

The Practice of Interfaith Inheritance Distribution in Malaysia: An Analysis of its Fatwa

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Abstract: The Law of Inheritance (*Faraid*) is one of the laws on which serious emphasis is given in Islam so much so that the Prophet (peace be upon him) suggested Muslims to learn it and teach it to others. Among the aspects considered in Islam in the issue of inheritance is the position of the properties involving the deceased and the heirs of different religion. This is because some Muslims do face this situation and require a solution that is in line with Shari'ah laws. Do Muslims of today understand this law, or has this been neglected without any solution being found? What are the laws related to the inheritance of a Muslim who had left his religion (apostate) and the inheritance for the non-Muslims amongst them? Hence this study will re-examine the view of Islam on the matter and will analyse the implementation of *fatwa* on this issue in Malaysia. This study found that each decision made by the *fatwa* institution in Malaysia indicates that in the matter of allocation of properties, Muslims and non-Muslims are forbidden from inheriting from each other. At the same time this shows that the decisions are in line with the inheritance system introduced by Islam. However, in specific cases, some *fatwa* allows the distribution of the properties to those of different faith in honour of the customs of some people in the community. Similarly in cases affecting a deceased Muslim who left behind a mother who, although non-Muslim, is living in need, Baitulmal (Treasury) can allocate a part of the deceased's properties for the use of his mother as an act of compassion and not on the basis of distribution of inheritance property.

Key words: Property Allocation • Inheritance • Interfaith • Malaysia • Fatwa

INTRODUCTION

Inheritance Law or *Faraid Law* in Islam is crucial especially in modern times when man faces various new issues. Among those new issues is the tendency of some of the Muslim *ummah* to be less observant of the religious practice to the extent that their neglect of the practice may lead to them being out of the fold of Islam. What would happen between parents and children, between relatives and so on, from the point of inheritance? Such cases must be resolved according to Islamic guidelines so that the properties are channeled to the rightful owner. The lack of understanding of Islamic inheritance law causes the *ummah's* economic regression due to neglecting assets willed to them.

There are clear texts in al-Quran which explain the law regarding inheritance on top of details of its particulars in *hadith* be it from the angle of its technicality or implementation. If we are to look into other laws in the Shari'ah, there are no other laws explained in al-Quran with as much detail as inheritance law, from the fundamentals right up to its branches.

Discussion on prohibition for one from claiming one's right to inheritance within the Islamic legal framework is an important matter. This is because Shari'ah is depicted as formidable in protecting the fortune and safeguarding the rights of the individual. By knowing the prohibition, one should not give his or her fortune to someone who is not entitled to the property, such as in the case of different religion between the deceased and the heirs. Hence, this article shall briefly explain how one is prevented from inheriting or giving inheritance as in the case of interfaith inheritance, on its practice and on the related fatwas in Malaysia.

Prohibition from Getting Inheritance: In Islam, there is a specific discussion on prohibition from getting inheritance. Imam Shafi'i explained that the prohibition from obtaining inheritance occurs when someone is prevented, due to reasons, from inheriting anything considered as inheritance unless he or she is of the same religion with the deceased, an heir to the deceased, is free (not a slave) and, in the case of the deceased died due to murder, is free from murder charge of the deceased [1].

The Shari'ah has decided that these prohibitions can be divided into two categories: first, prohibition agreed by consensus of the ulema and second, prohibitions which are disputed among the ulema.

Prohibitions Agreed on Consensus of the Ulema: A prohibition from inheritance agreed unanimously by the ulema is that if the heir to the deceased is a mukallaf who committed the criminal murder of the deceased with intention. The murderer is not allowed to inherit any property left behind by the victim[2].

However, disputes exist among the ulema if the crime was committed unintentionally. In the Shafi'i *mazhab*, the type of murder considered as a hurdle for someone to gain access to the inheritance property of the deceased is one which is an absolute murder regardless by intention or not. This is different from the views of the Hanafi, Maliki and Hanbali scholars who put certain conditions to convict the heir of manslaughter victim [3].

