

The Application of Maslahah Mursalah Principle in Resolving Inheritance Claims by Non-Muslim Heirs of Converts at Baitulmal

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Abstract

In the Islamic inheritance system, non-Muslims are prohibited from inheriting the estate of a Muslim, and likewise, Muslims cannot inherit from non-Muslims, as per authentic hadith. When there are no Muslim heirs, the estate is entrusted to Baitulmal as the administrator of the convert's inheritance. Disputes arise when non-Muslim family members contest the role of Baitulmal, leading to inheritance claims on the convert's estate in Selangor, though this rarely occurs in other states. This paper aims to identify the application of the concept of *maṣlaḥah mursalah* in resolving these inheritance claims from an Islamic perspective. The qualitative research is based on document analysis and interviews with informants. The findings indicate that Baitulmal applies the principle of *maṣlaḥah mursalah* in resolving inheritance claims of converts based on *siyāsah shar'iyah* and *maqasid syariah*.

Keywords: Inheritance, Maslahah Mursalah, Non-Muslim Heirs, Baitulmal.

Introduction

Islam prioritizes family members significantly. After a Muslim passes away, typically their estate will transfer to the closest family members known as *ashāb al-furūd* and *ʿaṣabah*. Conversely, religious differences become a barrier to inheritance, and the estate is only transferred to Muslim heirs or entrusted to Baitulmal if there are no Muslim heirs. This leads to non-Muslim family members' claims on the estate of converts at Baitulmal, particularly prevalent in Selangor.

In any state enactments, non-Muslims are not mentioned in the administration of Islamic affairs, while Baitulmal is part of the administration of the State Islamic Religious Council at the same time. Baitulmal is no longer a separate administration or organization as it was in the early days of Islamic glory, equivalent to the position of the Ministry of Finance. Therefore,

any actions and resolutions related to Islam and non-Muslims are linked to leadership or *siyasah syar'iyah* and serve as a form of *da'wah*. Thus, anything good can be done if it brings benefit to the Islamic state and its people, whether they are Muslims or non-Muslims. As stated by Allah SWT:

أَدْعُ إِلَى سَبِيلِ رَبِّكَ بِالْحِكْمَةِ وَالْمَوْعِظَةِ الْحَسَنَةِ وَجَدِّدْ لَهُم بِآيَاتِي هِيَ أَحْسَنُ إِنَّ رَبَّكَ هُوَ أَعْلَمُ بِمَنْ ضَلَّ عَنْ سَبِيلِهِ وَهُوَ أَعْلَمُ بِالْمُهْتَدِينَ

Translation: Invite (all) to the way of thy Lord with wisdom and beautiful preaching; and argue with them in ways that are best and most gracious: for thy Lord knoweth best, who have strayed from His Path, and who receive guidance.

According to Ibn Kathīr (2000), Allah SWT commanded the Prophet Muhammad SAW to preach to all people wisely, considering the circumstances of everyone, and to speak to them with kind words. He also said that the guidance to Islam belongs to Allah and will be granted to whomever He wills.

To achieve societal balance within a country, *ijtihad* was introduced by the Prophet Muhammad SAW when he sent Mu'ādh ibn Jabal to Yemen, as narrated in the following hadith:

كيف تقضي؟ فقال أقضي بما في كتاب الله. قال فإن لم يكن في كتاب الله، قال فبسنة رسول الله صلى الله عليه وسلم. قال فإن لم يكن في سنة رسول الله صلى الله عليه وسلم؟ قال أجتهد رأيي، قال الحمد لله الذي وفق رسول رسول الله صلى الله عليه وسلم.

Translation: "How will you judge?" He replied: "I will judge according to what is in the Book of Allah." He was asked: "And if you do not find it in the Book of Allah?" He said: "Then I will judge according to the Sunnah of the Messenger of Allah (peace be upon him)." He was asked: "And if you do not find it in the Sunnah of the Messenger of Allah (peace be upon him)?" He said: "Then I will strive to form my own opinion." He was told: "Praise be to Allah who has guided the messenger of the Messenger of Allah (peace be upon him) correctly." (al-Tirmidhī, Sunan al-Tirmidhī, Kitāb Abwāb al-Aḥkām 'an Rasūlillāh Ṣallā Allāh 'alayh wa Sallam. Bāb: Mā Jā' fī al-Qāḍī kayf yaqḍī)

Based on this hadith, the Prophet Muhammad SAW tested the understanding of Mu'ādh ibn Jabal before he departed to Yemen as a messenger of his *da'wah*. When asked how Mu'ādh would resolve religious issues, Mu'ādh answered that he would base his judgments on the Quran, then the hadith, and finally on his own *ijtihad*. *Maṣlaḥah mursalah* is one of the sources of *ijtihad* that is not agreed upon after *ijma'*, *qiyās*, and *istiḥsān*.

