apply to the JPPH for evaluation of *waqf* land. When the process is completed in the JPPH division, the SIRC will discuss to fix a mutually agreed price.

Informant 4 mentioned the evaluation of *waqf* property, SIRC will use the services of JPPH to evaluate *waqf* property. However, the problem that appeared in about the period the land is valued. Informant 4 said that it takes a long time to evaluate *waqf* property since the JPPH also needs time, and many other lands (other than *waqf* lands) need to be evaluated. It is a challenge to perform the instrument *Al-Tawriq Istibdaliah* because before liquidating the unproductive *waqf* land assets, SIRC will detail the land area so that the quotation process runs smoothly. Informant 4 said:

*“JPPH is the basic valuer of waqf properties, although occasionally we have asked for resources from other evaluators, but lately it is not feasible, and we have had to rely on JPPH. And while I manage this endowment, I think this is a challenge and a constraint, since JPPH is also an officer just like us, there are many items to be evaluated, not just SIRC, but also many locations, and there will be some delays”.*

The *waqf* managers intend to set up their evaluation department, since there was a case in municipal departments where they already have their evaluation department and specialised officers. The *waqf* land self-evaluating system will be compiled and planned by the *waqf* department itself. This system will facilitate and expedite appraising the *waqf* property by itself and will not take long to evaluate a *waqf* property. Other *waqf* managers will praise this and consider this method to improve

the efficiency of the process in the *waqf* department. *Waqf* managers also explain that this system of self-assessment of *waqf* assets will generally improve the *waqf* manager's performance.

#### 4.5.5 Inappropriate Buyers

The intention is to give more people a chance to endow their assets as real estate issues should not be overlooked because many of the public are not able to afford a *waqf*, especially when it comes to high-value real estate assets. By involving the public, such as large investors, the offering of *waqf* property units is supported by a network of high-quality assets that generate income while maintaining an efficient governance system. This situation is also in a willingness to offer the public confidence to contribute their capital for development purposes related to *waqf* and, at the same time, allowing them to grow their business by using *waqf* assets. Informant 4 said:

*“As I mentioned earlier, we are going to look for Bumiputera if the land wants to be liquidated. We have cases of "Repossession" of land. Sometimes our land involves, for example, Tenaga Nasional Berhad, substation, and so on. So, the party who will buy the waqf lands we will make sure they are from government agencies or trusted agencies like Tenaga Nasional Berhad agency”.*

Based on the *Al-Tawriq Istibdaliah* method of the instrument, the offering of *waqf* assets is open to public investors, whether individuals or institutions over the counter (OTC) by appointed representatives. Investment participation in these funds is open to Muslims and non-Muslims. However, the *waqf* manager may set investments as open to Muslims only to preserve the *waqf* image and realise the strategy of

increasing the equity of Muslims in the Malaysian real estate sector through the concept of *waqf*. Informant 1 also said that:

*“I sold a cemetery in Darga, Alor Setar Kedah, because of its central location, and the developer asked to buy the land because it wanted to build a housing project, and we were the waqf manager asking for a fatwa, and the fatwa gave the permission”.*

Offers on *waqf* properties are also open to foreign investors, especially if there are potential *waqf* assets developed and found that foreign investors can expand the *waqf* properties. As a result, there is a potential for *waqf* assets to no longer be limited to domestic investors only, by allowing investors across geographical boundaries in any country to involve. As a result, it may indirectly increase the size of *waqf* funds in the future. However, to avoid any future problems, *waqf* managers should have extensive information and expertise on regulations relating to financial markets, real estate markets and corporate governance abroad. In addition, proceeds from the development of *waqf* lands or *waqf* units will be distributed to *waqf* beneficiaries for welfare purposes such as educational assistance, health care, disaster management and microfinance.

#### **4.6 Analysis Finding of Challenges of Al-Tawriq Istibdaliah**

Table 4.3 shows the overall findings of the study. Firstly, the research question is about the opinions of *waqf* managers about *Al-Tawriq Istibdaliah*, with the research objective is to describe opinions of the concept of *Tawriq Istibdaliah waqf* among *waqf* managers. Next, this study outlines the early assumption on the concept of *Al-Tawriq Istibdaliah*. Finally, after an interview session, the study found that analysis

validate early assumptions. Therefore, the study come out with the discovery, *Al-Tawriq Istibdaliah* existed before the *istibdal* process.

