

# The Issues, Concepts and Functions of Baitulmal in Selangor Islamic Religious Council (MAIS) on The Reclamation of Muslim Inheritance

Mohammad Salleh Abdul Saha<sup>1</sup>, Norazmi Anas<sup>2</sup>, Hamdi Rahman Mohd Yaacob<sup>1</sup> & Nurul Hidayah Aziz<sup>2</sup>

<sup>1</sup>Academy of Contemporary Islamic Studies (ACIS), Universiti Teknologi MARA, Perak Branch, Seri Iskandar Campus, 32610 Seri Iskandar, Perak, Malaysia, <sup>2</sup>Academy of Contemporary Islamic Studies (ACIS), Universiti Teknologi MARA, Perak Branch, Tapah Campus, 35400 Tapah Road, Perak, Malaysia

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## Abstract

Property reclamation is one of the approaches in *takharuj* to resolve disputations related to Muslim inheritance, especially apportion that belongs to baitulmal. Revenue revealed by The Baitulmal Property Division of Selangor Islamic Religious Council (MAIS) has experienced a significant downward trend from year 2017 to 2021. Data obtained from MAIS shows that the collection or income of inheritance by MAIS decreased from RM 4,316,241.87 in 2017 to RM 2,116,504.56 in year 2021. Therefore, this paper aims to identify the issues, concepts and functions of baitulmal on the inheritance reclamation in MAIS. It proposed a user-friendly reclamation method as a solution for both parties (MAIS & redeemers) which also resolve the declining inheritance revenue in MAIS. Indeed, the proposed method will strengthen the institution of Baitulmal MAIS, thus become a relevant reference to other religious institutions of Islamic Religious State Council (MAIN) in Malaysia.

**Keywords:** Issues, Concepts, Functions of Baitulmal, Inheritance Reclamation, Muslim, MAIS

## Introduction

Inheritance refers to all property left by the deceased to heirs (family members and others) including the movable and immovable property after deducting all debts and obligations to the entitled parties according to legislation (Muda, 2016) or known as the Administration of Inheritance (Halim & Arshad, 2014). It involves the process of collecting the deceased's property, followed by settlement of debts and balances, then distributed to the rightful heirs through three stages, namely (i) Grant of Probate from the High Court, Small Estate Division Unit, or Amanah Raya Berhad (depends on the state of property & value), (ii) Administration process of the deceased's property (sales/exchanged/ownership to heirs), and (iii) Distribution proceeds to heirs after deducting all related costs such as funeral expenses, will and administrative expenses, debts, liabilities or others (Halim & Arshad, 2014).

According to the Selangor Islamic Religious Council (MAIS) through its official website portal ([www.mais.gov.my/harta-pusaka](http://www.mais.gov.my/harta-pusaka)), the estate includes (i) all the *halal* property of the deceased, (ii) rent that has not been paid to the deceased, (iii) debts to the deceased settled after death, (iv) dividends/interest of the deceased's estate, (v) EPF savings with a nominee/ no nominee, (vi) Takaful nominee, and (vii) current goods and business after death, meanwhile; (i) property that has been sold, endowed, gifted or held in trust, (ii) death benefits, (iii) donations by persons visiting death, (iv) remuneration, compensation and consolation, (v) derivative pensions and (vi) payments under the Employees Social Security Act 1969 (SOCSO) are not included in the estate inheritance.

Inheriting an inheritance is subject to three (3) main categories of heirs, namely (i) *Ashab al-Furud* (heirs who receive an inheritance according to the portion prescribed by law consists of wife/wives or husband, mother or grandmother, father or grandfather, daughter or granddaughter, half-sister, half-sister and half-brother), (ii) *Asabah* (heirs who do not receive the prescribed obligatory share) and (iii) *Dhawi al-Arham* (heirs who have a family relationship with the deceased other than the obligatory heirs and heirs of *asabah*). The religious scholars (*ulama*) yet provide various opinions, namely (Ahmad & Abidin, 2017; Putera, 2011):

- i. First: They are rightful to inherit if the deceased does not assign an *asabah* who can use up the estate or there is no rightful heir can be returned the rest of the property.
  - ii. Second: They are not rightful to inherit because the deceased did not assign *asabah* or rightful heirs who could not use up the inheritance, then the rest of the deceased's estate should be handed over to the baitulmal even the deceased left many heirs of *dhawi al-arham*.
- Therefore, this study aims to identify the problems and concepts as well as functions of baitulmal in the Selangor Islamic Religious Council (MAIS) regarding inheritance reclamation.