Lately, many policies in state or organizational administration have been made based on *maṣlaḥah mursalah* that are bound by the decisions of government officials or leaders of any organization (Tuan Sidek T.M & Ismail 2021). In Malaysia, the inheritance of converts is entrusted to Baitulmal when there are no rightful heirs, even if there are non-Muslim family members. Interviews with informants reveal that inheritance claims for converts often occur in the Baitulmal Sector of the Selangor Islamic Religious Council (Indera 2021). However, such claims are rare in Baitulmal in other states such as the states of Kedah, Perak, Pahang, Perlis, and Negeri Sembilan" (Rohaizah 2021; Kamal Said 2021; Abdul Halim Lim 2021; Mohd Nor Iqbal 2021). This needs a comprehensive study to resolve the claims made by non-Muslim

family members. Among the earliest references based on the case of *In Re Timah binti Abdullah deceased: The Official Administrator, FMS v. Magari Mahihiko & 3 Ors (1940) FMSLR 170*, the court ruled that her non-Muslim family members were not entitled to receive the estate, and it was instead given to Baitulmal (Jasni Sulong 2014), in line with the Islamic inheritance system. However, the opposite occurred in Baitulmal, as the Melaka Islamic Religious Council contributed from the estate of Lim Sek King to non-Muslim family members (Akmal Hidayah Halim et al. 2019), based on *da'wah* principles and the needs of the family. Numerous studies have been conducted by previous researchers on the inheritance rights between Muslims and non-Muslims from the perspective of Islamic inheritance law. However, research that highlights the relevance of the application of *maṣlaḥah mursalah* by the Baitulmal to harmonize the inheritance claims of converts by non-Muslim heirs in situations of extreme necessity is significantly lacking.

The purpose of this article is to identify the application of the *maṣlaḥah mursalah* concept in resolving inheritance claims of converts that depend on government decisions based on the principle of *تصرف الإمام على الرعية منوط بالمصلحة* (government actions towards the populace are bound by *maṣlaḥah*). The question at hand is whether the implemented resolution adheres to the concept of *maṣlaḥah mursalah* accepted by most jurists (*jumhūr fuqahā'*).

Methodology

The writing of this paper employs a qualitative approach through document analysis and interviews with informants directly involved in inheritance claims of converts. The document analysis method was employed to gain in-depth information on the study, focusing on texts such as classical works, books, and scholarly articles including *al-Masalih al-Mursalah wa Atharuha fi Murunat al-Fiqh al-Islami* (Burkab 2002); *Muhadarat fi Maqasid al-Shari'ah* (al-Raysuni 2014); *al-Muwafaqat fi Usul al-Fiqh* (al-Shatibi 2001); *al-Fiqh al-Islami wa Adillatuh* (al-Zuhayli 1985); *al-Wajiz fi Usul al-Fiqh* (Zaydan 1993); 'The Differences Between *Maslahah Mursalah* and *Maqasid al-Shariah*,' *Journal of Education and Social Sciences* (Muhammad Nazir et al. 2020); 'The Rights of Converts to Inherited Property: An Analysis of Current Laws,' *Jurnal Islam dan Masyarakat Kontemporari* (Jasni 2014). In addition, interviews were conducted with individuals directly involved in the administration of Baitulmal in the State Islamic Religious Councils, such as Pn. Rohaizah binti Abas (Head of the Mal Section, Melaka Islamic Religious Council) and En. Indera Shahril bin Mohd Shahid (Director of Baitulmal, Selangor Islamic Religious Council (MAIS)).

