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### RESEARCH ARTICLE

#### INHERITANCE MANAGEMENT BY BAITULMAL IN MALAYSIA: ROLE AND CHALLENGES

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#### Abstract

In Malaysia, division of inheritance is based on the Shafie *madhhab* (school of law), whereby when there is a surplus of inheritance after distribution to rightful heirs or when there are no rightful heirs, the residual inheritance is surrendered to the Baitulmal. However, there are challenges which need to be dealt with by Baitulmal in order that the inheritance may be utilised for the well-being of the whole society. Hence, the objective of this article is to highlight the basic conceptual framework and role of Baitulmal in addition to identifying the challenges in management of inheritance vested in Baitulmal. This qualitative research applies a content analysis design, and results are elaborated and presented descriptively. Research results find that there are differences between Baitulmal's role during the golden age of Islam and its unique practice in Malaysia. Besides that, there are challenges identified in management of inheritance by Baitulmal which need to be overcome and harmonised in order to preserve the *maslahah* (public interest) and public welfare of the entire Muslim society in Malaysia.

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#### Introduction:-

The Federal Constitution of Malaysia places the Baitulmal under the jurisdiction of Islamic Religious Councils of the respective states in Malaysia. This means that the Baitulmal does not function as a State treasury nor a National treasury for the whole country. It is only a small unit under the State Islamic Religious Council and functions in administering sources of revenue from surplus inheritance, *waqaf* (endowments), *nazar* (vow) and *kaffarah* (fine), lost property and other sources (Muhammad 2006).

Thus, the present conceptual framework of Baitulmal management is different from that implemented in early Islam and during the golden age of the Islamic Caliphate which upheld the Baitulmal as a parent treasury and financial center of the Caliphate. The present Baitulmal has a restricted scope and functions due to the fractionalising the administration into the National Treasury under Ministry of Finance of Malaysia and the Baitulmal under the respective State Governments. Article 97(3) of the Federal Constitution provides that the Baitulmal and Islamic

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revenues of the State Islamic Religious Council are placed in a separate group of treasuries, and revenue cannot be withdrawn except according to the relevant laws, namely the Shariah laws. Hence, according to Mohd Yusof (2009), Article 97(3) states the scope of Baitulmal or Islamic revenue now named as Baitulmal Fund. In addition, the Baitulmal has a special provision in the National Land Code 1965 (NLC 1965), namely, Section 4(2)(e) which exempts the application of NLC 1965 toward any legal provisions in effect at the time relating to the Baitulmal or *waqaf*.

The legislative power of the State Legislative Assembly regarding matters stated in List 2(1), State List, Ninth Schedule, including Baitulmal, is enshrined in Article 74(3) of the Federal Constitution. Hence, the Administration of Islamic Religion Act/Enactment of the respective states provides for the establishment and role of Baitulmal, for example, the legal provisions of Sections 81(1) and (2), Administration of Islamic Religion (Selangor) Enactment 2003 (Ngadimon 2009). Thus, the Federal Constitution provides the powers to administer Islamic religious affairs to be under the absolute jurisdiction of the Malay Rulers (Kasan 2006; Muttaqin et al. 2020). In line with this, Baitulmal has the right to lost and found property (*luqatah*), property of unknown ownership such as confiscated property, loans and savings whose owners are difficult to trace, and inheritance property without heirs or property not exhausted by heirs through *fara'id* law (Rayyan 1999). It is clear that inheritance property is one of the revenue sources of Baitulmal established in *fara'id* law whereby the Baitulmal is the last place to surrender it if there are no heirs or there is surplus property after distribution to rightful heirs. Hence, the Baitulmal is authorised to manage residual inheritance.