Secondly, the research question is about how *Al-Tawriq Istibdaliah* can be implemented for *waqf* assets in Malaysia with the research objective is to assess potential implementation of *Al-Tawriq Istibdaliah* for *waqf* assets in Malaysia. This study outlines the early assumptions on implementing the *Al-Tawriq* concept in Pinang that has already taken place by MAINPP. It is confirmed that after an interview session, the study found several analyses and validated an early assumption, and the study come out with the discovery that *Al-Tawriq Istibdaliah* has already occurred in the SIRC's *Istibdal* project.

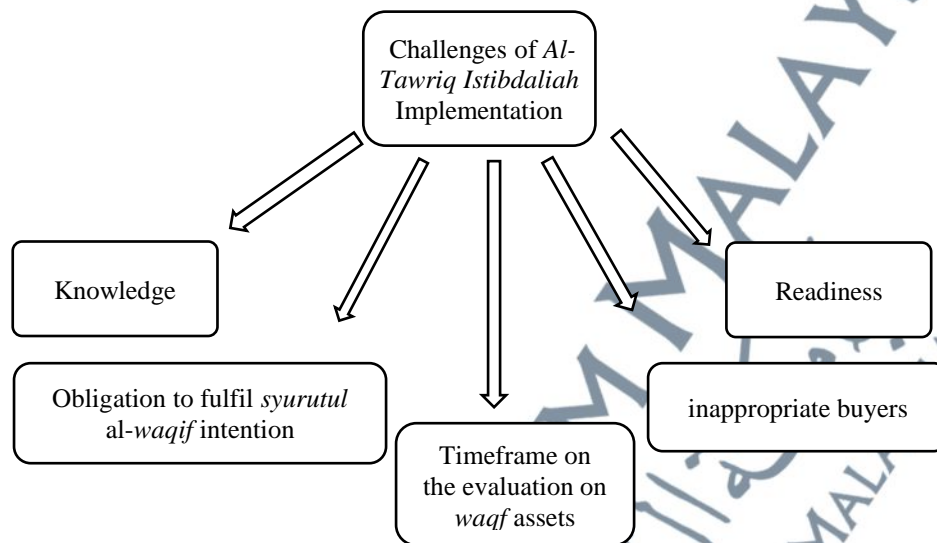
**Table 4.3:** Early Assumptions and Overall Finding of Challenges of *Al-Tawriq Istibdaliah*.

Research Question	Research Objective	Early Assumptions (Hypothesis Generating)	Analysis Finding	New Discovery
1.What are the opinions of <i>waqf</i> managers about the <i>Al-Tawriq Istibdaliah</i> instrument for solving the undeveloped <i>waqf</i> asset?	1.To describe opinions of the concept of <i>Tawriq Istibdaliah waqf</i> among <i>waqf</i> managers.	1. The word <i>Al-Tawriq</i> is derived from the Arabic word (الورق) which means cash (Fuadah et al., 2018). 2. The concept of <i>Al-Tawriq</i> is a new solution to solve undeveloped and unproductive <i>waqf</i> assets (Fuadah et al., 2018).	1.The Early Rejection of SIRC <i>Waqf</i> Managers to The Concept of <i>Al-Tawriq Istibdaliah</i> 2. The Acceptance of <i>Al-Tawriq Istibdaliah</i> in Condition be Accepted by the Fatwa.	<i>Al-Tawriq Istibdaliah</i> is a prior to the <i>istibdal</i> process.

