

## The Concept of Reclamation in Muslim Inheritance

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### Abstract

Reclamation of inheritance is the means wherein successors acquire inherited properties obtained from the Baitulmal. These assets are placed under its property considering the deceased has no qualified or specific descendants (as per the principle of *asabah*) that constitute the Baitulmal as a valid heir pursuant to religious rights of inheritance. They are later distributed to the Muslim community when necessary, in line with Section 13(1) of the Small Estates (Distribution) 1955 (Act 98), enabling heirs to redeem the Baitulmal's share. The objective of this study is to explore the subject of reclaiming Muslim inheritance via literature review and discernment among selected Malaysian professionals. The primary research approach utilized in this qualitative case study was semi-structured interviews involving four Malaysian experts from Islamic organizations, local authorities, and a legal firm. Data were assessed thematically to uncover key themes and findings. The present research accurately clarifies the notion of Islamic inheritance reclamation in depth, integrating widely used terms like *takharuj* and *sulh*. They allude to the relinquishment of possession in exchange for reimbursement, remuneration, or restitution determined by present valuation under a sale-and-purchase framework, providing a solution to succession issues by way of *musyawarah* (compromise) between successors. The premise also rests on customs maintained by the companions throughout the reign of Caliph Uthman bin Affan, prioritizing equity and complying to *al-'adah al-sahihah* with respect to the fundamentals of *fara'id*. In this study, heirs consent on purchasing the Baitulmal's assets in cash all while abiding to Shariah requirements.

**Keywords:** Concept, Reclamation of Muslim Inheritance, Expert, Malaysia

## Introduction

The redemption of hereditament is a means that enable heirs acquire bequeathed properties retained by the Baitulmal. The properties are owned by Baitulmals when the deceased individual has no descendants or qualified ones (based on the *asabah* principle), allowing the Baitulmal to take ownership on account of religious rights of succession. They are then divided to the Muslim population when necessary, as per Section 13(1) of the Small Estates (Distribution) 1955 (Act 98), which states that successors have the option to redeem the Baitulmal's share (Lembut, 2003). There are three key reasons why the Baitulmal can take possession of assets:

- i. The deceased was without heirs.
- ii. The deceased possesses heirs, however they are unable to inherit due to religious differences, apostasy, or complicity in the deceased's demise.
- iii. The deceased possesses heirs, yet they are incapable to inherit the fortune.

In the perspective of *fiqh*, particularly in the context of *fara'id*, inheritance reclamation is associated with the concept of *takharuj*, that refers to an heir's opting out from accepting a portion or all of the inheritance. The heir's portion is handed over to one or more successors as a substitute for reimbursement equal to the appraised worth of the bequeathed property or other assets. The Baitulmal withdraws or gives up its claim to certain properties in return for settlement, bound to both parties' mutual consent (JAWHAR, 2008). This procedure includes two categories of assets: immovable and movable. Ahmad et al. (2017) state that the versatile method of *takharuj* offers alternatives and tolerances in settling concerns with regard to the dispersion of Muslim inheritance, allowing numerous issues to be resolved, including inheritance redemption that involve the Baitulmal. This method adheres to Shariah principles while differing from the Malay society's conventional consensus-based approach (Ahmad, 2017). This concurred with Noor et al. (2019) and Hamdani (2020), who contend that if implemented correctly, this strategy can be a viable option that benefits all affected parties. For example, a *takharuj*-based framework designed to maximize the utilization of agricultural land possessed by eligible successors could regard the asset as productive or appropriate for development. Ali and Ahmad (2013) propose three (3) forms of *takharuj* solutions:

- i. *Takharuj* agreement among two successors, either with or without compensation.
- ii. *Takharuj* agreement involving one successor and all other successors in which the former gives up certain aspects of the *tarikah*, for instance a house, as well as his rights to other assets, that are subsequently distributed to others who inherit.
- iii. *Takharuj* agreement with reimbursement from other properties, that may be divided evenly among the successors, in accordance to their portion of the inheritance, or at a mutually agreed sum.

The *takharuj* method is significant as it is pertinent when dealing with the legal quandaries pertaining to delegation of Muslim inheritance under the constitutional structure. The method strives to resolve several issues that may hinder heirs from receiving their legitimate entitlements, eliminate excessive estate fragmentation, and expedite the administrative procedure so as to minimize delays in inheritance distribution (Ali, 2016; Ahmad et al., 2019).