Indeed, ownership and possession of property is not absolute for humans because Allah SWT is the real owner. Humans only play a role as trustees responsible for managing it in the interest and well-being of society (Ahmad & Ibrahim 2006). For this reason, the party accountable must fulfill the trust with complete dedication in order to ensure the objective outlined by Shariah is achieved, at once preserving the interest and welfare of the community (Laluddin et al. 2012). In line with this, the objective of this article is to discuss the conceptual framework and role played by Baitulmal in managing inheritance property of Muslims through the mechanism of *fara'id* distribution as well as the challenges faced in managing inheritance for the Muslim society in Malaysia. In order to achieve this objective, this qualitative research applies a content analysis design, and results are elaborated and presented descriptively.

### **Brief Discussion of Conceptual Framework and Role of Baitulmal:-**

The term Baitulmal has been defined and commented on by many writers including Zallum (1993), who cast his view that Baitulmal is the authority that has the special duty to manage all state's wealth which all the Muslims are entitled, whether in the form of national revenue and expenditures. Muhammad Kamal (1993) concluded that generally, Baitulmal played the role of receiving sources and collections from Muslim and non-Muslim societies, such as *zakat*, *wakaf*, *khayrat*, *jizyah* (head tax), *kharaj* (tax of the lands conquered by force and by treaty), *fay'*, *'ushur* and *ghanimah* (spoils of war). More accurately, Baitulmal means the Treasury of an Islamic State that cumulatively received, managed and coordinated or harmonised various financial sources and property such as *zakat*, *waqaf* property, welfare, *khayrat*, taxes and so forth. In continuity from that, Baitulmal achieved its peak performance during the rule of Caliph 'Umar ibn 'Abd al-'Aziz when none of its citizens are eligible to receive *zakat* (Ibn 'Abd al-Hakam 1994).

Assets accumulated in the treasury were state property owned by all subjects who lived and settled under the auspices of the Islamic state. In other words, according to Hasan et al. (1954), property owned and kept by Baitulmal management was state property for the public welfare or public interest and development of the subjects and state. Tahir (1982) also held the view that the scope of the Baitulmal institution in terms of position, role and responsibility toward state development was immense and it was the most important financial and wealth institution in the state's fiscal and financial policy. Therefore the Caliph as Head of State acted to manage the state policy and budget policy according to the interests and priorities deemed suitable with Shariah policies and principles or Islamic laws.

Kamaruddin (2008) added that the Baitulmal should be seen as a financial and treasury system with the role to generate economic strength so that the true wealth of the Muslim community may bring collective benefit as optimally as possible. This statement is in line with the opinion of Abdul Rasyid (1999) who asserted that the pure concept of Baitulmal is not merely as a 'treasure house' that acquires and spends state property but more importantly as a vehicle to mobilize economic resources in influencing socio-economic stability and growth for the benefit of

society. According to Yaakub (2009) and agreed by Tayib and Osman (2009), the Baitulmal essentially functions in safeguarding and preserving the matter of society's welfare, whether directly or indirectly.

In terms of governance, Nik Hassan (2003) and Osman (2009) stated that management by Baitulmal is rooted in the trust principle of Islamic management of public finance, meaning that each revenue or resource channelled to the Baitulmal is trust property of Allah SWT and owned collectively by Muslims, while the Head of State acts as trustee. Hence, implicitly, control over the property is more of a responsibility and not as absolute ownership, namely the responsibility to manage and utilise the benefit for society and religion (Ahmad & Ibrahim 2006). For this reason, the Head of State and authorised institutions must ensure that the targeted objective will be achieved.

Along with this idea, Hassan (1992) held the opinion that it requires management rooted in tawhidic paradigm leading to execution of duties (trust obligation) as righteous practice for building a civilization pleasing to Allah SWT in order to achieve *al-falah*, namely, salvation, happiness and well-being in this world and Hereafter, at once curbing *al-fasad* (corruption or mischief). Hence in order to realise this aspiration into reality, Kamaruddin (2009) stressed that good governance by Baitulmal will boost the authority and dignity of the institution, at once increasing the confidence of the Muslim society in Baitulmal.