### Problem Statement

Revenue collections by the Baitulmal Property Division, Selangor Islamic Religious Council (MAIS) has experienced a leaning decline in the last five (5) years from 2017 to 2021. Data obtained from MAIS presents that the collection or income of inheritance by MAIS has decreased from RM 4,316,241.87 in 2017 to RM 2,116,504.56 in 2021 (refer to Table 1). Indera Shahril Mohd Shahid (personal communication, June 21, 2022) stated that in the last three (3) years also showed a significant downward trend in MAIS inheritance reclamation income between RM 34,247.63 (2019-2020) to RM136,133.48 (2020-2021).

Table 1

*Revenue Collections by Baitulmal Property Division of MAIS by the last 5 years (2017-2021)*

YEAR	Total Revenue Collections
2017	RM 4,316,241.87
2018	RM 2,327,682.06
2019	RM 2,286,885.67
2020	RM 2,252,638.04
2021	RM 2,116,504.56

Source: Baitulmal Property Division, MAIS

Among the main factors for the falloff in MAIS inheritance income as figured in Table 1 is the arrears of reclamation payments by redeemers for more than 30 months due to the COVID-19 pandemic confrontation, loss of source income, and flood disaster incidents. The COVID-19 pandemic has hit the world since 2019, however affected country's finances due to the slowdown in the economic sector as well as increased current debts due to large economic stimulus packages that have been implemented in order to prevent economic turmoil (Farique & Fauzi, 2021; Abodunrin et al., 2020). The quantity of joblessness is also seen increasing daily which reason by unemployment in order to reduce operating costs of a company and the people play against the risk of losing their source of income because the implementation of Movement Control Order (PKP) or 'Total Lockdown' including in Malaysia (Hasbullah & Ab Rahman, 2020). The flood disaster, nevertheless hit Selangor at the end of last year caused property damage affected the lives of the people in the state involving more than 10,000 houses, especially in the districts of Klang, Kuala Langat, Petaling and Hulu Selangor (BERNAMA, 2022). Those situations visibly affected the redeemers who lost their source of income due to COVID-19 pandemic, incurring huge losses by flood disaster followed by arrears of instalments inheritance reclamation payments further affecting Baitulmal's income as one of the beneficiaries.

### **Islamic Estate Governance in Malaysia**

Inheritance refers to all the estate of the deceased including movable and immovable property after deducting all debts and obligations that need to be given to the rightful parties according to the law. According to Muda (2016), there are five (5) types of estates, namely; (i) testate estate, (ii) intestate estate, (iii) small estate, (iv) large estate (also known as ordinary estate) and (v) simple estate. Islamic inheritance governance means the process related to the estate of the deceased which involves the collection of the estate of the deceased, settlement of debts and balances before being distributed to the rightful heirs. A valid inheritance ownership is through the division of inheritance that benefits human beings if managed in the right way (Ab Rahman et al., 2018). According to Ab Rahman et al (2018), there are six (6) basic principles of Islamic estate governance:

- i. *Adalah* (just): A fair and meticulous system in conducting the estate to all heirs based on human nature, needs and bringing themselves closer to the deceased. Within this, the administration can be done well and professional. Each heir entitled to a reasonable share without any injustice practices.
- ii. *Wasatiyyah* (moderate): An Islamic system that differs to the capitalist and communist. Thru this moderate governance, an individual ownership is recognized and guaranteed through Islamic inheritance law. The estate apportions to the heirs respectively to their needs. Thus, affect better administration of the property according to the rights of the heirs.
- iii. *Tawazun* (balanced): A system that provides the owner of an approximate wealth to allow 1/3 allocation of his property for welfare via a will of the deceased, and the remaining 2/3 as inheritance for the rightful heirs according to Islamic law. The bound between the deceased and the heirs is closed as to assign wealth that can be used by the heirs later.
- iv. *Syumuliyyah* (comprehensive): A comprehensive system for all heirs, the beneficiary entitled to receive a share of the estate including all beneficiaries or relatives, whether large or small, old or young, rich or poor, even a foetus in the womb of a mother has the right to inherit.

- v. *Tafadol* (priority): A system that offers priority share in the division of the estate is based on the needs of the beneficiary (*al-hajah*). Man demands more property compared to woman because man will take over certain responsibilities in Islam, while woman and children have a lot of needs from the property, indeed children need a lot more goods compared to their fathers and grandfathers.
- vi. *Ijbar* (coercion): A system built by *redha* (goodwill) of a portion determined by Allah that requires all heirs to receive a share through a system of *faraid* (statutory portion) and any welfare that do not prevent beneficiary (heirs) from receiving a portion of the left property.
- vii. *Thabat* (permanent): It is the nature of Islamic inheritance law which does not change and cannot be changed to time, locality, even individual is subject to change because it is the command of Allah through the Quran and Sunnah of the Prophet SAW except in the case of heirs of the grandfather, siblings or relatives who receive the inheritance and *wajibah* (obliged) provides a room for *ijtihad*.