- The principal objective of this research is to thoroughly assess the concept of reclamation in Muslim inheritance, relying on a thorough analysis of relevant literature and viewpoints of selected Malaysian experts in the field.

## Literature Review

*Takharuj* takes its name from the Arabic word *kharaja*, that linguistically translates "to exit". It is also defined as an heir voluntarily giving up his claim to a portion (or all) of an asset and passing it over to another successor with or regardless of compensation (Awang, n.d.). All mazhabs employ this notion in settling conflicts over inheritance under Islamic legal system (Ali & Ahmad, 2013). It permits all successors to divide their assets in the most efficient ways feasible whilst adhering to the principles of *fara'id* and *Shariah*. Furthermore, it is akin to terms like *muafakat*, *sulh*, and agreement. *Takharuj* is permissible in Islam under the legal concepts of *al-hibah* (gift-giving), *al-ibra'* (release of rights), and *al-sulh* (peaceful settlement).

*Takharuj* was initially practiced back in the Khulafa' al-Rasyidin era. Abdul Rahman bin 'Auf divorced his wife, Tumadhir binti al-Asbagh, while he was ill, which eventually led to his death. This happened amid Tumadhir's iddah, and Uthman ibn Affan (RA) afterwards divided his inheritance among Tumadhir and his three other wives. Abdul Rahman's heirs struck a settlement with respect to how they would split his inheritance, with Tumadhir obtaining one-quarter ( $\frac{1}{4}$ ) of the one-eighth ( $\frac{1}{8}$ ) portion, which was substituted with 93,000 dinars. Ali and Ahmad (2023), came up with three types of resolution by way of *takharuj*: (i) *Takharuj* involving two heirs, either at no cost or with compensation (al-Nawawi, 1992), (ii) *Takharuj* that occurs between a single heir and other heirs, wherein a particular amount of the inheritance is swapped, and the heir forfeiting his share in exchange for other assets and consigns them over to the remaining heirs, deeming the withdrawing heir as non-existent (al-Hasari, 1992), and (iii) *Takharuj* that includes compensation from other properties, which is either divided equally amongst the heirs or in accordance to their distinct inheritance shares, or at a mutually agreed-upon rate. Furthermore, if an heir withdraws, their share would be distributed equally based on *fara'id* or the benefaction accumulated from each heir (al-Hasari, 1992).

The fundamentals of *fara'id* determine each heir's entitlement and portion of the inheritance. Additionally to the partition based on these parameters, *takharuj* is an alternate resolution founded on consensus between successors, built on the principles of shared agreement and tolerance. It permits them to determine the best alternative, particularly whilst grappling with a succession that has financial worth and affects their livelihoods. The following aspects ought to be thoroughly considered prior to implementing *takharuj*:

- i. Someone who inherits may opt out from collecting the inheritance, either individually or together with other successors. Meanwhile, those who accept the relinquished portion can consist of one, several, or all remaining successors.
- ii. The inheritor who withdraws of his portion can opt to accept reimbursement, an incentive, or restitution for forsaking his share of the succession, or he may willingly relinquish his portion without receiving any form of compensation.
- iii. The withdrawing successor may receive compensation, an incentive, or restitution from any assets of the heir who gets the surrendered portion or part of the estate itself.
- iv. If the withdrawing successor consents on a specific sum with one, a few, or all of the other heirs, avowedly the same as he has sold his share to them.
- v. Should the withdrawing heir freely ceded his rights to another heir without compensation, the heir is deemed to have gifted his share to the beneficiary heir.

- vi. If an heir chooses to forego his share of the inheritance in exchange for a portion of the assets, such a settlement cannot be reached among one heir and another or between a few of heirs; instead, it requires the approval of all rightful heirs entitled to the properties.

*Takharuj* is dealt with under Act 98, Section 15(1), that states, “if the appointed administrator has confirmed that all recipients of the inheritance are within the legal age and are capable, have jointly decided on the method of how the property ought to be divided, the administrator can, subsequent to documenting the terms of agreement and obtaining the approval of all parties in the distribution order, divide the property in line by the terms of the contract, except it is evident to the administrator that executing so would appear unfair and discriminatory”. The aforementioned is clarified further in Section 15(3), which indicates that “If two or more recipients possess the right to a share in any piece of property included in the assets, the administrator can, at their own discretion, take into consideration the best interests of the parties in question as well as the interests of proper land development through (a) assigning isolate lots to individual recipients”. *Takharuj* can be invalidated under three (3) circumstances (Awang, n.d.). Firstly, if the deceased's debts outweigh the estate's assets and all heirs refuse to cover those expenses, then *takharuj* is deemed null and void. Secondly, if a claim for an inheritance is made on the deceased, successors' actual shares on the property may be altered. Thirdly, if an unknown successor turns up prior to the distribution or during *takharuj*, their existence may result in alterations to the rights and shares of every eligible heirs of the inheritance.

