

The Principle of *Maalat Af'al* and its Application in Dealing with the Issue of Women Converting without their Husbands: A Case Study in the UK

Prinsip *Maalat* dan Aplikasinya dalam Berinteraksi dengan Isu Wanita Memeluk Islam tanpa Suami: Kajian Kes di UK

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ABSTRACT

This paper aims to apply the principle of maalat af'al (consequences of an action) in analysing the issue of women converting to Islam without their husbands from the perspective of maslahah (public interest). Despite the fact that the majority of classical scholars maintain the view that this marriage must be dissolved, dealing with this case in Muslim minority circumstances needs more consideration, particularly in terms of maslahah (securing benefit and removing harm) and mafsadah (harm). Dissolving this marriage immediately could portray a negative image of Islam as a religion that divides families with psychological and emotional impacts on women and their families. This is a qualitative study that obtained data from interviews with several imams and scholars in the UK. The findings indicate that this is a contemporary ijthadi issue, with some aspects tolerated. Also, the status of maslahah in this issue is in line with the Shari'ah, particularly in facilitating a new Muslim life. While this study is merely exploratory with a limited number of participants, linking theory and reality makes the discussion on the issue and applying the principle of maalat practical.

Keywords: Maalat; Maslahah; Muslim minority; interfaith marriage; new Muslims

ABSTRAK

Artikel ini mengaplikasikan prinsip maalat terhadap isu wanita memeluk Islam tanpa disertai suami mereka dari sudut pertimbangan maslahah. Walaupun majoriti ilmuan silam berpendapat perkahwinan sebegini mesti dibubarkan, menangani isu ini dalam suasana Muslim minoriti memerlukan pertimbangan yang lebih teliti, khususnya dari sudut maslahah dan mafsadah. Pembubaran perkahwinan serta-merta boleh membawa imej yang negatif terhadap Islam di mana agama dilihat memecah belah institusi kekeluargaan. Begitu juga, ia membawa kesan psikologi dan emosi terhadap wanita serta keluarga mereka. Kajian ini bersifat kualitatif di mana data kajian merupakan hasil temu bual bersama beberapa imam dan ilmuan di UK. Dapatan menunjukkan bahawa isu ini merupakan ijthad kontemporari di mana beberapa aspek memerlukan toleransi. Di samping itu, status maslahah dalam isu ini selari dengan prinsip umum Syariah, khususnya dalam usaha memudahkan kehidupan Muslim yang baharu. Walaupun kajian ini bersifat penerokaan dengan bilangan individu terlibat yang terhad, namun ia menghubungkan teori dan realiti sekaligus menjadikan aplikasi prinsip maalat terhadap isu ini lebih praktikal.

Kata kunci: Maalat; Maslahah; Muslim minoriti; Perkahwinan antara agama berbeza; Muslim baharu

INTRODUCTION

The *Shari'ah* is revealed for the sake of human well-being. Its rulings are designed either to achieve *maslahah* (well-being) or avoid *mafsadah* (harm). This is part of the *maqasid al-Shari'ah* (objective of *Shari'ah*) which represents God's wisdom through His rulings (Al-Yubi 1998). These two elements must be fully considered by policymakers, religious authorities and muftis in implementing any *Shari'ah* ruling. Nevertheless, it is undeniable that some

Shari'ah rulings might not achieve their objective when implemented in certain cases due to improper implementations. For example, a ruling that aims to achieve *maslahah*, but could lead to *mafsadah* when it is applied to a given situation. Likewise, a ruling may aim to remove *mafsadah*, but cause a bigger *mafsadah* in certain situations. For example, *siyam* (fasting) in *Ramadhan* for a traveller or a sick person, may not achieve *maslahah* of this ruling and their situation could be made even worse.

To ensure the element of the *maqasid al-Shari'ah* in *Shari'ah* rulings, the principle of *maalat* (considering consequences) was introduced by al-Shatibi as an approach to dealing with the outcome of action. In more details, this principle engages with the case when the outcomes of a *Shari'ah* ruling against its objective. Thus, an exception is crucial either to ban a permitted action or tolerate, in some aspects, a prohibited action (Al-Shatibi 2004). In modern times, this principle is essential in dealing with many contemporary issues which seem to be more complicated. This includes finance, economics, politics, society, technology and medics. *Shari'ah* rulings must embody their spirit and not be applied literally without considering the objective intended by God through these rulings (Ishak 2018).

An interesting topic requiring special analysis based on the principle of *maalat* is the case of women in Europe converting to Islam. It becomes a *Shari'ah* issue when these women prefer to stay with their non-Muslim husband or, at the very least, are not prepared to leave. It is reported that many new Muslim in Europe are women (Peppiatt 2011); thus, requiring them to leave their husband may make them think twice. Also, this case needs special consideration from the *Shari'ah* perspective due to the reality in Europe that differs from Muslim-majority countries.