The Concept Of *Maṣlaḥah Mursalah*

According to al-Fayrūzabādī (2008), *maṣlaḥah* comes from the word *الصالح*, which is the opposite of *الفساد*, meaning badness or corruption, and *maṣlaḥah* signifies goodness. Ibn Manzūr (2003), on the other hand, states that *maṣlaḥah* comes from the word *يصلح – يصلح* or *الصالح* (goodness) as opposed to *الفساد* (badness). *Mursalah*, linguistically, means unrestricted without any limitations (Ibn Manzūr 2003). The term *mursalah* is an attribute of the word *maṣlaḥah*, which signifies a *maṣlaḥah* that is unrestricted and without any boundaries (Alias & Rahman, 2018).

In terminological terms, as stated by al-Ghazālī (1993), of the Shafi'i school, *maṣlaḥah* means bringing benefit and warding off harm to preserve the objectives of *Shariah* (*maqasid*

syariah) and to safeguard the five essentials (*al-ḍarūriyyāt al-khams*), namely: preservation of religion, life, intellect, progeny, and wealth. According to him, every Shariah ruling encompasses these five aspects, referred to as *maṣlaḥah*, and anything that negates them is considered *mafsadah* (harm), while warding off harm is considered *maṣlaḥah* (benefit). He also opined that placing *maṣlaḥah mursalah* as a principle for determining rulings is unfounded. This indicates that *maṣlaḥah mursalah* is not accepted in the Shafi'i school as a principle for determining rulings (Alias et al. 2020).

In general, scholars divide *maṣlaḥah* into two categories: *maṣlaḥah* that is not recognized or rejected by any specific or general Shariah text, and *maṣlaḥah* that aligns with the objectives of a group of Shariah texts but is not specifically accepted or rejected by any text (Abū Zahrah 1985; Zaydān 1993).

Maṣlaḥah is divided into several categories, primarily into acceptance aspect (*maṣlaḥah mu'tabarah*), rejection aspect (*maṣlaḥah mulghāh*), and those overlooked by Shariah (*maṣlaḥah mursalah*). Another division is based on the strength aspect: *ḍarūriyyāt*, *ḥājiyyāt*, and *taḥsīniyyāt* (Burkab 2002).

Maṣlaḥah mu'tabarah refers to the recognized *maṣlaḥah* by Shariah through specific texts encompassing benefits in the hereafter and worldly benefits. All Islamic scholars accept *maṣlaḥah mu'tabarah* as an argument. To preserve intellect, Islamic law prohibits alcohol and then compares intoxicating drinks to alcohol, making all intoxicants haram to consume due to the same 'illah (reason).

The second is *maṣlaḥah mulghāh*, rejected by all Islamic scholars through specific texts. For instance, equating the inheritance share between male and female heirs when the distribution ratio is stipulated in the Quran, and equal distribution contradicts the Quranic text.

The third *maṣlaḥah* is *maṣlaḥah mursalah*, overlooked by scholars, not discussed by scholars, and not found in any textual sources such as the Quran, Hadith, consensus, and analogy. An example is the compilation of the Quran. Caliph Abu Bakr asked 'Umar ibn al-Khaṭṭāb about the act of compiling the Quran, as it was not done during the time of the Prophet Muhammad SAW. 'Umar replied that by swearing an oath to Allah, this method brings benefit (for future generations). In another narration, 'Umar expressed concerns that the deaths of memorizers and writers of the Quran who died in battle would lead to the Quran being lost from the world.

From the perspective of strength, *maṣlaḥah* is divided into three categories: *ḍarūriyyāt*, *ḥājiyyāt*, and *taḥsīniyyāt* (al-Ghazālī 1993). These three levels must uphold the *al-kuliyāt al-khams*, which are preserving religion, preserving life, preserving intellect, preserving progeny or dignity, and lastly, preserving wealth (al-Raysūnī 2014). These three levels of *maṣlaḥah* must ensure existence (obligation) and prevent absence (prohibition) for all the *al-kuliyāt al-khams* (Burkab 2002).