In Malaysia, Baitulmal is a small unit placed under the administration of a State Islamic Religious Council. The Baitulmal is responsible for managing properties of the Council according to Shariah, including inheritance property. According to Sulong (2008) and Abdul Majid (2009), based on the Sunni Shafie *madhhab* (school of law) prevalent in this country, the Baitulmal institution has the right to *'asabah* (residual inheritance property), namely, where there are no rightful heirs, or the heirs have accepted their shares but there is surplus inheritance property, or unclaimed property or the deceased had no heirs at all. Rahman (2015) added, this includes property where the owner is missing and the beneficiaries are unknown.

In the context of managing inheritance property of Muslims, the role of Baitulmal is to manage receipt and redemption of inherited property; manage the sale of inherited property; manage the purchase of inherited property; apply for execution of claims for inherited property at relevant agencies; receive payment for various revenues of inheritance property; receive redemption payment in installments and manage unredeemed inheritance property vested in the Baitulmal.

An investigation into the deceased's heirs is done based on *fara'id* mechanism before their rightful shares are determined including the Baitulmal's share as residual recipient (Ahmad et al. 2014) and investigation covers the location, size and condition of real estate property (Abdul Wahab 2007).

Besides that, in detailing the significance of the Baitulmal's role in Malaysia, Mohamad and Sulaiman (2015) related it to the agencies involved with Baitulmal management, namely, Department of Waqaf, Zakat and Hajj (JAWHAR), State Islamic Religious Council (MAIN), Agency for Management of Zakat (AMZ), Waqaf Foundation of Malaysia (YWM), World Zakat Organization (WZO) and so on, for the purpose of promoting Baitulmal's services and increasing public awareness through instruments such as *waqaf* (endowment), inheritance, *sadaqah jariyah* (continuous charity or property endowed for public interest), *zakat* (mandatory charitable contribution for all Muslims who meet the necessary criteria of wealth), *hibah* (gift), *wasiat* (wills) and *nazar* (vows). These agencies with Baitulmal play their role in financial management as well as investment in *'ibadah* for the hereafter of the Muslim society.

### **Challenges in Managing Inheritance Property by Baitulmal in Malaysia:**

As a trustee institution responsible for keeping the property for the Muslim society, including managing inheritance property vested in it, the Baitulmal needs to overcome several challenges in order to preserve public interest. The challenges are as follows:

#### **Statutory Constraints:**

Highlighting the opinion of Zulkafli and Ahmad (2017), one of the challenges faced is that caused by the constraints of federal and state statutes. This runs parallel with the view of Daud (2005) that the source of authority enshrined in Article 97(3) and First Paragraph, List 2, State List, Federal Constitution along with the Administration of Islamic Religion State Enactment vesting in the respective States the power to establish, regulate and determine the direction of the Baitulmal institution, impact Baitulmal resulting in dispersed administration which can contribute to

administrative inefficiency. In the same tone, Mahamood (2007) stated that one of the factors which contributes to this circumstance is the uncoordinated organizational structure of management in each State Baitulmal in Malaysia. This is due to each State Baitulmal operating under the respective State Administration of Islamic Religious Council known as MAIN which differs from one another in their structure and ways (Abdul Rasyid 1999). The impact of this is to cause diminution and ambiguity in the current functions of the Baitulmal (Kamaruddin 2008). This statement is supported by Osman et al. (2014) who stated that the true role of Baitulmal is marginalised and its function reduced into a small unit in the State Islamic Religious Council, aided by some government agencies.

In line with that, Sulong (2011) and also Nor Muhammad and Mat Ali (2014) explained that statutory constraints such as the Land (Group Settlement Areas) Act 1960 (Act 530) and the negative attitude of heirs interfere with or disrupt management of inheritance property of Muslims, including the residual 'share' which should be surrendered to Baitulmal according to *fara'id*. Besides that, Mohd Shahid (2016) stated that there is a challenge relating to the law on redemption of inheritance property. This is because the Baitulmal of the State Islamic Religious Council has to deal with various agencies in managing inheritance as there is no written provision (statutory) that enables Baitulmal to directly take ownership of the residual share of inheritance property.