Most Muslim scholars view that the marriage between non-Muslim couples must be dissolved if only women convert to Islam without their husband. Nevertheless, they have different opinions on whether it must be carried out immediately or have a transitional period until the end of the *'iddah* (the waiting period for women) (Al-Majlis al-Urubi li al-Iftā' 2010). However, some contemporary scholars deal with this issue differently. Al-Qaradawi (2005), for example, claims that this couple can remain together, basing his opinion on the decision made by the Caliphs Umar and Ali and the view of al-Zuhri on a similar issue that occurred at their time. Meanwhile, many important aspects need to be considered, as dissolving this marriage could negatively affect Islam as dividing families, not to mention the negative consequences for women themselves. In contrast, allowing these women to remain with their husband may potentially lead them to follow their wives' path (Hanafi 2013).

Nevertheless, allowing this couple to remain together also presents numerous challenges. Any decision should not be generalised in all cases because *maslahah* and *mafsadah* differ (Ishak 2018b). In

this regard, this study analyses this issue based on the principle of *maalat*. Since this principle deals with the outcome of action from the perspective of *maslahah* and *mafsadah*, it could practically analyse women converting to Islam without their husbands. In this regard, this study utilises both literature and primary data from the semi-structured interview conducted with scholars and *imams* in the UK to obtain a clear picture of this issue from real practice. Then, the data is analysed based on the principle of *maalat*. Even though this study is exploratory due to its limited number of interviewees, it provides a new discussion from both theory and practice.

LITERATURE REVIEW

This part covers two topics: the principle of *maalat* and the status of marriage between Muslim women and their non-Muslim husband. As for the former, considering *maalat* is an important topic contributed by al-Shatibi in the subject of *maqasid al-Shari'ah*. This topic has been presented under the chapter of *ijtihad* (deductive process of religious ruling), which explained as the following:

“Examination of the *maalat* of actions is acknowledged and intended according to *Shari'ah*, whether these actions are lawful or unlawful. Thus, the mujtahid (those who has the ability to conduct *ijtihad* process) will only judge an action carried out by individuals, either by action or omission, after examining the consequences of this action” (Al-Shatibi 2004: 837).

Based on his point of view, al-Shatibi argues that implementing *Shari'ah* rulings must ensure their consequences in line with the *maqasid al-Shari'ah*, as intended by God. Thus, realising *maslahah* and removing *mafsadah* must be achieved through the implementation of these rulings (Al-Raisuni 1995). Although al-Shatibi did not clearly explain the consequence of *Shari'ah* rulings vis-a-vis their objectives, al-Sanusi (2003) views that three factors might cause this situation: an intention to achieve a wrong objective through any *Shari'ah* ruling; using the right abusively; and applying rulings in the wrong situation.

In supporting his idea, al-Shatibi argues that the principle of *maalat* has a strong justification from the *Shari'ah* sources. For the general justification, all rulings in the *Shari'ah* are revealed to achieve *maslahah* in human life and reward them with blessing in the hereafter. In this sense, the *Shari'ah* emphasises the outcome of its rulings. There are also cases in which the outcomes of an action could be in

line with the *Shari'ah* or against it, where scholars should consider avoiding given actions in reference to their objectives (Al-Kailani 2000).

Subsequently, al-Shatibi comes up with specific justifications. A few verses from the Qur'an are justified including the order to worship God as a means leading to piety (2:21); the obligation of fasting to cultivate piety (2:183); and the prohibition of insulting non-Muslims to prevent them from insulting Allah (6:108) (Al-Shatibi 2004). In terms of prophetic practices, two cases can illustrate the element of considering consequences. Firstly, when the Prophet (PBUH) refused to punish the *munafiqin* to avoid Muslims confusing the matter and suspecting that he (PBUH) kills his companions. Secondly, the Prophet changed his mind about re-establishing the shape of the ka'bah in its original shape after he realised that newly converted Meccans would not accept it (Al-Shatibi 2004).

While al-Shatibi may intend to reform several aspects in the *Shari'ah* including the idea of the principle of *maalat*, he claims that this principle is not altogether new. In other words, the substance of this principle has already been practised in various principles and methods in the *Shari'ah*. *Sad Zara'i* (blocking the means), for example, is applied to blocking an action because it ultimately leads to *mafsadah* (Ishak 2018). Also, preventing *hiyal* (legal trick) is part of banning an action due to its negative consequences based on the wrong intention through a permissible action. In contrast, *istihsan* (considering something better) is applied to provide an exception in respect to an unlawful matter in a particular situation because of its positive outcomes. Meanwhile, *mura'ah al-Khilaf* (considering differences) guides a *mujtahid* to base his decision on a real situation to minimise negative consequences (Al-Shatibi 2004).