The estate of the deceased, however who has no heirs or there is a residual inheritance after being given to the entitled heirs will be handed over to *baitulmal* by taking into account the views of the Shafi'ites. The position and influence of the Shafi'ite is seen to be very strong and prominent, including the issue of inheritance and will administration law. Furthermore, the provisions of Islamic law in Malaysia also outline the application of the views of Shafi'ites, including inheritance property managed by *baitulmal*. The inheritance properties owned by *Baitulmal* of Selangor and Kedah unfortunately were not developed comprehensively in time due to various difficulties (Abd Wahab & Muda, 2021; 2022).

### **The Concept of Reclamation in *Takharuj***

Reclamation is the process of purchasing *baitulmal*'s inheritance estate by the heirs. The inheritance by *baitulmal* is because of the deceased is not having a specific heir or heirs (*asabah*) which qualify *baitulmal* to be an heir due to the right of inheritance from religious perspective, then to be distributed to the needed Muslims (Lembut, 2003) under the provisions of Section 13 (1) The Small Estates (Distribution) Act 1955 (Act 98) clarifies that the heirs are given the opportunity to reclaim *baitulmal*'s apportion. In general, there are three (3) main reasons of *baitulmal* be able to inherit the property, namely:

- i. The deceased has no heirs.
- ii. The deceased has heirs but is not entitled to receive an inheritance due to different belief, apostasy or the murderer of the deceased.
- iii. The deceased had heirs but could not use up the estate.

According to the *fiqh* of *faraid*, reclamation of inheritance is an analogy to the term of *takharuj* refers to withdrawal from receiving the inheritance either in part or in whole, by giving that share to one or several other heirs with a certain worth consideration from the estate or from other property. The *baitulmal* withdraws or relinquishes its rights to a property with payment after being agreed by both parties (JAWHAR, 2008) involving two types of property, namely immovable and movable property. According to Ahmad et al. (2017), a flexible *takharuj* provides option and preference in resolving the issue of division on Muslim property, in turn enabling various distribution problems to be addressed such as reclamation of inheritance entitled to *baitulmal*. It is seen in line with Islamic law, in fact quite differ to the concept of consensus practiced by the earlier Malays (Ahmad, 2017). It is supported by Noor

et al (2019); Hamdani (2020) who believe this approach becomes one of the effective solutions applied wisely and will benefited all. An example, a *takharuj*-based model is applied to optimize the size of agricultural land owned by each rightful heir and categorized as productive land development (Noordin et al., 2021). Ali and Ahmad (2013) state three (3) forms of solution by *takharuj*, namely:

- i. The agreement by *takharuj* between two heirs is either free or paid
- ii. The agreement by *takharuj* between one and the other heirs in return for a certain part of the *tarikah* such as a house, and his rights on other properties are all handed over to the other heirs.
- iii. The agreement by *takharuj* with payment from other property which can be made equally among the heirs, or in proportion to the value of their inheritance share, or as per certain amount agreed.

The *takharuj* approach is highly significant and relevant in terms of overcoming legal constraints in the context of Muslim estate division within the Constitutional framework that restricts heirs from obtaining their rights, addressing excessive property size fragmentation and avoiding delays in managing estate division (Ali, 2016; Ahmad et al., 2019).

#### **Functions of Baitulmal and Agencies Involved in Inheritance Reclamation**

Baitulmal is one of the financial institutions established as a socio-economic medium for the Muslim community. Current developments show that baitulmal is focusing on business, profits and new prospects in Islamic finance as well as boosting the governance of Islamic finance which involves waqf, zakat, inheritance and others related to religiosity (Osman et al., 2014). In line with its great function in Islam, baitulmal funds are extensively used for community benefit and also various purposes such as education, facility and infrastructure development, health needs, the welfare of *asnaf* and so on (Ab Rahmani, 2018; Jahidin et al., 2021). Baitulmal also serves as the last reference centre involving the estate that has no heirs or there is a residual property after being given to the rightful heirs. The situation occurs if the deceased does not assign heir of *fardu* or *asabah*, and the inheritance must be inherited by *dzawil arham*. According to Imam an-Nawawi in his book; Raudah al-Talibin, the *dzawil arham* is not inherited nor is the residual property returned when the management of the baitulmal are well administered and ruled by a just leader (Mohamad & Sulaiman, 2016). It is further reinforced by the view of Imam Malik and Imam Syafi'i that *dzawil arham* or relatives are not entitled to heirs and should be channel to the Baitulmal for the general benefit of the Muslim community (Al-Sabuni, 2008).