According to Burkab (2002), the *ḍarūriyyāt* level for preserving religion in terms of obligation is associated with the foundation of Islam, namely creed (*'aqidah*), declaring the

two testimonies of faith, performing prayers, giving zakat, fasting, and pilgrimage (hajj), while matters that need to be safeguarded to prevent absence are jihad against those who wage war against Islam. He also explains that to preserve life and livelihood, humans need to eat, drink, clothe themselves, and have shelter for survival, as well as implementing punishments for those who harm others physically with the law of *qiṣāṣ*. Furthermore, to safeguard intellect, Allah SWT urges humans to constantly contemplate, analyze, study, and use sound reasoning, while prohibiting the impairment of intellect through alcohol consumption or intoxicating substances. In terms of preserving progeny, as humans naturally incline towards opposite-sex partners, Shariah mandates marriage, hadanah, and financial support (nafkah). To ensure the preservation of progeny, Allah imposes stoning and flogging as punishment for adultery, false accusations (*qazaf*), and similar offenses. Regarding wealth preservation, Allah SWT permits trade and prohibits usury (riba).

At the *ḥājīyyāt* level, it refers to the *maṣlaḥah* needed to alleviate difficulties and hardships, leading to concessions for individuals (al-Raysūnī 2014). When this aspect is overlooked, it can result in hardship and distress for an individual, although not to the level of *ḍarūriyyāt* necessities, such as concessions granted to travelers and the sick, which necessitate transactions like *salam* contracts and the obligation to pay taxes (Burkab 2002).

At the *taḥsīniyyāt* level, it refers to a *maṣlaḥah* that does not reach the level of *ḥājīyyāt* and *ḍarūriyyāt*; instead, *taḥsīniyyāt* aims to refine and embellish existing *maṣlaḥah* (al-Raysūnī 2014), such as observing modest dress, adhering to etiquette during meals, and performing recommended acts of worship. If *taḥsīniyyāt* were absent, it would not lead to the disruption of human life systems as occurs with *ḍarūriyyāt maṣlaḥah*, nor would it cause hardships in their lives as with *ḥājīyyāt maṣlaḥah*, but it would lead to an unseemly life in the eyes of those with intellect (Ramli n.d.).

The definition of *maṣlaḥah mursalah* varies in terms of its legitimacy as a method for determining legal rulings (Alias et al. 2020). This definition is divided into two: *maṣlaḥah* that is not recognized or rejected by any specific or general Shariah text (Burkab 2002), and *maṣlaḥah mursalah* refers to a *maṣlaḥah* that aligns with the objectives of Islamic Shariah and is recognized by a group of revelatory texts in general, but there is no single specific revelatory text that affirms or rejects it (Alias et al. 2020).

Maṣlaḥah that is not recognized or rejected by any specific or general Shariah text is rejected by all Islamic scholars because it contradicts Islamic law, whereas the Shariah is complete and perfect. Therefore, all new matters and issues have rulings in Islamic law. This definition is suitable as a definition for *maṣlaḥah gharībah* (odd) (al-Ghazālī 1993). Some Islamic scholars state their rejection of the use of *maṣlaḥah mursalah* as a method for determining legal rulings, referring to *maṣlaḥah mursalah* based on this definition (Būrkāb 2002).

The second definition is *maṣlaḥah* that aligns with the objectives of Islamic Shariah and is recognized by a group of sources from the Quran and Hadith in general, but there is no single specific revelatory text that affirms or rejects it. This *maṣlaḥah* is accepted by all Islamic scholars except for the scholars of the Zāhirī school, although the extent of its application varies according to the classical fiqh schools (Abū Zahrah 1985).

According to scholars of the Maliki school of thought, *maṣlaḥah mursalah* is a distinct method for determining legal rulings (Bürkāb 2002). Deciding on legal rulings based on *maṣlaḥah mursalah* according to the Maliki school involves looking at the current realities faced by people. If the issue contains *maṣlaḥah* and does not contradict Shariah evidence, then *maṣlaḥah mursalah* can be used even if there is no specific evidence stating its ruling or that can be analogized (Ibn 'Āshūr, 2001). This means that *maṣlaḥah mursalah* according to this school is a method for determining legal rulings equivalent to analogical reasoning (*qiyās*).

Furthermore, the application of *maṣlaḥah mursalah* by other schools of thought is observed to utilize different methods (Alias et al. 2020). The application of *maṣlaḥah mursalah* by scholars of the Hanafi school can be observed in using *istiḥsān* based on *maṣlaḥah*. Its usage by scholars of the Shafi'i school, on the other hand, is observed through the application of *qiyās* based on *munāsib* as the 'illah. Its usage by the Hanbali school can also be observed in the application of *qiyās* (al-Zuḥaylī 1986).