However, neither prior to nor after al-Shatibi was the topic of *maalat* continually discussed in the classical works of Muslim scholars. Al-Darraz argued that scholars at that time were reluctant to discuss such reform, including the principle of *maalat* since it was contrary to the reality at that time when most of the intellectual efforts focussed on continuous explanations of the previous works based on every *mazhab* (school of thought). Furthermore, his approach is difficult to understand since he mixed many discussions in one topic (Al-Shatibi 2004). As for al-Hussin (2009), he argued that two factors make al-Shatibi's idea less popular within classical works. Firstly, *maqasid al-Shari'ah* has not

been discussed directly through the subject of *usul fiqh*, including the principle of *maalat*. Secondly, it seems the substance of the principle of *maalat* had been covered through various methods, including *maslahah*, *Sad Zara'i*, and *istihsan*. Meanwhile, al-Qaradawi (2013) argued that the idea of *maalat* is difficult to be implemented, as this explains why it has less attention among scholars. Nevertheless, after *maqasid al-Shari'ah* was widely presented as an independent subject, the principle of *maalat* has received more attention among modern scholars and researchers.

As for the second part, in general, the *Shari'ah* does not allow any woman to marry a non-Muslim man based on the verse: And do not marry polytheistic men until they believe (2:221). This is also applied for the case of a newly converted Muslim woman while her husband prefers to remain in his original religion. Exploring the classical literature, this topic has been discussed by scholars. In general, Hanafi, Maliki, Shafii and Hanbali scholars have prohibited this couple from remaining together (Al-Majlis al-Urubi li al-Ifta' 2010).

Nevertheless, scholars have different opinions as to the duration of this process. According to the Zahiri school, the marriage must be dissolved immediately once the woman becomes a Muslim and her husband has not (Ibn Hazm n.d). However, the majority of Maliki, Shafii, and Hanbali scholars allow this couple to remain together till the end of the *iddah* (Ibn Abd Bar 1992, Al-Shafii 2001, Ibn Qudamah 1997). As for the Hanafis, they differ slightly based on the way they categorise *Dar Harb* and *Dar Islam*. If this case occurs in *Dar Harb*, they view that this marriage must be dissolved immediately. However, if this happens in *Dar Islam*, the case must be brought to the *Qadi* (judge), who will present the husband the offer to become Muslim. If the husband agrees, the couple can remain. By contrast, if he refuses, then the marriage would be dissolved (Al-Maghrinani 2008). Another view that can be learned from classical scholars is the opinion from Ibn Taimiyyah and Ibn Qayyim, who both claim that this marriage would be hung temporarily as both husband and wife are separated temporarily until the husband becomes a Muslim (Ibn Qayyim 2005).

In modern times, the *Shari'ah* has been established as systematic family law in Muslim countries. In almost all Muslim countries, for example in Malaysia, if any wife or husband becomes a Muslim without their partner, then their

marriage needs to be dissolved due to its law does not recognise the interfaith marriage (Samuri & Nabees Khan 2020). Nevertheless, the situation is different in Muslim minority countries in which there is no *Shari'ah* family law and secular civil laws preside. Most Western countries do not prohibit unions based on differences in religious background between the husband and wife. Some contemporary scholars like Al-Qaradawi (2005) and Al-Judai' (2008) allow this couple to stay together. The former argues with the decision made by Caliphs Umar and Ali and the view of al-Zuhri on a similar issue in their time, while the latter claims that neither the revelation nor *ijma'* require the dissolution of this marriage.

Realising the gap within related literature, this study reconsiders the view on this issue based on the current situation. Changes, in reality, could significantly affect the implementation of *Shari'ah* rulings, as scholars need to consider the environment, context, and circumstances. Nevertheless, this process should not amend mandatory rulings and principles of *Shari'ah*. Therefore, it is worth analysing this issue based on the principle of *maalat*.

METHODOLOGY

This study analyses the issue of a newly converted woman without her husband in Muslim minority countries based on the principle of *maalat*. In this regard, the UK is selected because it has one of the largest Muslim populations in Europe, plus it is considered among the most ethnically diverse countries. This is qualitative research in which data is obtained from semi-structured interviews. This method supports the subjective interpretation of the content of text data through the systematic classification process of coding and identifying specific themes (Hsieh & Shannon 2005). The

qualitative interview method is preferable because the issue of converting women to Islam without their husband should be understood from actual practice, particularly in understanding the *maslahah* and *mafsadah*, which are difficult to determine based solely on library data.

Concerning the participants, the researchers interviewed six individuals. They represent four *imams* and two Muslim scholars. Both are selected to ensure the reliability and validity of the data. The group of *imams* becomes a reference for the surrounding community and has practical experience engaging with the issue. Meanwhile, two scholars who specialised in Islamic studies are selected because they understand this issue from an academic perspective, plus they are aware of Muslim minority settings. All the interviewees, including *imams*, have a formal *Shari'ah* academic background. This is vital to ensure that they can express their view under the discipline of the *Shari'ah* since *maslahah* and *mafsadah* should not solely be based on human logic.