Another situation in which an heir is prohibited from receiving inheritance is when the heir is a slave, not a free man. The ulema have agreed that a slave is prevented from allocation of inheritance and he or she also cannot give inheritance to his or her heir. This is because inheritance is under the category of ownership whereas a slave does not own anything since he or she him/herself is owned by his/her master. The relationship between a slave and his master cannot be considered as one of kinship[4].

Another prohibition is in the case of difference of religion between the deceased and the heir. What is meant by this is that the religion that the living heir subscribes to is different from the religion of the deceased who leaves behind the inheritance. In other words, both parties profess different religions[5]. The *dalil* behind this situation is found in the *hadith* of the Prophet (p.b.u.h.) which means[6].

“A Muslim cannot be the heir of a disbeliever, nor can a disbeliever be the heir of a Muslim”.

Also prohibited from getting inheritance is the couple in the case of *li'an* (a case when a husband accuses the wife of committing adultery whilst the wife denies it and both parties take an oath of *li'an* or condemnation). In such case, both are barred from inheriting from each other should one of them die first. The prohibition also applies to the children born by the wife who is in the *li'an* case because *li'an* acts like a boundary between the husband and wife[7].

Prohibitions Disputed among the Ulema: Among the prohibitions which become disputes among the ulema is in the case of uncertainty of the time and date of death. This is because a condition for allowing the distribution of inheritance is a certainty that the heir is still alive at the time of death of the deceased[8]. In certain cases, it is difficult to determine who dies first, such as in the event of collapse of building which causes multiple deaths. In such cases which involve simultaneous deaths, the ulema differ in opinion as to how the inheritance is to be distributed.

According to Hanafi, Maliki and Shafi'i scholars, apportionment of the inheritance in such circumstances cannot be done due to these factors:

- A condition for distribution of inheritance is that the heir is still alive after the death of one who leaves the inheritance (*muwarris*). This condition cannot be conclusively known in the case of simultaneous deaths and therefore inheritance distribution cannot proceed as there is doubt in the condition[9].
- An alive person cannot inherit from another living person. Therefore, if one inherits from a living *muwarris*, such distribution of wealth is considered void.
- The decision to divide the wealth to one of them (who died simultaneously) or to all of them is therefore considered erroneous[10].
- Such cases cannot avoid making an assumption that either all of them die together or one of them dies first. Therefore to distribute the inheritance is wrong according ulema consensus or *al-ijma'* [11].

The Hanbalites however opine that in such cases, inheritance distribution can still proceed. The reasoning is that one of them must have been surely alive. In such situation, the original Islamic verdict must be applied and maintained that is to treat as if one is still alive after the death of another. Moreover, the event is determined by the closest to the time of death[12].

Apart from the above, another issue which becomes a point of dispute among the ulema is the situation in which divorce occurs while the husband is suffering a critical illness which may lead to death. The ulema unanimously agreed that divorce by *raj'i* does not prevent husband and wife to inherit each other's fortune when one of them dies as long as they are still in the *'iddah* period. The ulema also agreed that divorce by *ba'in* while the husband is healthy will prohibit inheritance from each other should one of them die.

The Polemic of Interfaith Inheritance Distribution:

The position of inheritance property in the event that the deceased and the heir are of different faith is discussed from three angles. First, between a Muslim and non-Muslim; second, the *hukum* (Islamic verdict) of inheritance for apostates; and third, inheritance among non-Muslims.

Islamic Verdict on Interfaith Inheritance Distribution Between Muslim and Non-muslim:

In this issue, two situations exist which are, first, a non-Muslim inherits the properties of a Muslim and, second, a Muslim inherits the fortunes left by a non-Muslim. In the first circumstance, the ulema unanimously state that a non-Muslim has no right to inherit any properties left by a Muslim[13].

Therefore, if the husband is a Muslim whereas the wife is a Christian, then the wife has no right to receive inheritance from the husband. The same position is taken when a husband who formerly was a Christian or a Jew, he then embraced Islam and after that he died. The wife, children and relatives have no part in the inheritance unless they also became Muslims. The non-Muslim heirs cannot be the beneficiaries of the inheritance, regardless whether he amassed the fortune prior to him becoming Muslim or not, due to the generality of the *dalil* of the afore-mentioned Prophet's *hadith* (Yusuf Qasim. 1994).