2. How <i>Al-Tawriq Istibdaliah</i> can be implemented for <i>waqf</i> assets in Malaysia?	2. To assess the potential implementation of <i>Al-Tawriq Istibdaliah</i> for <i>waqf</i> assets in Malaysia.	1. The implementation of the <i>Al-Tawriq</i> concept in 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).	1. Responsibility of SIRC to <i>Al-Tawriq Istibdaliah</i> 2. The Comparative of <i>Al-Tawriq Istibdaliah</i> and <i>Istibdal</i> 3. The Impact of the Implementation of <i>Al-Tawriq Istibdaliah</i> on Socio-Economic Development in Malaysia	<i>Al-Tawriq Istibdaliah</i> has already occurred in the SIRC's <i>Istibdal</i> project.
3. What are the challenges of implementing the <i>Al-Tawriq Istibdaliah</i> instrument to solve the <i>waqf</i> asset problem?	3. To identify the challenges in implementing <i>Al-Tawriq Istibdaliah</i> in Malaysia.	1. Lack of Knowledge: - The concept of <i>Al-Tawriq Istibdaliah</i> is a new solution to solve undeveloped and unproductive <i>waqf</i> assets. However, another factor needs to be reviewed before <i>Al-Tawriq Istibdaliah</i> can be implemented (Fuadah et al., 2018). - Educational process of <i>Waqf</i> can be implemented by determining the level of knowledge (Maulana Alifiandy Raditya Sukmana, 2020).	1. Knowledge of the SIRC <i>Waqf</i> Managers 2. The Readiness of the SIRC and the Expertise 3. Obligation to Fulfill <i>Syurutul al-Waqif</i> Intention 4. Timeframe of The Evaluation of <i>Waqf</i> Assets 5. Unappropriate Buyers	Has confirmed that knowledge and readiness are challenges to implement <i>Al-Tawriq Istibdaliah</i> . However, after the analysis of the study, there are three additional challenges: obligation to fulfill <i>syurutul al-waqif</i> intention, timeframe of the evaluation of <i>waqf</i> assets and inappropriate buyers.

Finally, the research question is the challenges of implementing *Al-Tawriq Istibdaliah* instrument with the research objective is to identify the challenges in implementing *Al-Tawriq Istibdaliah* in Malaysia. The beginning of the study assumed that knowledge and readiness are the cause of the challenges of implementing *Al-Tawriq Istibdaliah*. However, after analysing the study found a discovery and proved that knowledge and readiness are the challenges of implementing *Al-Tawriq Istibdaliah*. In addition, several other challenges have been identified: the challenges

of obligation to fulfil *syurutul al-waqif* intention, timeframe on the evaluation on *waqf* assets, and the last one is challenges of inappropriate buyers.



**Figure 4.3:** Challenges of *Al-Tawriq Istibdaliah* Implementation

Figure 4.3 shows all the challenges of of *Al-Tawriq Istibdaliah* implementation. The evidence from informants 1 and 5 show that knowledge is one of the challenges of implementing *Al-Tawriq Istibdaliah*. Therefore, evidence regarding the readiness challenge was presented by informants 3 and 1. In addition, informant 3 has stated that *syurutul waqif* is one of the challenges of implementing *Al-Tawriq Istibdaliah*. Furthermore, informants have stated the challenges of the timeframe of evaluating *waqf* assets by informants 5, 1 and 4. Finally, evidence on no appropriate buyers has been stated by informants 4 and 1.

#### 4.7 Conclusion

*Al-Tawriq Istibdaliah* is the most effective solution to develop idle and unproductive *waqf* assets. From the informants' point of view, the practice of *Al-Tawriq Istibdaliah* Instrument can be alternative for the development of *waqf*. However, nowadays, SIRC or another *waqf* institution face a problem developing *waqf* asset due to lack of financing to develop *waqf* asset. This study highlights the challenges that will be faced to implement *Al-Tawriq Istibdaliah* instrument in hopes that it will help the *waqf* managers to develop *waqf* assets.

*Al-Tawriq Istibdaliah* instrument can be applied in *waqf* institution for the maximum benefits of *waqf* asset in Malaysia. *Waqf* managers with expertise in managing *Al-Tawriq Istibdaliah* instruments are needed since *waqf* managers at SIRC currently lack individuals experienced in handling these *waqf* instruments. According to informant 3, SIRC should develop expertise as soon as possible due to the current condition of the *waqf* asset.

This chapter has reported the qualitative analysis carried out on the data from interviews. It has provided an analysis related to the themes and phenomenon. To validate the findings, this study has conducted an interview with informant 1. The informant did not have much say about this thesis apart from being agreeable with the findings.