All interviews were recorded using an audio recorder, and the words were transcribed verbatim. To ensure the validity of this study, interviewees' facts and specific information were revised to avoid accidental errors. Subsequently, the data were analysed based on thematic analysis in which several important themes emerged. Finally, all *maslahah* and *mafsadah* as well as the *Shari'ah* perspectives that emerged from the result are analysed based on the principle of *maalat*.

RESULT

Based on the data analysis, this study has identified the following themes:

Themes	Remarks
Theme I: Remaining the marriage brings <i>maslahah</i> .	<p>“This is the choice of religion. This means that if she wants to be a Muslim, it is her choice. If her husband wants to be a Muslim, then it is his choice. But if he doesn’t want to be a Muslim, this is his choice as well. She can’t force him to choose. This is part of Islam.”</p> <p>“Maybe at this time he is not Muslim, but he will be a friend of Islam. Close to Islam. Islam is <i>deen</i> of mercy; <i>deen</i> of family value and it does not allow suffers happen.”</p> <p>“Sometimes a non-Muslim husband is better and give more freedom than a Muslim husband, so he will support his wife in practising her religion.”</p> <p>“Why we should make problem with her family or even herself. She is suffering emotionally because she loves her husband and her husband loves her.”</p> <p>“If her choice to be a Muslim, according to scholar or even common people, she has to break the marriage contract. Then, her family will be broken, then children might be treated according to law of land. Supposedly, they are given to their mother because they are young but some laws might give the right to the husband because she started to create the problem”.</p> <p>“A family needs to live together: children are with their father and mother and not to differentiate between them. So, the most important is the family, and also to attract the husband. If he sees that his Muslim wife is good and remains a good wife, as well as there is an opportunity for her to explain Islam and to show the beauty of Islam, it may end up he becomes a Muslim too. Love can change something.”</p>
Theme II: Remaining the marriage brings <i>mafsadah</i>	<p>If the marriage remains between them, perhaps her husband will interfere in matters related to his wife’s religion and disturb her as well as in matters related to children. Therefore, Islam is concerned with the freedom in practising religion. It is known that the wife position is under the care of her husband”.</p> <p>“Being Muslim is part of sacrifices. Living with non-Muslim husband may bring harm for the wife. She needs to sacrifice for the sake of religion”</p> <p>“Are we trying to break the law of the Qur’an that clearly mention Muslim wife could not live with non-Muslim husband. There is <i>mafsadah</i> when we ignore the Qur’an”</p>
Theme III: This issue must be carefully and pragmatically engaged	<p>“We do not say that it is permissible to keep a wife with her non-Muslim husband, and we do not say that it is absolutely forbidden, rather we give her an opportunity”.</p> <p>“We may allow some new Muslim women on this matter. But we do not give a general <i>fatwa</i> in this case that it is permissible for a new Muslim woman to stay with her non-Muslim husband”.</p> <p>“The truth is that this issue is difficult, and we follow the European Council for Fatwa and Research as they discussed on this issue.”</p> <p>“The fatwa regarding the permissibility of keeping a Muslim woman with her non-Muslim husband is contrary to the Qur’an. This issue must be solved”</p> <p>“As long as the husband does not harm his wife, respects her religion, and does not make it difficult for her, and the wife wishes that his husband will become Islam, then why should we so rushing to ask her to leave her husband?”</p>
Theme IV: This is a new <i>ijtihad</i> issue	<p>“This issue is different than classical discussions”</p> <p>“This is a new issue that never happened at the time of the Prophet”</p> <p>“Muslim <i>al-Aqaliyat</i> is new phenomena for Islam.”</p> <p>“There is no clear evidence from the Qur’an and the Sunnah on the issue”</p>

ANALYSIS

The principle of *maalat* is applied in this study to engage with newly converted women without their husbands. It analyses the extent to which *maslahah* and *mafsadah* considered from the *Shari'ah* perspective. While the *Shari'ah* rulings should achieve their objective in terms of bringing *maslahah* in human life, they should not be amended solely to satisfy reality. To this end, the following issues need to be analysed: -

THE STATUS OF ISSUE

In dealing with any *Shari'ah* issue, the *mujtahid* must identify the status of related rulings. This is vital to ensure the extent of its application in reality. A key consideration is determining whether the ruling is based on *ijma'* or not. If the ruling has different views among scholars, then there is no reservation preferring one opinion over another if it suits the current *maslahah*. In contrast, if the ruling is based on *ijma'*, its status should not be questioned since *ijma'* puts an end to doubt and offers a decisive and infallible ruling (Kamali 2016).

Identifying the status of the ruling guides the *mujtahid* to deal with the situation when its application leads to negative outcomes in the current situation. In this regard, the implementation of the ruling should be reconsidered without compromising its status if it is based on *ijma'*. For example, a ruling may need to be postponed like the case when the punishment for stealing was suspended by caliph 'Umar. This approach was carried out due to the years of famine such that the ruling could not achieve its objective if it were to be applied under those circumstances (Al-Jadiyyah 2010).