To conclude, *maṣlaḥah mursalah* is an Islamic legal concept that refers to the consideration of public welfare in deriving rulings when specific textual evidence is absent, with its application varying across different schools of thought, particularly embraced by the Maliki school as a legitimate method for addressing contemporary issues in line with Shariah's objectives.

Arguments For The Use Of Maṣlaḥah Mursalah

Salamat Hashim (2016) states that the companions often employed *maṣlaḥah mursalah*, especially during the rule of the Rashidun Caliphs. The decisions made by the companions during their rule were part of maqasidic ijtihad. Maqasidic ijtihad encompasses human values within an institution to achieve the well-being of the people regardless of religious and ethnic differences (Lihhasinah 2008). This opinion aligns with the following verse from the Quran:

وَاللَّهُ لَا يُحِبُّ الْفُسَادَ

Translation: But Allah loveth not mischief.

يُرِيدُ اللَّهُ بِكُمْ الْيُسْرَ وَلَا يُرِيدُ بِكُمْ الْعُسْرَ

Translation: Allah intends every facility for you; He does not want to put to difficulties.

وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ

Translation: ...and has imposed no difficulties on you in religion.

In all these three verses, literally, Allah desires His servants to achieve the *maqāsid al-sharī'ah* (objectives of Shariah), not intending hardship, harm, or evil for His servants. Ibn Qayyim mentioned (Mahmood Zuhdi Abdul Majid 2010):

“The Sharia revolves around laws and the interests of humans in this world and the hereafter. It embodies comprehensive justice and comprehensive wisdom. Any issue that deviates from justice to oppression, from mercy to the opposite, from benefit to harm, and from wisdom to ignorance is not part of the Sharia, even if it is included through interpretation. This is because the Sharia represents Allah’s justice for His servants and Allah’s mercy for His creatures.”

Imam al-Ghazālī allows application of the al-*maṣlaḥah al-mursalāh* with three conditions: it must involve general (*kullīyyāt*), decisive (*qaṭʿīyyāt*), and necessary (*ḍarūriyyāt*) matters. If these conditions are not met, then al-*maṣlaḥah al-mursalāh* cannot be applied (al-Bāḥuṣīn 2005). However, Imam al-Shāṭibī sets three conditions for application of the al-*maṣlaḥah al-mursalāh*: that it must fulfill the objectives of Shariah (*maqāṣid al-sharīʿah*), be rational, not related to matters of worship (*taʿabudiyyah*), and must protect the five essentials (*al-ḍarūriyyāt al-khams*): religion, life, intellect, lineage or honor, and property. Nevertheless, al-*maṣlaḥah al-mursalāh* is subject to decisions made by the government.

Careful action in making *ijtihād* aims to avoid those who seek to make religious practices easier or more burdensome by permitting or prohibiting something based solely on *maṣlaḥah* without linking it to sources from the Quran and Sunnah (Sulaiman et al., 2016). *Ijtihād* based on probabilistic law such as in *muʾamalat*, including matters related to charity and contributions, while *qaṭʿī* law such as matters related to creed and worship do not require *ijtihād* because they have been established with conclusive evidence and clear indications (al-Dakhmisi, 2002). The topic of Islamic inheritance falls within the realm of *muʾamalat* and family matters.

According to ‘Abd al-Wahhāb Khallāf, when the space for *ijtihād* is restricted, it leads to a narrow scope of legal rulings to address new contemporary issues. This is because Islam is a religion of *maṣlaḥah*, not rigidity to the apparent text of the sources; rather, it requires deep study to understand its goals and spirit if there is a need (Būrkāb, 2002). This is mentioned by Allah SWT in Surah al-Ḥajj, verse 78:

وَجَاهِدُوا فِي اللَّهِ حَقَّ جِهَادِهِ هُوَ اجْتَبَاكُمْ وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ

Translation: And strive in His cause as ye ought to strive, (with sincerity and under discipline). He has chosen you, and has imposed no difficulties on you in religion;