#### **Diverse Laws and Multiple Jurisdictions Managing Muslim Inheritance:**

Multiple jurisdictions can cause confusion among agencies or department that manage Muslim inheritance, and also sometimes overlaps in jurisdictions. Besides that, it complicates and confuses the public involved in inheritance claims, especially for those from remote or interior areas who have limited exposure and information or knowledge (Muhamad 2006).

Further, there are legal problems relating to redemption of inheritance, caused by Baitulmal having to deal with many multiple agencies as there is no written legal provision (statutory) that enables it to directly possess and own inheritance property. According to Zulkafli and Ahmad (2017), the diverse agencies with different laws and regulations can cause confusion in parties involved in managing Muslim inheritance property and sometimes overlaps in authority occur. Besides that, it complicates matter for the heirs who have to attend two trials at different institutions that administer and resolve the deceased's assets (Mohd Ali 2014).

In this context, Muslims are forced to deal with the Shariah Court for a *Fara'id* Order, and then settle the matter of matrimonial assets (*harta sepencarian*) with the Baitulmal. Next, they must deal with the Estate Distribution Unit of the Department of Director-General of Land and Mines or Land Office to settle the distribution of inheritance property if the total value of land and/or building is not exceeding RM2 million. If the deceased has no land or immoveable property but only has cash of an amount less than RM600,000.00, they need to deal with Amanah Raya Berhad (Public Trustee Limited) (Somad Abdul Bashit 2016). The *Fara'id* Order is not an order for distribution of inheritance but an official declaration of the value of inheritance and the rightful Muslim heirs as well as their entitled shares after *fara'id* calculation is done, certified and issued by the Shariah Court (Ahmad et al. 2017). This statement is thus in line with the views of Noordin et al. (2012), Halim and Arshad (2014) and also Ahmad et al. (2019) that the Shariah Court has only limited jurisdiction in the administration of inheritance in the State List (List II, Ninth Schedule) of the Federal Constitution and legal provisions in Administration of Islamic Religion Act/Enactments of States. The Shariah Court only issues an official declaration for the inheritance but has no jurisdiction to deal with the legal procedure of inheritance administration for Muslims. This chain of problems complicates and prolongs the transfer process of inheritance property. Many parties are affected, while land property in Baitulmal's possession may become idle pending the inheritance case.

#### **Emergence of Diverse Agencies with Roles Almost Similar to Baitulmal:**

In addition, another problem is the increasing emergence of various public and private insititutions with roles similar to Baitulmal, causing confusion and ambiguity as to what is the actual role of Baitulmal. According to Kamaruddin (2009), society is more familiar with the Inland Revenue Board (LHDN), Department of Social Welfare (JKM) and Economic Planning Unit (UPE) than the Baitulmal institution. Mohd Shahid (2016) stressed that the situation becomes more critical when it involves management of inheritance by Baitulmal because its role in managing the inheritance of Muslims is less known or publicised (Somad Abdul Bashit 2016).

#### **Real Estate Property with Less Potential:**

In addition, another challenge relating to land in Baitulmal's possession is property which is less valuable, of narrow width land area and with less potential to be developed (Somad Abdul Bashit 2016). For example, in Negeri

Sembilan, Baitulmal has a surplus of property of narrow land area. Such land unfortunately cannot be developed due to lack of potential. In fact, such land owned by Baitulmal incurs taxes payable instead of bringing in revenue (Mohd Shahid 2013). There are also cases where Baitulmal's residual share is a small part of inheritance property. This limits Baitulmal's powers to manage and develop the property without prior consent of the other heirs. In such a situation, Baitulmal encourages the heirs to redeem Baitulmal's residual share (Somad Abdul Bashit 2016).