In regards the issue of converting women to Islam without their husband, on one hand, it is obvious that the *Shari'ah* does not allow a Muslim wife to live together with her non-Muslim husband. This is due to the different way of life, as how could both practice their different religions, raise and educate their kids, while also living together as a couple according to *maqasid al-Shari'ah*. On the other hand, dealing with this issue requires a pragmatic approach to avoid landing in *mafsadah*. This situation is categorised under the scope of *fiqh al-Aqaliyyat* (jurisprudence of Muslim minorities), which requires special consideration because of the reality that differs from Muslim-majority countries. In fact, without considering the real situation, even

though a *mufti* has a strong knowledge in *Shari'ah*, his approach may cause more harm than benefit (Al-Qayyim 2006).

This is a contemporary issue that did not occur during the period of the early Muslim generation. Also, the discussion from the perspective of *dar harb* and *dar Islam* on this issue like in the classical works of Hanafi scholars, seems to be less relevant. Even though *Shari'ah* principles and their mandatory rulings remain unchanged, their application need to be considered in reference to changes in the environment. Any *fatwa* must be balanced between the knowledge of the text and appropriate understanding of the situation on the ground. While *mujtahids* or *muftis* have to work hard to understand Islamic sources, they have to study the current reality too, including human needs, their customs, and new matters in their lives (Al-Najjar 1989).

THE PARAMETERS OF MASLAHAH

In applying the principle of *maalat*, considering *maslahah* must be based on the *Shari'ah*. Several parameters regarding *maslahah* need to be considered as follows: -

Firstly, declaring *maslahah* or *mafsadah* on the issue must be supported with *Shari'ah* sources. Since the principle of *maalat* aims to ensure the implementation of rulings that fulfil their intended *maslahah* and avoid unintended *mafsadah*, this process must be supported with the Qur'an and the Hadith. In general, *Shari'ah* through the concept of *maslahah* encourages people to do things that are conducive for their welfare as well as it forbades the harmful things (Nik Abdul Ghani et al. 2011). Nevertheless, the *maslahah* and *mafsadah* must represent God's intention for human wellbeing and not be based solely on human logic. If considering an action as God's ruling requires evidence from the revelation, claiming God's meaning in his specific ruling must also be supported with both sources (Al-Raisuni 1999).

In regard to the issue in this study, allowing a newly converted woman to stay with her husband could elicit some *maslahah* as mentioned by the majority of interviewees. This includes the fact that the number of women who accept Islam outnumbers men, thus requiring them to leave their husband may discourage them to be Muslim (Al-Qaradawi 2005). At the same time, this decision aims to facilitate newly converted women's lives by avoiding psychological

and emotional impacts on them and their family. Also, the procedure of dissolving the marriage is costly. In terms of religion, allowing the couple to stay together temporarily can avoid negative images towards Islam since it may be blamed for breaking up the family. Furthermore, there is a possibility that their husband will follow their wives' path (Hanafi 2013). All in all, requiring newly converted women to immediately leave their husband because of a different faith would bring more *mafsadah* than *maslahah*. All of these *maslahah* are supported by general texts of the Qur'an such as bringing mercy (21:107), ensuring justice among people (4:58), and easing difficulty (22:78).

Secondly, considering *maslahah* or *mafsadah* in any issue must ensure it is genuine, not imaginary. In other words, arguing the current circumstances as negative consequences for implementing any *Shari'ah* ruling must be proven strongly. In this regard scholars have underlined four situations of *mafsadah*:

1. An action that definitely leads to *mafsadah* like insulting non-Muslim practice as this will insult Allah.
2. An action that most often leads to *mafsadah* and rarely leads to *maslahah*; for example, selling grapes to an alcohol manufacturer to produce wine.
3. An action which frequently leads to *mafsadah*, but there is no certainty or even dominant probability. For example, practising *bay inah* which can lead to *riba*.
4. An action which rarely leads to *mafsadah*. For example, digging a well in a place which is not likely to cause harm.

The first and second situations must be avoided. The scholars also agree that the consequences of the fourth situation must be ignored since its consequences are doubtful. However, the third situation is a matter of different opinion among scholars about whether to consider it or not, as they did not agree the extent to which the consequences affect the actions (Zaidan 1996). In this regard, since the argument of *mafsadah* for the third situation is based on assumptions or intentions, these should only be considered where there is real evidence. As for *maslahah*, the outcomes of a practice must be evident in respect of how this action is able to gain *maslahah*. Also, *maslahah* which results from the action must be widespread, covering a large group of people. Finally, *maslahah* must not contradict any

mandatory rule mentioned clearly by the Qur'an or Hadith (Ishak 2020).