### Methodology

This study utilized a qualitative case study design through semi-structured interviews being the main method of investigation. Interviews were held with selected Malaysian experts from Islamic institutions, local authorities, and a law firm (see Table 1). Hybrid semi-structured interviews took place based on the participants' preferences, either in person or online. Each of the participants are known specialists on Malaysian Muslim inheritance. The data were evaluated thematically. The study comprised of four individuals chosen by purposive sampling, which is consistent with the recommended sample size of one to seven for qualitative research by Darusalam and Hussin (2018).

Table 1

#### *Coding of Participants in the Study*

| Institutions   | Codes |
|--|-------|
| The Mufti's Office of Selangor   | P1    |
| Department of the Director-General of Lands and Mines (JKPTG) Selangor | P2    |
| National University of Malaysia (UKM)                                  | P3    |
| Tetuan Termizi & Co.   | P4    |

### Findings and Discussions

#### *Literature Review Perspective*

The first theme's results were acquired by searching the Google Scholar database for the keywords "Islamic Inheritance Reclamation" and "Takharuj". The initial search revealed 81 publications between 2022 and 2023 for them. Nevertheless, a manual thematic analysis discovered that merely 46 publications are relevant to the first theme, with 25 from 2023 and

21 from 2022. These featured 34 journal articles, one (1) conference proceeding, eight (8) doctoral theses, and three (3) books, as listed in Table 2 below.

Table 2

*Summary of Literature Review Findings for the Years 2022-2023*

|   | Author                   | Source   | Study Title   | Research Findings  |
|---|--------------------------|--|---|--|
| 1 | Abdullah (2023)          | Journal of Contemporary Islamic Studies                    | <i>Analisis Bayaran Cucuran Kenderaan dalam Pentadbiran Harta Pusaka</i>  | The process of inheritance redemption involves compensating or redeeming by beneficiary who accepts a part of the deceased's property in return for a share which is not granted owing to the beneficiary's shortage of legal capacity. This process is similar to <i>takharuj</i> since it relies on the premise of mutual consent among the heirs. |
| 2 | Abdul Saha et al. (2023) | International Journal of Law, Government and Communication | <i>Masalah Penebusan Pusaka Muslim di Negeri Selangor</i>   | Four key events have led to the inability of sustaining perpetual monthly payments in Selangor's <i>takharuj</i> redemption process: the COVID-19 pandemic, floods, growing living expenses, and financial limitations.  |
| 3 | Akmal et al. (2023)      | <i>Jurnal Multidisipliner Bharasa</i>                      | <i>Penerapan Hukum Waris Islam Dalam Praktik Kehidupan Masyarakat Loloan Timur Jembrana Bali</i>                | The notion of reconciliation, or <i>takharuj</i> , as outlined in Article 174 of the Compilation of Islamic Law, supersedes Bali's customary inheritance law in Loloan Timur.  |
| 4 | Arrij & Syafi'i (2023)   | <i>Jurnal Justitia: Jurnal Ilmu Hukum dan Humaniora</i>    | <i>Pelaksanaan Takharuj Dalam Pembagian Waris Di Desa Ambokembang Kecamatan Kedungwuni Kabupaten Pekalongan</i> | <i>Takharuj</i> is a long-standing concept in Islamic jurisprudence, especially within the Hanafi school, despite its provenance that it is founded solely on the <i>atsar</i> of companions. Thus, it is permissible with regard to the Hanafi school since it follows the conventions of a sales transaction.                                      |
| 5 | Asror (2023)             | <i>Jurnal Al-Wasith: Jurnal Studi Hukum Islam</i>          | <i>Pembagian Waris Sama Rata Perspektif Hukum Islam</i>   | The <i>takharuj</i> method, which relies on the <i>atsar</i> of companions during Uthman bin Affan's caliphate, allows for the equal distribution of inheritance.  |
| 6 | Awad (2023)              | Doctoral Thesis  | <i>Pembagian Warisan Masyarakat Muslim Kelurahan Islam</i>  | <i>Takharuj</i> is one technique of distributing inheritance among heirs through <i>musyawarah</i> .   |