Under Section 13 (1), Small Estates (Distribution) Act 1955, "Provided that where there is in force any written law relating to baitulmal the Collector shall before distributing any part of the estate of a deceased Muslim satisfy himself that any share of the estate which is due to the baitulmal has been duly paid or proper provision made for the payment thereof". In the state of Selangor, the situation has been provided under Section 5 (4), Administration of the Religion of Islam (State of Selangor) Enactment 2003 namely; "The Majlis shall have power to act as an executor of a will or as an administrator of the estate of a deceased person or as a trustee of any trust". The Selangor Islamic Religious Council (MAIS) has offers to the heirs or any entitled party on the estate of the deceased to reclaim the share falls under baitulmal.

There are three (3) agencies involved in the inheritance reclamation process in Malaysia, namely the Islamic Religious State Council (MAIN), Small Inheritance Division Section, Department of the Director General of Federal Lands and Mines (JKPTG) or the Land and Civil High Court Office (JAWHAR, 2008; Abd Wahab & Muda, 2022; Roslan & Ahmad, 2022). MAIN is a statutory body established under the Islamic Religious Administration Act/Enactment for each state to assist and advise His Majesty, the Sultan/King or State Government in matters relating to Islam. Moreover, MAIN also acts as the executor of a will or as the administrator of the deceased's estate or as a trustee in administering Islamic religious affairs in the state which plays a big and important role in administering the deceased's estate. The estate must be distributed fair and equitable among the heirs, then MAIN must perform as entrusted to the best.

The Small Estate Division Section, JKPTG was established on March 1<sup>st</sup>, 1974 based on the awareness and sensitivity of the Malaysian government to the difficulties faced by the people in resolving estate management whose total property value does not exceed RM600,000. In the beginning of its establishment, its role was focused on assisting the tasks that were carried out by the administration of the District Land Office. The role, then has improved to a full responsibility when JKPTG decided to increase the number of sections from 11 to 36 sections throughout Peninsular Malaysia. The objective of this section is to ensure that the management of small estate division is fair, quick and efficient through strategies to increase the complete applications ability and spread awareness to the heirs of immediate application for small estate division.

The Civil Court has the authority to hear an application for a Letter of Administrative by the High Court. Then, the jurisdiction of the High Court is to hear petition of Letter of Administration and Grant of Probate which provided under Order 71 and Order 72, Rules of the High Court (KKMT) 1980, Probate and Administration Act 1959. The Deputy Registrar and Senior Assistant Registrar have the right to hear Letter of Administration of non-contentious matter. While for the contentious matter petitions will be referred to the Judge. The fee for Letter of Administration of the Estate Grant has been fixed by the Court through *praecipe*. However, for deaths occurs before November 1<sup>st</sup>, 1991, the fee is subject to a certificate issued by the estate duty office. In order to manage the estate of the deceased, the law in advance provides for the heirs to obtain an order from the Civil High Court or any relevant agencies (subjected to the total value of the movable and immovable property) to obtain rights of administration of the deceased's estate.

### **Conclusion**

This study, in general discusses the issues and problems occur related to the reclamation of Muslim inheritance in the Selangor Islamic Religious Council (MAIS) as well as the concept of reclamation of inheritance in Islam. Reclamation of inheritance is one of the methods of *takharuj* as an effort to resolve disputes concerning Muslim inheritance, specifically entitled to baitulmal. Therefore, the rightful heirs or the entitled agencies have an effective and efficient selection pertaining to the process of resolving estate issues. The inheritance reclamation is a method founded by *takharuj* in resolving issues and problems of inheritance involving heirs and related agencies entitled to the inheritance such as baitulmal. Based on the aforementioned problem statement, a user-friendly reclamation method is proposed as

an effective solution to increase the inheritance collection by the Baitulmal Division, Selangor Islamic Religious Council (MAIS) also a great solution for both parties (MAIS-redeemer).

**Corresponding Author**

Hamdi Rahman Mohd Yaacob

Academy of Contemporary Islamic Studies (ACIS), Universiti Teknologi MARA, Perak Branch, Seri Iskandar Campus, 32610 Seri Iskandar, Perak, Malaysia

Email: hamdi105@uitm.edu.my

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