In regards to women converting to Islam without their non-Muslim husband, *maslahah* or *mafsadah* could be genuine in some cases, but not for others. For example, staying between a Muslim wife and a non-Muslim husband may lead to *mafsadah* in some cases in terms of practising Islam, particularly if the husband is not friendly and open-minded towards his Muslim wife. Therefore, if a *mufti* prefers to issue a *fatwa* to allow a couple to stay together, the *fatwa* should not be generalised to all couples as every case may differ.

Thirdly, applying the principle of *maalat* must not lead to changing the original status of any mandatory *Shari'ah* ruling. Otherwise, it might devastate the religion gradually for the sake of *maslahah*. Considering that *maslahah* aims to understand Islamic rules within a bigger picture to adapt those rules into the current reality; not to amend them. Moreover, it is unacceptable to claim that there is a clash between *maslahah* and Islamic rules since the latter is revealed for the sake of human well-being (Al-Qaradawi 2005). Thus, its application must harmonize between revelation and real situations, not to amend Islamic rules in the name of "human wellbeing" (Ishak 2019)

In this regard, this principle should not justify the means by the ends (Usamah 2011). *Mujtahids* have no authority in deciding Islamic rules, but their role is to implement them in the right situation. In the case where some rules might be unable to be implemented, it does not mean that those rules are irrelevant, but that the environment needs to be improved first (Ishak 2018).

Therefore, the *fatwa* to allow a newly converted woman to live with her husband should not aim to allow the interfaith relationship between couples in Islam. In fact, based on the general *Shari'ah* principle, a Muslim woman must live together with her Muslim husband as the latter is considered as a leader to the former. Also, since Islam grants the right for a husband to be respected and followed by her wife, how could this happen to the case of a Muslim wife with her non-Muslim husband? Thus, allowing this case aims to facilitate the life of new-Muslim women.

Lastly, considering between *maslahah* and *mafsadah* must be based on its priority. Sometimes there are situations in which a clash occurs between *maslahah*. In this regard, it is vital to ensure that considering a *maslahah* must not thwart a *maslahah*

superior to it nor a *maslahah* of equal degree (Al-Buti 2005). Even though it is impossible to achieve all *maslahah* or to avoid all *mafsadah* at one time, the principle of *maalat* is applied to determine which *maslahah* needs to be considered, and which *mafsadah* can be sacrificed.

Thus, it begins with how far the *maslahah* can affect human life based on three situations: *dharuriyyat* (necessities), *hajiyyat* (needs), and *tahsiniyyat* (embellishments). In terms of priority, *maslahah* at the level of *dharuriyyat* must be put as the highest priority since humans could not sustain their life without it. It is followed by *hajiyyat* which reflects human needs, as they will experience difficulties without it. The lowest priority is *tahsiniyyat* (Al-Shatibi 2004). In this regard, consequences that affect *dharuriyyat* must be considered first, rather than *hajiyyat* and *tahsiniyyat*, while consequences pertaining to *hajiyyat* deserve much more attention than *tahsiniyyat*. In the case of women converting to Islam without their husbands, physical and emotional impact towards women should be considered first since it is part of *dharuriyyat*, instead of immediately showing her religious identity, reflecting *tahsiniyyat*.

OVERCOMING THE ISSUE

Implementing *Shari'ah* rulings must be carried out gradually by considering their impacts towards individual and society (Al-Khadami 2010). Despite the *Shari'ah* being revealed as a set of rulings, its implementation still requires a gradual approach (Zuhaili 2000). It should begin from the easiest to accept and then to the more difficult. Therefore, it is essential for muftis to link between *Shari'ah* with its spirit and its objective, as they need to understand the reality and mastering the skill of how to issue the *fatwa* (Abd Al-Razaq 2003). In regards the issue of concern in this study, strengthening the faith of a newly converted Muslim should be prioritised rather than asking her to perform all the requirements of the *Shari'ah*. All matters related to the *Shari'ah* must be given a period of time to be practised.

The gradual approach aims to ensure *Shari'ah* rulings can be implemented pragmatically and that problems can be overcome wisely. Sometimes, there might be a case when a ruling could not be completely applied, but it should not be completely abandoned. In this regard, it can be understood that the principle of *maalat* ensures the more realistic application of *maslahah*. In fact, *maslahah* must be considered

from the consequences in practice (Al-Alam 1994). Thus, *maslahah* should be more flexible because only an achievable *maslahah* should be prioritised (Ishak 2019b). Nevertheless, considering *maslahah* must be carried out under *Shari'ah* discipline so as there is no *maslahah mulghah* considered, also protecting *din* must be always the main priority particularly in dealing with the situation of *dharuriyyat*. On top of that, this principle ensures the effort to realise *maslahah* is carried out gradually to avoid it turning into *mafsadah*. Thus, the principle of *maalat* should not be applied merely to permit something or ban the practice due to reality. Instead, it should come up with pragmatic solutions to ensure *Shari'ah* rulings are implemented gradually, in line with its spirit (Ishak 2018).