Islam should be understood as a comprehensive way of life, encompassing all aspects of life, including politics based on Islamic principles. After the decline of Islam, Jewish and Christian groups attempted to separate politics and state matters from Islamic principles, as done by the West, leading to the rise of secularism, which separates religion from state governance (al-Qaraḍāwī, 1998). Among these ideas is the belief that Islam is merely a religion that only prioritizes specific acts of worship, as proposed by ‘Alī ‘Abd al-Rāziq in his work “al-Islām wa Uṣūl al-Ḥukm” in 1925. However, this opinion was refuted by prominent scholars of al-Azhar and strengthened by Ḥasan al-Bannā’s statement in Usul 20, as follows (Kadir, 2013):

“Islam is a system that encompasses all aspects of life; thus, Islam is both state and homeland, or government and community. Islam represents ethics and strength, or compassion and justice. Islam is culture and law, or knowledge and judiciary. Islam is material and wealth, or endeavour and prosperity.”

Furthermore, the administration of the state involves *Siyasah Syar’iyyah*, defined as a form of governance and state administration that aligns with the principles of Shariah, promoting good and deterring evil, even in the absence of specific textual arguments (Noor & Mohd Noor, 2021). Without *siyasah* and administration, a country’s governance system would not be able to enforce laws, such as the issuance of fatwas within a state. Nevertheless,

aspects such as justice, benevolence, freedom, empowerment, and humanization are of paramount importance in social theology (Mohd Nasir bin Mohd Tap 2020), as emphasized in Allah's words in Surah al-Nahl, verse 90:

﴿إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ وَإِيتَاءِ ذِي الْقُرْبَىٰ وَيَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ وَالْبَغْيِ يَعِظُكُمْ لَعَلَّكُمْ تَذَكَّرُونَ﴾

Translation: "Indeed, Allah orders justice and good conduct and giving to relatives and forbids immorality and bad conduct and oppression. He admonishes you that perhaps you will be reminded."

Additionally, the ijtiḥād of 'Umar ibn al-Khaṭṭāb can serve as a valuable guide, given his keen and profound understanding of the circumstances of his era and the primary objectives of Shariah, which prioritize the welfare of the community. His period was closer to the time of revelation. Ibn Nujaym (1999: 106) in his book *al-Ashbāh wa al-Naẓā'ir* states:

إذا كان فعل الإمام مبنيًا على المصلحة (أي فيما ليس فيه نص خاص) فيما يتعلق بالأمر العامة، لم ينفذ أمره شرعًا إلا إذا وافقه (أي وافق الشرع) فإذا خالفه لم ينفذ

Translation: A leader's (Imam) decisions are based on considerations of public welfare (in matters where there is no specific naṣṣ), and such decisions should be implemented by the people if they do not contradict Shariah. However, if they do contradict Shariah, then those decisions should not be executed.

The meaning of contradicting Shariah here refers to opposing the general principles and provisions of Islamic law, in which case the people are not obliged to obey such a leader. In the absence of specific *naṣṣ*, a leader must make decisions based on the principle of *maṣlaḥah* (Baltaji 1970). Therefore, ijtiḥād, whether conducted by an individual or a group, must not contradict the fundamental principles and objectives of Islamic Shariah.

During the reign of Caliph 'Umar ibn al-Khaṭṭāb, he exercised ijtiḥād by deciding not to allocate a portion of zakat to the *muallaf* (new converts to Islam), as the Muslim community was already strong and there was no longer a need to win them over to Islam. Nevertheless, he continued to care for the welfare of non-Muslim citizens under his rule (Baltaji 1970). For instance, he gave a portion of the jizyah revenues to a Jewish man who came to request aid for his needs. Caliph 'Umar took this elderly man to his house and then to the baitulmal (public treasury). He instructed the keeper of the baitulmal to give something from the jizyah revenues to the elderly man, who was a poor person among the People of the Book. Additionally, he provided charity and aid to impoverished Christians in the city of Jabiyah. This indicates that Caliph 'Umar did not give assistance from the zakat collections but rather from the jizyah revenues.