| dalam<br>Perspektif Islam |                                 |   |  |  |
|---------------------------|---------------------------------|---|--|--|
| 7                         | Azhari & Kisworo (2023)         | <i>Al-Furqan: Jurnal Agama, Sosial, dan Budaya</i>          | <i>Penerapan Teori Double Movement Fazlur Rahman Terhadap Pembagian Waris Islam Dalam Konteks Kekinian</i>             | <i>Takharuj</i> promotes the distribution of assets among successors, which is consistent with Fazlur Rahman's double movement theory.   |
| 8                         | Ghazali et al. (2023)           | International Journal of Law, Government and Communication  | <i>Faktor-faktor Peningkatan Kadar Harta Pusaka Tidak Dituntut dan Implikasi terhadap Masyarakat Islam di Malaysia</i> | <i>Takharuj</i> falls under the scope of <i>fara'id</i> law. However, it stays neglected as cultural attitudes are still limited by a restrictive interpretation of asset distribution based on <i>fara'id</i> . |
| 9                         | Hamzawi (2023)                  | <i>JURIH: Jurnal Ilmu Hukum</i>                             | <i>Takharuj: Solusi Syar'i Pembagian Waris Secara Damai</i>  | <i>Takharuj</i> is a practice for administering property in accordance with <i>Shariah</i> , as such promoting reconciliation between successors.  |
| 10                        | Hendrayanto & Rokhim (2023)     | GPH- International Journal of Social Science and Humanities | Refusal of the Inherited to the Transfer of Inheritance Rights to Land Charged with Guatantee Rights                   | Inheritors who seek to distribute the property in conformity with <i>Shariah</i> still retain the right to forgo their lawful portion of the estate via the <i>takharuj</i> method.                              |
| 11                        | Hidayatulloh & Nuruddien (2023) | SAKINA: Journal of Family Studies                           | <i>Hibah Mua'allah untuk Menghindari Sengketa Waris Perspektif Fath Adz-Dzariah</i>                                    | <i>Takharuj</i> refers to a circumstance in which one heir decides to withdraw and give up the right to inherit to another heir.   |
| 12                        | Hizbullah et al. (2023)         | <i>Jurnal Ilmu Syariah dan Hukum</i>                        | <i>Problemitika Pelaksanaan Kewarisan Harta Pencarian di Nagari Rao-Rao Perspektif Hukum Islam</i>                     | <i>Takharuj</i> as part of the <i>fara'id</i> system complies with Islamic law.  |
| 13                        | Lahinda (2023)                  | <i>Al-Mujtahid: Journal of Islamic Family Law</i>           | <i>Pembagian Harta Warisan Secara Adat</i>   | There are no restrictions on relinquishing inheritance through the <i>takharuj</i> method.   |



| <i>Masyarakat Muslim Talaud</i> |                         |   |  |  |
|---------------------------------|-------------------------|---|--|--|
| 14                              | Lubis et al. (2023)     | Book  | <i>FIQIH MAWARIS: Memahami Hukum Waris dalam Islam</i>   | <i>Takharuj</i> resolves inheritance issues by bringing heirs together and reaching an agreement.  |
| 15                              | Mardani (2023)          | <i>Al-Ilmu</i>  | <i>Takharuj Adalah Pendekatan Dalam Membagi Harta Warisan Secara Adil</i>                                    | <i>Takharuj</i> offers an alternative for successors to tackle complex and sensitive succession concerns brought on by excessive debts, family disagreements, and familial considerations.   |
| 16                              | Mohd Asri et al. (2023) | <i>International Journal of Zakat and Islamic Philanthropy</i>                  | <i>Pengurusan Pembahagian Harta Pusaka Tanah Berkelompok: Analisis Literatur Berdasarkan Tema</i>            | The concept of <i>takharuj</i> has not been entirely grasped by heirs.   |
| 17                              | Nurfaizah et al. (2023) | International Journal of Education, Vocational & Social Science                 | Contemporary Aspect of Grant and Inheritance to Children (Study Philosophy of Islamic Law)                   | <i>Takharuj</i> is a deal made in the context of hibah and inheritance. It regulates fair asset dispersion, hinders heir disputes, and enables flexibility in estate division.   |
| 18                              | Ridwan (2023)           | Journal of Law & Politics   | <i>Implementasi Kewarisan Adat di Sumatera dalam Tinjauan Maqashid Syari'ah dan Ketatanegaraan Indonesia</i> | <i>Takharuj</i> is utilized to resolve inheritance issues in conformity with Islamic conventions.  |
| 19                              | Salleh et al. (2023)    | IPN Journal of Research and Practice in Public Sector Accounting and Management | <i>Amalan Pengikhtirafan Hasil oleh Wakaf, Zakat dan Baitulmal di Malaysia</i>                               | The baitulmal generates income through <i>fai</i> , <i>ghanimah</i> , <i>kharaj</i> , <i>jizyah</i> , found property ( <i>luqatah</i> ), <i>rikaz</i> , inheritance allocated for the baitulmal, charity donations, and other means. Baitulmal administrators can manage its public finances or assets autonomously for the ummah's benefit. |
| 20                              | Sandira et al. (2023)   | <i>Muqaranah</i>  | <i>Pembagian Harta Waris menurut Kebiasaan</i>   | The dispersal of assets through musyawarah and earnestness between successors can be   |