In this regard, every case should be treated differently. If *mujtahids* or *muftis* realise the *mafsadah* is likely more dominant than the *mafsadah* in this case, then they should suggest the woman to break away from her husband. In contrast, if they notice the current *mafsadah* is more likely than *maslahah*, they should provide an opportunity for the woman to remain with her husband within the following parameters:

Religious freedom must be guaranteed

While preserving the relationship could bring *maslahah*, at least for the time being, several further issues need to be taken into account. The most important is the right of women to practise their religion. This includes praying, fasting in Ramadan and eating halal food. These must not be interfered with by their husband. At the same time, the obedience of wives towards their husbands must be within *Shari'ah* rulings.

Each case must be examined separately

The *fatwa* to allow a newly converted woman to remain with her non-Muslim husband should not be generalised to all women. Every case must be studied in detail due to the fact that *maslahah* and *mafsadah* could differ. Moreover, a clear guideline in this issue should be provided to ensure that the intended *maslahah* does not turn into unexpected *mafsadah*.

Wives must keep *dakwah*

Allowing a Muslim wife to remain with her non-Muslim husband is not in line with the *maqasid*

Shari'ah for the long-term relationship. The *fatwa* is issued as a gradual approach to overcome the current negative impacts by remaining as a couple temporarily. In this case, either the husband will eventually become a Muslim, or he may leave his wife due to many restrictions living together. In this case, it is the wife's duty to present a good image of Muslims and deliver Islam's message to her husband to encourage him to follow her path.

Children must remain Muslim

If the couple has children, the wife must teach and educate them according to Islamic teachings. Building a family in Islam aims to produce future Muslim generations. This can be seen in the case of marrying *kitabiyah* (Jewish or Christian women) in which children must follow their Muslim father in terms of religion. Nevertheless, considering the situation in the Western world where liberal freedoms are promoted, this effort should be carried out carefully with wisdom.

CONCLUSION

This paper applies the principle of *maalat* in analysing women converting to Islam without their husbands. This principle engages the element of *maslahah* on this issue. It began by presenting literature on the principle of *maalat* and marital status between a Muslim woman with a non-Muslim man. Preserving the marriage between a Muslim wife and her non-Muslim husband is against the *Shari'ah*, as discussed in the classical works of scholars. Nevertheless, dealing with this issue in modern times, particularly in Europe, requires a special approach. Based on empirical analysis, there is *maslahah* remaining together for the time being, particularly to facilitate further conversion. Also, this issue needs to be treated differently from the classical discussion since the situation differs considerably.

Based on the analysis, this issue is part of new *ijtihad* and not *ijma'*, and thus some aspects can be tolerated. Also, the status of *maslahah* in this issue is in line with the *Shari'ah* in terms of facilitating a new Muslim life. Further, a gradual approach is needed in requiring converted women to fulfil *Shari'ah* commitments. In the end, every case needs to be treated differently. For the *mufti* who prefers allowing the couple to stay together, it must follow certain parameters such as religious freedom must be

guaranteed, the case must be examined separately, wives must maintain *dakwah*, and children must be educated as Muslims.

This study has its limitations as it focuses on the principle of *maalat* in dealing with women's converting without their husbands. Furthermore, since this study is exploratory in which the data are collected only from six interviewees, the results may not be generalised. Therefore, future studies are suggested to enlarge the group of participants by interviewing other parties including husbands and wives who involve directly in this issue. Nevertheless, linking the reality and theory makes the discussion on this issue and applying the principle of *maalat* more practical.

REFERENCE

- Abd al-Razaq, W. 2003. *Ḍawabiḥ al-Ijtihad al-Tanzili fi dau' al-Kuliyat al-Maqasidiyah*. Beirut: Dar Lubnaa.
- Abdul Ghani, N. A. R., Laluddin, H., Mat Nor, A. H. 2011. Maslahah as a source of Islamic transactions (Muamalat). *Islamiyyat*. Vol.33: 59-66.
- Al-'Alam, Y. 1994. *Maqasid al-'Ammah li al-Shari'ah al-Islamiyyah*. Riyad: al-Ma'ad al-'Alami lil fikr al-Islami.
- Al-Buti, M. S. R. 2005. *Dawwbit al-Maslahah fi al-Shari'ah al-Islamiyyah*. Damascus: Dar al-Fikr.
- Hanafi, K. 2013. Turq Al-Kashf 'an Al-Ma'alat. Al-Majallah Al-'Ilmiyyah Li Al-Majlis Al-Urubi Li Al-Ifta' Wa Al-Buhus. June: 37-86
- Hsieh, H. F., & Shannon, S. E. 2005. Three approaches to qualitative content analysis. *Qualitative Health Research* 15(9): 1277-1288.
- Al-Hussin, W. 2009. 'Itibar Ma'alat al-Af'al wa Atharuha al-Fiqhi. Riyad: Dar al-Tadmoriyya.
- Ibn Abd al-Bar, Y. 1992. Al-Isti'ab fi Ma'rifah al-Asob. Beirut: Dar al-Jail.
- Ibn Ḥazm, 'A. n.d. Al-Muḥalla bi al-Athar, (committee of Dar Ihya' al-Turath al-'Arabi, Ed.). Beirut: Dar al-Afaq al-Jadidah.
- Ibn al-Qayyim, M. 2005. Zaad al-Ma'ad fi Hadyi Khair al-'Ibad. Cairo: Abu Bakar al-Siddiq.
- Ibn al-Qayyim, M. 2006. 'Ilam al-Muwaqi'in 'an Rabbi al-'Alamin. Cairo: Dar al-Hadith.
- Ibn Qudamah, A. 1997. Al-Mughnī. Riyad: Dar al-'Alam al-Kutub
- Ishak, M. S. I. & Asni, F. 2020. The Role of Maqasid al-Shari'ah in Applying Fiqh Muamalat into Modern Islamic Banking in Malaysia. *Journal of Islamic Accounting and Business Research*, 11 (10): 2137-2154.
- Ishak, M. S. I. 2019. The principle of *maṣlahah* and its application in Islamic banking operations in Malaysia", *ISRA International Journal of Islamic Finance*, 11 (1): 137-146.