Additionally, Sa'īd bin al-Musayyib narrated that the Prophet Muhammad (SAW) gave charity to his family members who were still Jewish. Similarly, his wife Ṣafīyyah donated 30,000 dirhams to her Jewish family. Ibn Jurayḥ, in his interpretation of Surah al-Insān, verse 8, which states, "And they give food in spite of love for it to the needy, the orphan, and the captive," explained that at that time, captives were predominantly polytheists. Abū 'Ubayd further elaborated, "In this verse, Allah SWT praises those who are willing to give food to captives who are polytheists" (Baltaji 1970: 617).

Based on the historical interactions in financial transactions with non-Muslims, it can be inferred that the inheritance of a convert to Islam (*muallaf*) without Muslim heirs becomes the right of the baitulmal as its recipient, serving the broader interests of the Muslim community as administrators. Claims from non-Muslim family members regarding the inheritance of the *muallaf* create a polemic, as such inheritance should be allocated to Muslims only. Here, the baitulmal administration has the authority to grant or reject these claims once the inheritance becomes the property of the baitulmal, representing the Muslim community.

In this context, the role of *siyasaḥ syar'īyyah* (Islamic governance) needs to be emphasized as it involves the interests of the Muslim community and requires careful consideration by the baitulmal administration under state authority. Additionally, Malaysia's population consists of various ethnicities and religions living under one Islamic government. The fiqh *ta'āyush* (jurisprudence of coexistence) approach is suitable for application by the baitulmal, especially in the propagation of *da'wah* (Islamic preaching). However, this fiqh requires extensive expertise not only in understanding the *naṣṣ* (textual sources) in a limited sense (*al-istidlāl*) or applying it in a broader context (*al-istinbāt*) but also in comprehending the secrets and wisdom behind the legislation itself, both in terms of philosophy (*ḥikmat al-tashrī' wa falsafatuh*) and the reality of the society (*al-bu'd al-zamānī wa al-makānī*) where the law will be implemented (Ismail 2003).

Maṣlaḥah Mursalah In The Claim Of A Convert's Inheritance

In addressing the conflict of non-Muslim family members' claims to the estate of a convert to Islam, the State Islamic Religious Council continues to employ the concept of *tasāmuḥ*, considering the factor of hardship as the primary consideration reflecting the beauty of Islam as a religion that prioritizes the welfare of the family members of the deceased convert (Azman et al. 2020). This concept of *tasāmuḥ* is one of the *maṣlaḥah* taken into account because the ownership now belongs to the baitulmal (Islamic treasury) and is no longer the property of the deceased convert. This application of *tasāmuḥ* represents the implementation of *maṣlaḥah mursalah* by the baitulmal.

Research conducted in this study found that the Baitulmal is deeply concerned about the welfare of converts' families, yet they also need to conduct thorough investigations into the claims made. According to Indera (2021), the Investigation and Ethics Section under the Operations Unit within the Baitulmal Sector consists of officers who have received training from the Malaysian Anti-Corruption Academy (MACA) to conduct investigations and submit reports to the Director of the Baitulmal Sector. These investigations are carried out after the Baitulmal receives information about the death of a convert. According to him, the investigations conducted include obtaining information about the conversion from the State Islamic Religious Council, checking the deceased's assets at the Land Office or relevant Financial Agencies, conducting interviews with heirs and non-Muslim family members including obtaining the family tree from the National Registration Department (JPN).

The processing of a convert's inheritance claim will occur after the Baitulmal has obtained rights over the convert's estate, and it requires a considerable amount of time due to the involvement of multiple parties and each transaction entails certain expenses. This was acknowledged by Indera (2021); and Rohaizah (2021) during their interviews. Therefore, the

costs associated with these procedures will be considered in resolving the convert's estate claim.

In this claim, Rohaizah (2021), had previously suggested to the mufti department to issue a fatwa regarding the percentage of distribution to non-Muslim heirs, but the mufti stated that this was unnecessary because the estate in question had become the right of Baitulmal as the administrator or trustee of the estate. Baitulmal has the right to reject such claims as it complies with Islamic law yet based on the principle of *maṣlaḥah mursalah* to maintain the image of Islam and address the needs of non-Muslim heirs such as medical financing and poverty alleviation, as well as the assumption of providing sustenance, becomes a priority for Baitulmal.