|    |                      |   |  |  |
|----|----------------------|---|--|--|
|    |                      |   | <i>Masyarakat Desa Sanding Marga Perspektif Hukum Waris Islam dan KUH Perdata</i>  | achieved through method of <i>takharuj</i> .   |
| 21 | Takdir et al. (2023) | Journal of Islamic Law                          | The <i>Takharruj</i> Method as an Islamic Legal Solution for Customary Inheritance Practices among Muslim Communities in Pakamban Laok, Sumenep, Indonesia | <i>Takharuj</i> is an alternative to inheritance disputes that have not been resolved by the heirs by enabling the sale of inheritance portions.   |
| 22 | Umar & Lawang (2023) | QANUN: Journal of Islamic Laws and Studies      | <i>Tinjauan Hukum Islam Terhadap Mediasi Sebagai Bentuk Penyelesaian Sengketa Harta Waris Di Pengadilan Agama</i>  | <i>Takharuj</i> is a peaceful division of property obtained by means of <i>musyawarah</i> procedure, in which successors undertake a key role in settling problems harmoniously in line with Islamic standards for the betterment of all successors.   |
| 23 | Wasik (2023)         | Doctoral Thesis                                 | <i>Kewarisan Adat Madura dan Suku Madura dalam Kewarisan Islam Perspektif Maqashid al-Syariah</i>  | The delegation of inheritance in the Madurese society is founded on three tenets: fairness and equality, harmony, and the common good. The act takes place through the practice of <i>musyawarah</i> , which is consistent with the concept of <i>takharuj</i> .   |
| 24 | Yassir et al. (2023) | <i>Al-Usariyah: Jurnal Hukum Keluarga Islam</i> | <i>Inkonsistensi Wasiat Wajibah Dalam Kompilasi Hukum Islam: Menurut Perspektif Fikih Islam</i>  | The obligatory redemption in KHI is considered contradictory to the Islamic principles since it transfers assets to an adopted child who is not considered a legitimate successor under Islamic law. <i>Takharuj</i> , a practice consistent with Islamic principles, presents a solution to this issue. |
| 25 | Yusuf et al. (2023)  | Malaysian Journal of Islamic Studies            | <i>Kecenderungan Masyarakat Islam di Daerah Setiu dalam Memilih Kaedah</i>   | <i>Takharuj</i> can take several shapes and approaches, including withdrawal from obtaining a portion of the inheritance and consenting with all or some successors to hand over their assets  |