On the second issue whereby a Muslim is an heir to a non-Muslim, majority of the *fuqaha'* among the Prophet's Companions, *tabi'in* and *imam mujtahids* stated that a Muslim cannot inherit from a deceased non-Muslim. This is also based on the generality of the above *dalil*. This is in line with the prohibition of inheritance between people of different beliefs. In fact, it runs parallel with the equality principle in *muamalat* between Muslim and non-Muslim[14].

Nevertheless, some of the Companions (may Allah be pleased with them) namely Mu'az bin Jabal and Mu'awiyah and *tabi'in* scholars (Sa'id bin al-Musayyab and Masruq) carried the opinion that Muslims can inherit properties from people of other faith[15].

A question arises as to when we determine the deceased and the heirs are of different faith. Is it at the time of death or the time of inheritance being distributed? According to what has been determined by majority of the *fuqaha'*, the time is the time of death of the deceased (who leaves the inheritance). This is because that time is considered the reality and most suitable for wealth distribution. Therefore, if a Muslim dies and only after that the wife converts to Islam, then in this situation the wife is prohibited from inheriting her dead husband's

fortune because at the time of death they were of different religion. Hence, the actual time to allocate portions of inheritance to those eligible for the inheritance is at the time of death of the deceased[16].

In the view of some *fuqaha'*, difference in religion is determined at the time of the inheritance distribution. This is to take into account that real ownership of the inheritance by the heir does not occur unless the inheritance has been divided whereas before that, the heir's right on the property has not been determined due to the possibility that their right may become invalid before the property is divided[17].

Based on the above dispute among the *fuqaha'*, it can be concluded that the latter opinion provides opportunity for a ploy to obtain the inheritance by getting around the Shari'ah verdict without any real intention on the side of the heir to really subscribe to the religion of the deceased. Therefore, the stronger opinion is the view of majority of the *fuqaha'* which stipulates that the status of religion is determined at the time of death and not the time when the inheritance is being allocated.

Inheritance for Apostates: Apostasy occurs when the action or uttering of words by a mukallaf Muslim cause his or her Islam being renounced[18].

The *fuqaha'* agreed by consensus that an apostate cannot inherit properties of absolutely anyone because a condition for allowing inheritance is that the heir must be a Muslim whereas in apostasy the heir has become a disbeliever[19].

Therefore, if the deceased was a Muslim, while the heir is an apostate, the heir is forbidden from receiving the deceased's left properties. The same goes with the case in which the deceased is a non-Muslim and the heir becomes an apostate during his or her lifetime and so the apostate heir is not entitled for any portion of the inheritance[20].

Inheritance Distribution among Non-Muslims: If the deceased and the heirs are among non-Muslims, then it must be looked into their religion. If they profess the same religion, according to the consensus of *fuqaha'*, they can inherit from each other.

In the situation where the deceased is Christian and the heir is of another religion such as Judaism, majority of the *fuqaha'* agree that the heir can inherit the wealth of the deceased. This is based on the generality of the *nas* on this matter. Moreover, according to Islam, in matters pertaining to inheritance law, other religions are treated equally.

However, according to Imam Malik and some fuqaha' such cases must be categorised into either Abrahamic religions or non-Abrahamic religions. Hence, when the deceased and the heir are followers of Abrahamic religions, difference in the religion may prevent the heir from receiving inheritance should one of them profess Christianity while the other Judaism. A Christian heir cannot inherit from a Jewish deceased and vice versa due to the basis that both Christianity and Judaism are Abrahamic religions. That is to be the case unless one of them either the Jew or the Christian no longer believes his or her original belief.

Non-Abrahamic religions are considered the same for they associate Allah with other gods and are therefore treated equally, as in there is no difference among them[21].