From a realistic perspective, Baitulmal also faces constraints in terms of procedures due to certain agencies not cooperating effectively in obtaining documents and information about deceased Muslim converts in accordance with the Personal Data Protection Act. This hindrance results in the inability to process the estate, contributing to asset freezing in Malaysia.

In determining *maṣlaḥah mursalah* for non-Muslim family members, Baitulmal management should prioritize *maṣlaḥah kubrā* over *maṣlaḥah ṣuḡhrā* (Ridzwan Ahmad, 2008). This involves prioritizing the *maṣlaḥah* that leads to more adverse effects when neglected over the *maṣlaḥah* with lesser adverse effects and prioritizing the *maṣlaḥah* that is closer in terms of self-interest and family relations compared to the *maṣlaḥah* that is further away.

Tracing the needs of non-Muslim family members, the Baitulmal management, through the investigative process, can determine the extent of urgency required and the consequences that may arise if the request from these non-Muslim family members is rejected. Future expectations need to be re-evaluated because the inheritance in question comes from their parents or grandparents to support their children. Children without a portion of their parents' inheritance may face hardship, leading to potential cases of theft, homelessness, and severe poverty, whereas when the deceased *muallaf* was alive, they received sustenance.

Research Findings

From the perspective of implementing the management of baitulmal regarding the claim of inheritance from a deceased Muslim convert (*muallaf*), it fulfills the concept of *maṣlaḥah mursalah* even though some Islamic scholars do not consider it as a legal method. Therefore, *maṣlaḥah mursalah* should be subject to the decisions of the authorities (*ulil amri*) and cannot be executed without investigation and discussion among legal and religious experts.

In the management of Baitulmal, *maṣlaḥah mursalah* serves as a primary reference for Islamic leaders in safeguarding the welfare of the people, including maintaining societal harmony according to current realities, which includes non-Muslims. Consequently, Baitulmal applies *maṣlaḥah mursalah* in resolving inheritance claims involving converts, based on *siyasah shar'iyah* and *maqasid al-shar'iah*.

In the context of managing inheritance claims by non-Muslim heirs of converts, Baitulmal applies *maslahah mursalah* grounded in *siyasah shar'iyah* and *maqasid al-shar'iah* to ensure the well-being of Muslims without neglecting the welfare of the non-Muslim family members who may be in hardship, particularly if the deceased convert was the primary breadwinner for the family. Therefore, it would be appropriate for Baitulmal to provide goodwill contributions from its own assets to the affected non-Muslim family members, as the inheritance of the convert has become entirely the property of Baitulmal.

Suggestion

Based on the research conducted, the researcher recommends a thorough study on *maṣlaḥah* (benefit) and *mafsadah* (harm) contributions to non-Muslims in terms of *ma'ālāt* (future consequences) for the benefit of the Islamic community and Islam itself in Malaysia. Similarly, there is a need for further refinement in the understanding of living converts, especially regarding the management of assets and encouragement to make gifts or wills to non-Muslim family members. This service is provided by the Baitulmal Sector of the Selangor Islamic Religious Council and should be expanded to other State Islamic Religious Councils as well.

Conclusion

The summary in resolving the inheritance claims of Muslim converts at Baitulmal, especially in the Selangor Islamic Religious Council, adheres to *maṣlaḥah mursalah*. The application of *maṣlaḥah mursalah* in the Maliki School is based on general principles and does not deviate from the objectives of Islamic law, and it is bound by governmental decisions.

The inheritance in question originates from the possessions of a Muslim convert who has non-Muslim family members. Subsequently, this inheritance is entrusted to Baitulmal as a trustee for Muslims who pass away without Muslim heirs. This marks the beginning of the application of *maṣlaḥah mursalah* because Baitulmal represents the entire Muslim community. Therefore, the management of Baitulmal needs specific justifications that allow a certain portion to be allocated to claimants limited to the parents and children of the deceased Muslim convert.

From the perspective of the strength of *maṣlaḥah*, as per the findings of this study, the resolution of the inheritance claims of Muslim converts rests on *ḥājiyyāt* considerations aimed at preserving the image of Islam and safeguarding the welfare of non-Muslim relatives of the Muslim converts. Additionally, the solutions put forth can pave the way for the continuity of Islamic outreach efforts in the future, facilitating a better understanding of the religion of Islam.

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