|    |                                |   |   |   |
|----|--------------------------------|---|---|---|
|    |                                |   | <i>Pembahagian Harta Pusaka</i>   | to another inheritor. It aids in the resolution of conflicts over joint ownership of small or restricted inherited wealth, safeguards familial connections, and hinders ownership transfers to outsiders. Furthermore, this strategy could entail the total surrender of one's rights to inherit, with or without compensation, a concept known as <i>tanazul</i> . |
| 26 | Abdullah et al. (2022)         | <i>Jurnal Al-Sirat</i>  | Review on Issues of Administration and Distribution of Islamic Inheritance in Malaysia  | <i>Takharuj</i> can avert value loss and fragmentation of land fees that heirs may face throughout succession proceedings. It is settled upon the heirs' consent, with the goal of circumventing obstacles arising from small properties that are hard to sell, manage, or expand, rendering them economically unsustainable.                                       |
| 27 | Abdul Saha et al. (2022)       | International Journal of Academic Research in Bussiness and Social Sciences | The Issues, Concepts and Functions of Baitulmal in Selangor Religious Council (MAIS) on The Reclamation of Muslim Inheritance       | The challenges, concept, and roles of Baitulmal at the Selangor Islamic Religious Council (MAIS) have been noted. As thus, a user-friendly inheritance redemption approach has been suggested as an alternative to MAIS's declining inheritance collections, that may serve as a template for other State Islamic Religious Councils (MAIN) in Malaysia.            |
| 28 | Achmadiansyah (2022)           | Doctoral Thesis   | <i>Penyelesaian perkara kewarisan bertingkat perspektif Maqashid Syariah: Studi pandangan hakim dan ulama di Kota Denpasar Bali</i> | <i>Takharuj</i> proves suitable in addressing clashes concerning small properties by means of reconciliation, according to the <i>Qur'an</i> . It remains consistent with the <i>maqasid al-shariah</i> of <i>Dharuriyyat</i> .   |
| 29 | Achmadiansyah & Mahmudi (2022) | Sakina: Journal of Family Studies   | <i>Penyelesaian perkara kewarisan bertingkat perspektif Maqashid Syariah</i>  | The judge contends that the notion of <i>takharuj</i> may be utilized for settling intricate inheritance issues, whereas religious scholars claim that its use is not necessary under Islamic law.  |

|    |                           |   |  |   |
|----|---------------------------|---|--|---|
| 30 | Agustina (2022)           | Formosa Journal of Multidisciplinary Research         | <i>Pembagian Harta Waris yang Ditolak oleh Ahli Waris</i>  | According to Article 1045 of the Civil Code, heirs have the right to decline an inheritance and are under no duty to accept it.   |
| 31 | Ajmain (2022)             | Master's Thesis                                       | <i>Praktek Pembagian Warisan Sama Rata Perspektif Hukum Islam (Pembagian Waris Masyarakat Adat Melayu Rengat di Desa Alang Kepayang, Kabupaten Indragiri Hulu Provinsi Riau)</i> | The concept of <i>takharuj</i> provides for an equitable split of property amongst male and female children, which is attained through justice and resistance to conflicts, in lined with Article 183 of the Compilation of Islamic Law (KHI).  |
| 32 | Alfaruq (2022)            | Doctoral Thesis                                       | <i>Pelaksanaan Hukum Kewarisan Adat di Kampung Kuta Desa Karangpaningal Kecamatan Tambaksari Kabupaten Ciamas</i>  | At the study's setting, inheritance is allocated by <i>musyawarah</i> and compromise among successors, who agreed and accepted their distinctive portions. <i>Takharuj</i> settlement is a reasonable step in specific situations, meant for safeguarding the welfare and impartiality of the succession procedure. |
| 33 | Dewi et al (2022)         | <i>Jurnal Hukum, Politik Dan Ilmu Sosial</i>          | <i>Analisis terhadap Sengketa Pembagian Hak Waris karena Adanya Hutang Ditinjau dari Hukum Waris Islam</i>   | Settlement of disputes between heirs may occur place via judicial channels, through the presentation of legal evidence, or independently outside the court by way of reconciliation ( <i>takharuj</i> ).  |
| 34 | Hadana et al. (2022)      | <i>Al-Ahkam: Jurnal Syariah dan Peradilan Islam</i>   | <i>Penyelesaian Sengketa Waris Melalui Mediasi di Mahkamah Syari'ah Sigli</i>  | <i>Takharuj</i> is a settlement paradigm in <i>fiqh</i> that is based on the successors' consensual acknowledgment of their respective portions.  |
| 35 | Hamidon et al. (2022)     | Journal of Islamic, Social, Economics and Development | The Issue of Unclaimed Property In State of Selangor   | The research addresses concerns and strategies for minimizing cases involving unclaimed inheritance.  |
| 36 | Husna & Fatimawali (2022) | Proceeding of International Conference on             | <i>Takharuj</i> in the Distribution of Inheritance and   | <i>Takharuj</i> is a legally accepted peaceful arrangement in which heirs voluntarily distribute the  |