Fatwa on Interfaith Inheritance in Malaysia: A recurring issue raised in the distribution of inheritance in Malaysia is interfaith inheritance which is inheritance which needs to be distributed to heirs of different religion. It can be said that all *fatwas* decreed on such issue agreed that inheritance properties cannot be given to a living heir of different religion. According to the authors' study, only a few states, namely Terengganu, Kelantan, Perlis, Selangor and the Federal Territory have *fatwas* deliberating this matter.

An example to illustrate this issue is the *fatwa* issued by The Terengganu State Mufti Department. A *fatwa* was given by the Mufti al-Syeikh Syed Yusuf b. 'Ali al-Zawawi in response to questions asked to him in Questions 55(1) and 120 in "*Fatwa-Fatwa Mufti Kerajaan Negeri Terengganu (daripada tahun Hijrah 1372-1389 bersamaan tahun Masehi 1953-1970)*". In responding to the questions, the Mufti asserted that a Muslim cannot inherit properties from a non-Muslim. Similarly, non-Muslims are not allowed to inherit fortunes left by Muslims. The Mufti presented a *dalil* from the *hadith* related by Imam al-Bukhari and Muslim which means[22]:

"A Muslim cannot be the heir of a disbeliever, nor can a disbeliever be the heir of a Muslim".

Apart from that, there were questions from the people of Terengganu in Questions 134(I) and 134(II) on the status of properties left behind by someone who originally was not a Muslim and later on in his life embraced the religion of Islam and married a Muslim woman. He later died leaving some properties which he acquired prior to being Muslim and some properties after he professed the religion of Islam.

In answering the question, the Mufti stated that any fortune, money or asset which the deceased left behind is considered as inheritance regardless before or after he became Muslim. Therefore, should the deceased not have any Muslim heir apart from his wife, the wife shall inherit $\frac{1}{4}$ of the inheritance. Meanwhile, the rest shall be handed to Baitulmal. Hence, any non-Muslim heir does not have the right to claim any of the deceased's properties.

The same matter was discussed in a meeting of Panel of Ulema of The Kelantanese Council of Islam and Malay Customs who convened on the 22nd of February 2009 deliberating the current issues of prohibitions (*mawani'*) of inheritance property or *faraid* claim. The meeting took a resolution that among the prohibition from claiming *faraid* is due to difference in religion. If someone, who is entitled to the inheritance property, left the fold of Islam be it by proclamation, *ikhtiqad* or by statutory declaration or "deed pole" declaration, the other heirs must obtained an order from the Shari'ah Court to exclude the non-Muslim heir from the list of the inheritance beneficiaries[23].

Similarly in Perlis, the State Fatwa Committee decided that a Muslim cannot inherit from a non-Muslim and vice versa. The decree was made on the 1st of May 2000[24] based on the reasoning of a *hadith sahih* which means[25]:

"A Muslim cannot be the heir of a disbeliever, nor can a disbeliever be the heir of a Muslim"

A similar matter was discussed in the 61st Muzakarah of the Fatwa Committee of the National Council for Islamic Affairs which convened on the 27th of January 2004. There was a discussion on the *hukum* on the Employee Provident Fund (EPF) disbursement for an EPF contributor who embraced Islam and died leaving behind non-Muslim heirs. The *muzakarah* decided that according to Shari'ah a non-Muslim does not have the right to inherit from a Muslim and vice versa.

The same committee also decided that if a non-Muslim embraces Islam and has savings in EPF and has named non-Muslims as beneficiaries, he or she is therefore obliged to change the beneficiary to a Muslim heir. Should there be no Muslim heir, the inheritance is not accorded to a non-Muslim beneficiary but must be handed to Baitulmal. However, Muslims can apportion his *wasiat* (will) to a non-Muslim no more than one-third of his fortune[26].

The Kedah State Fatwa Committee likewise decided that, in matters of inheritance, a Muslim cannot receive inheritance from the parent or any other non-Muslim relatives and vice versa due to difference of religion except in the case of *wasiat*[27].