#### **Society's Negative Attitude Regarding Management of Inheritance Property at Baitulmal:**

Baitulmal faces the problem of society's shallow understanding of *fara'id* (literally means fixed portions) or Islamic inheritance laws, especially regarding management of inheritance property at Baitulmal (Ahmad & Laluddin 2010). Cases of willfully not fully disclosing the rightful heirs during the process of distribution eventually results in a re-trial because of another heir making a claim on the inheritance property after the Baitulmal has sold his share to the other heirs (Abdul Wahab 2007). According to Abdul Wahab (2007), there are instances of some who dispute the right of Baitulmal to inheritance property by requesting evidence and arguments for giving residual rights to Baitulmal or the State Islamic Religious Council. Besides that, there have been instances of quarrels and fights to rent out and redeem property vested in the Baitulmal because the property was cultivated or worked on long before it became the property of Baitulmal.

This matter complicates the process of transferring inheritance property distributed by the Shariah Court according to *fara'id* laws. According to Ahmad (2017) and Somad Abdul Bashit (2016), this happens because of the Muslim society's lack of understanding and information regarding the concept of *fara'id* and the role of Baitulmal in managing Muslim inheritance.

#### **Problem of Payment for Redemption of Inheritance Property:**

Most heirs cannot afford to settle their dues in redeeming inheritance property because they are from the lower income group. Therefore, Baitulmal usually offer some price reduction based on the financial capability of heirs who wish to redeem. The Baitulmal of Islamic Religious Councils of Malacca (MAIM) and Selangor (MAIS) do offer a reduced price for heirs who wish to redeem inheritance property. However, according to Somad Abdul Bashit (2016) other State Baitulmal do not give any price reduction in settling payment for redemption unless the property has been previously occupied by the heirs. It is feared that if given price reduction, the heir might sell the property to another party for profit.

#### **Claim by Non-Muslim Heirs for Inheritance Property of the Deceased Convert (*Mualaf*):**

There are non-Muslim heirs who are aggrieved that their share of inheritance is denied and feel they are entitled to the deceased convert's property which is vested in the Baitulmal. They question the right of Baitulmal to deny their inheritance when in fact they are the living heirs of the deceased and should be recognised as rightful heirs in spite of the deceased's conversion, especially if the deceased had kept knowledge of his conversion secret from them. Thus, grievance on the part of non-Muslim heirs leads them to make a claim on the convert's inheritance property when they do not get their rights due to his Muslim status as a *mualaf*.

#### **Conclusion:-**

Baitulmal should be placed high in the country's administrative system but in Malaysia the role of Baitulmal is restricted and diminished under the administration of the State Islamic Religious Council. Hence, it seems as if the role of Baitulmal has gone off the mark in comparison to its original role during the golden age of Islam in the past. Based on the Shafie *madhhab* (school of law), inheritance property of the deceased is vested in Baitulmal under the respective State Islamic Religious Council if there are no rightful heirs, or there is surplus after distribution to rightful heirs. With the permission of the Baitulmal of the State Islamic Religious Council, the heirs of the deceased may redeem the property vested in the Baitulmal at a current price evaluated by the Settlement Officer of the District Land Office or relevant Assessment Office based on the procedure set by Baitulmal.

There are several challenges which need to be straightened out and resolved to smooth the course of inheritance management at Baitulmal, namely, statutory constraints, the confusing involvement of various agencies with almost similar roles to Baitulmal's, diverse laws and multiple jurisdictions for management of inheritance property of Muslims which complicates the transfer process of the property, payment for redemption of inheritance property, the 'less than friendly' attitude of the Muslim society toward *fara'id* knowledge (Islamic inheritance laws) and Baitulmal's management of inheritance, real estate property vested in Baitulmal which have less potential and the challenge of facing claims by non-Muslim heirs for inheritance property of a deceased *mualaf* (convert). Therefore,

exploring the potential of inheritance property vested in Baitulmal needs to be comprehensive as it can constitute added value to generate the economy which will empower the role of Baitulmal in maintaining and sustaining the welfare of the whole Muslim community in Malaysia.

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