|    |                                       | Islamic and<br>Interdisciplinary<br>Studies                    | its Legal<br>Consequences<br>from the<br>Compilation of<br>Islamic Law  | assets via <i>musyawarah</i> (mutual<br>consensus).  |
|----|---------------------------------------|--|---|--|
| 37 | Lestari<br>(2022)                     | Master's Thesis  | <i>Sistem<br/>Pembagian<br/>Warisan di<br/>Gampoeng<br/>Drien Tujoh<br/>Nagan Raya<br/>(Analisis<br/>terhadap<br/>Warisan Rumah<br/>untuk Anak<br/>Perempuan<br/>Baungsu)</i> | The premise of <i>takharuj</i> could be utilized when allocating a greater portion of inheritance to the youngest daughter, who has yet to become independent and takes on responsibility for taking care of her elderly parents, in compliance with Islamic principles.   |
| 38 | Meerangani et<br>al. (Eds.)<br>(2022) | Book   | <i>Kelestarian<br/>Pengajian Islam<br/>di Malaysia</i>  | A preliminary investigation on the nature and customs of Islamic inheritance management in Baitulmal includes the notion and duty assigned to Baitulmal, its position as a receiver of inheritance, inheritance allocation within Baitulmal, and Baitulmal's property administration methods.  |
| 39 | Naachy<br>(2022)                      | <i>At-Tahdzib:<br/>Jurnal Studi<br/>Islam dan<br/>Muamalah</i> | <i>Tatacara<br/>Pelaksanaan<br/>Ishlah dalam<br/>Pembagian<br/>Waris Perspektif<br/>Kompilasi<br/>Hukum Islam</i>   | The <i>takharuj</i> and <i>hibah</i> approaches may assist to establish peaceful practices for inheritance distribution.   |
| 40 | Ramadhan<br>(2022)                    | Doctoral Thesis  | <i>Hibah yang di<br/>perhitungkan<br/>sebagai<br/>warisan: Studi<br/>terhadap pasal<br/>211 kompilasi<br/>hukum Islam</i>   | The <i>fiqh</i> evaluation of Article 211 within the Compilation of Islamic Law (KHI) concerning settling by way of <i>hibah</i> , that constitutes part of the inheritance, is a desirable approach that ought to be explored. This method relies on principles of fairness and corresponds with the premise of <i>al-'adah al-shahihah</i> , encompassing concerns relating to <i>takharuj</i> (a peaceful outcome in property settlement) that are not against the values and foundational principles of Islamic law. |
| 41 | Sabarina &<br>Febriansyah<br>(2022)   | <i>Az-Zawajir<br/>Jurnal Hukum<br/>Islam</i>                   | <i>Analisa<br/>Penolakan Ahli<br/>Waris terhadap</i>  | There are four primary causes for heirs' unwillingness to accept their inheritance, notably in <i>takharuj</i> :   |

|    |                            |   |  |   |
|----|----------------------------|---|--|---|
|    |                            |   | <i>Hasil Warisan menurut Hukum Islam dan Hukum Perdata</i>   | legal standpoints, past events, philosophical ideas, and sociological concerns.   |
| 42 | Sanusi (2022)              | Book  | <i>Hukum Warisan Islam: Sejarah dan Teori Pembagian Harta Peninggalan</i>                                      | <i>Takharuj</i> can take three (3) forms: (i) an heir purchases a part of another heir's right, (ii) an heir gives up his ownership and obtains other property in exchange as compensation, and (iii) an heir buys the whole inheritance property.  |
| 43 | Ulfah (2022)               | Doctoral Thesis   | <i>Tinjauan Hukum Islam terhadap Pembagian Harta Waris di Desa Sedayu Kecamatan Arjosari Kabupaten Pacitan</i> | In Desa Sedayu, inheritance is distributed based on the heirs' consent and cooperation, complying with Islamic inheritance regulations. It upholds the premise of <i>takharuj</i> , that is not in violation against <i>Shariah</i> principles.   |
| 44 | Wahidah & Al Amruzi (2022) | <i>Khazanah: Jurnal Studi Islam dan Humaniora</i>                         | <i>Fenomena Kewarisan pada Masyarakat Banjar Kalimantan Selatan</i>  | <i>Takharuj</i> is linked to <i>musyawarah</i> , appeasement, and agreement in the settlement of inheritance disputes determined by a sale contract.  |
| 45 | Yusof & Ibrahim (2022)     | BITARA International Journal of Civilizational Studies and Human Sciences | <i>Kedudukan Hutang Si Mati dalam Pelaksanaan Hak-Hak Harta Peninggalan menurut Syariat Islam</i>              | The governance regarding the deceased's debts has to be extensively examined in order to fully and thoroughly comprehend the heirs' standing, remaining property, any liabilities declared from the property, the will, and negotiated inheritance portions between the heirs, whether or not the allocation relies on <i>fara'id</i> or <i>takharuj</i> tenet. |
| 46 | Yusuf et al. (2022)        | BITARA International Journal of Civilizational Studies and Human Sciences | <i>Kedudukan Baitulmal sebagai Waris Asabah menurut Syariat Islam dan Amalan di Negeri Terengganu</i>          | Lands owned by the Baitulmal are capable of being reclaimed by the deceased's family successors via the notion of <i>takharuj</i> , that entails surrender of rights in return of reimbursement that corresponds to the current valuation, as determined by JKPTG.  |