In Penang, one case involved a non-Muslim mother who wished to claim a portion of inheritance left by her child who converted to Islam without the mother's knowledge. The mother made an appeal to Penang's Council of Islamic Religion to gain access to the inheritance left by the deceased. Her reasoning was that she was decrepit and in need of financial assistance, something which the deceased frequently provided for her.

Hence, the Shari'ah Committee of Penang led by the Mufti himself, Dato' Haji Hassan Bin Haji Ahmad, in 1986 decreed that the appeal made by the deceased's mother could not be granted by the Committee since she was of different faith. However, the Committee was of the opinion that Baitulmal can consider awarding the mother with compassionate emolument because, if the deceased was still alive, he would be obliged to provide for provisions for the mother even though she was not a Muslim[28]. The Shari'ah Committee made the decision based on the words of Allah S.W.T. in Chapter Al-Mumtahinah verse 8 which means:

" Allah forbiddeth you not those who warred not against you on account of religion and drove you not out from your homes, that ye should show them kindness and deal justly with them. Lo! Allah loveth the just dealers "

The above fatwa mentioned that the deceased did not leave behind any other heir who is Muslim, apart from his non-Muslim mother. Hence, according to Islamic *faraid* law, if the deceased did not leave any heir then his properties shall be handed to Baitulmal. This is based on the opinion of the ulema who assert that[29].

"When there is no one among the heirs on the status and arrangement as we mentioned earlier on, the inheritance must therefore be handed to the public treasury of the Muslims namely the Baitulmal".

Nevertheless, flexibility has been noted in cases involving communities which mix the *faraid* system with their traditional customs. Such problem had been asked to members of the Jawatankuasa Perunding Hukum Syara' (Fatwa) [Shari'ah (Fatwa) Consultative Committee of the State of Selangor] on the method or procedures in inheritance apportionment for multi-religious Orang Asli (the indigenous people of Peninsular Malaysia) family of Bukit Lanjan.

Orang Asli of Bukit Lanjan originally resided in three areas within the Orang Asli Bukit Lanjan Reserve Land. A 641-acre portion of the land had been developed for housing. The development included construction of bungalow houses, terrace houses, shop lots, apartments and administrative buildings. Apart from immovable

assets mentioned earlier, the Orang Asli community of Bukit Lanjan also received a considerable amount of compensation money.

Since the commencement of the construction project undertaken by Syarikat Saujana Triangle Sdn. Bhd, a subsidiary of EMKAY, a total of 14 Ketua Isi Rumah Induk (KIR) or Chiefs of Household had passed away including the pioneers who played a significant role in the development project. Considering they had left some inheritance, their heirs made a claim for the properties.

Jabatan Orang Asli (The Department of Orang Asli) took the initiative to determine the method and procedure for inheritance allotment especially for movable assets. A series of discussion was conducted to resolve the issue to no avail due to difference of opinions and circumstances. This was the first such case in Malaysia to involve Orang Asli inheritance in which the heirs to the properties were of different faiths.

Therefore, the meeting of Shari'ah (Fatwa) Consultative Committee of the State of Selangor which convened on the 24th of July 2001 unanimously decided that[30].

"The method of inheritance apportionment for Orang Asli of Bukit Lanjan must comply with *faraid* system as prescribed by Islam. Nevertheless, heirs are given the choice to apply the *faraid* system or make equal apportionment according to their customary system. This is done in the interest of *maslahah* or expediency which takes precedence.."

CONCLUSION

Based on the above analysis, this study found that all decisions made by the *fatwa* institutions in Malaysia show that property apportionment between Muslim and non-Muslim is prohibited. They cannot inherit each other's property. This is in line with Islamic inheritance law. However, in certain cases, some *fatwas* allow the Baitulmal to consider giving the property as compassionate gift to a mother who does not profess the religion of Islam because, if the deceased was still alive, he is obliged to provide sustenance for the mother even though she is non-Muslim. Apart from that, in cases involving tribal customs and traditions in inheritance apportionment, the Fatwa Committee is seen as honouring the custom practised by some part of the society even though it involves different faiths. Such apportionment is seen more as taking care of the *maslahat* or expediency of both parties.

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