Source: Researcher's Analysis

The literature review outcomes reveal that the concept of inheritance restitution, or *takharuj*, is a viable solution to Muslim succession conflicts. It is an Islamic conception rooted on the *atsar* of companions under Uthman bin Affan's reign, that implies trades that include

purchasing and selling of goods. Furthermore, it constitutes a practice/approach/option for handling disagreements over inheritance by means of peaceful methods or *musyawarah* (consensus), grounded in justice and as *al-a'dah al-shahihah*. *Takharuj* can be implemented in three (3) distinct forms: (i) one heir purchases a portion of another heir's right to the inheritance, (ii) an heir relinquishes their inheritance share in exchange for another asset as compensation, and (iii) an heir purchases the entire inheritance property. Consequently, it may be inferred that the concept of inheritance repurchase, or *takharuj*, has been advocated in Islam, coinciding with the Baitulmal's rights as an *asabah* inheritor, that are uncontested by Islamic law, and conforming to the principles of *maqasid syariah dharuriyyah*. Therefore, it is proposed that a user-friendly inheritance redemption technique be established to render *takharuj* deployment more competent and effective in today's world.

### Perspectives of Malaysian Selected Experts

The subsequent interview excerpt summarizes and analyzes the findings of expert interviews with participants PK6 to PK9.

"Transferring the ownership of Baitulmal or surrendering it following an appraisal and *talaq* redemption (reinstate the assets to the heirs at a specific rate). This permits the successors to get hold of the Baitulmal's shares. The redeemer will be given an offer to buy a share" (P1)

"The reimbursement, incentive, or indemnity provided to other lawful successors of the property right after both parties consent to provide and receive the compensation in a valuable arrangement, like money, adheres to Islamic law" (P2)

"This could be considered in terms of its closeness to the notion of *takharuj* in the context of *fara'id*, which is additionally referred to as *sulh*. This indicates that each successor participating in the dispersion of the properties, involving the Baitulmal (right after learning their separate shares or *fara'id* rights), could take action in the most feasible manner (which involves disposing their shares to other successors) to deal with succession issues" (P3)

"*Takharuj* includes an heir withdrawing from obtaining their inheritance in exchange for a reimbursement or redemption for their part" (P4)

In response to the findings of interviews with experts (P1–P4), the premise of inheritance redemption is intimately tied to *fara'id* knowledge, commonly referred to as *takharuj* and *sulh*. In general, bequest reclamation from an Islamic point of view implies the conveyance of ownership in return for remuneration rewards, or indemnities determined by the present value, which is regarded as a share transaction. In the research, the heirs consented to buy off Baitulmal's shares in cash, while complying with Islamic legal system.

### Conclusion

In conclusion, this study has effectively clarified the notion of Islamic inheritance reclamation utilizing generally used language like *takharuj* and *sulh*. It signifies the transfer of ownership in return for reimbursement, rewards, or indemnities determined by its current worth, viewed as a sale, that acts as an alternative to succession issues through *musyawarah* (heir reconciliation). The concept likewise relies on the *atsar* of companions during Caliph Uthman bin Affan's rule, which underscored impartiality and operating as *al-a'dah al-shahihah*, a

concept firmly tied to *fara'id* knowledge. In the overall setting of this investigation, inheritors agreed to obtain Baitulmal's rights in cash as per the laws of *Shariah*.

The outcomes of this study rely entirely on literature reviews undertaken over a two-year period (2022-2023) and the perspectives provided by four chosen experts. It can be further developed through a broader literature analysis over the past five years (2020-2024), taking into consideration the viewpoints of inheritance reclamation managers from Malaysia's State Islamic Religious Councils (MAIN). The results can then be utilized to develop a conceptual framework for further research targeted at supplying the wider community with knowledge and comprehension of Muslim inheritance redemption methods which are consistent with Islamic law.

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