- Ishak, M. S. I. 2019b. Malaysian banking: is the current practice of *ibrā'* (rebate) reflecting its true meaning? *Qualitative Research in Financial Markets*. 11 (1): 22-30.
- Ishak, M. S. I. 2018. The principle of considering *ma'alat* in Islamic rules: Do ends justify means? *International Journal of Islamic Thought* 14 (Dis): 52-59
- Ishak, M. S. I. 2018b. Considering *maalat* as an approach to applying *maslahah* in reality. *ICR Journal* 9(2): 147-160.
- Al-Judai', A. 2008. *Aslama Ihda Zaujain wa Muda Ta'thiru ala Aqdu Nikah Fi dau' Kitab wa Sunnah*. Beirut: Dar al-Rayyan.
- Al-Jadiyah, U. 2010. *Aslu 'Itibar Al-Ma'al baina Al-Nazoriyat wa Al-Tatbiq*. Beirut: Dar Ibn Hazm.
- Al-Kailani, A. 2000. *Qawa'id Al-Maqasid 'inda Al-Imam Al-Shatibi*. Amman: al-Ma'had al-'Alami lil fikr al-Islami.
- Kamali, M. H. 2016. *Principles of Islamic Jurisprudence*. Vol. 15. Cambridge: The Islamic Texts Society Miller's House.
- Al-Khadimi, N. D. M. 2010. *Al-Ijtihad Al-Maqasidi*. Beirut: Dar Ibn Hazm.
- Al-Majlis al-Urubi li al-Ifta' wa al-Buhus. 2010. *Al-Qararat wa al-Fatawa al-Sadirah 'an al-Majlis al-Urubi li al-Ifta' wa al-Buhus*. Beirut: Muassasah al-Rayan al-Nashirun.
- Al-Maghrinani, B. 2008. *Al-Hidayah Syarh Bidayah Mubtadi'*. Editor Ahmad Jad. Cairo: Dar Hadith.
- Al-Najjar, A. H. 1989. *Fiqh al-Tadayyun Fahman wa Tanzilan*. Doha: Wizarah al-Awqaf wa al-Syu'un al-Islami.
- Al-Qaradawi, Y. 2013. *Fiqh al-Ma'alat*. Al-Majallah Al-'Ilmiyyah Li Al-Majlis Al-Urubi Lii Al-Ifta' Wa Al-Buhus. (June): 13-34.
- Al-Qaradawi, Y. 2005. *Al-Siyasah Al-Shar'iyah fi Dau' Nusus Al-Shari'ah wa Maqasidiha*. Cairo: Maktabah al-wahbah.
- Al-Qaradawi, Y. 2006. *Dirasat fi Fiqh Maqasid al-Syariah baina al-Maqasid al-Kulliyah wa al-Nusus al-Juziyyah*. Cairo: Dar al-Shuruq.
- Al-Qaradawi, Y. 2005. *Min Huda Al-Islam Al-Fatawa Al-Mu'asirah*. Cairo: Dar al-Qalam.
- Al-Raisuni, A. 1995. *Nazoriyyat al-Maqasid 'inda al-Imam al-Shatibi*. Virginia: al-Ma'had al-'Alami lil fikr al-Islami.
- Al-Raisuni, A. 1999. *Al-Fikr Al-Maqasidi, Qawa'iduhu Wa Fawa'iduhu*. Rabat: Dar al-Baida'.
- Richard P. 2011. *Women & Islam: The Rise and Rise of the Convert*. Independent.co.uk. <https://www.independent.co.uk/news/uk/home-news/women-islam-the-rise-and-rise-of-the-convert-6258015.html>. Retrieved on: 20 June 2021.
- Samuri, M. A & Nabees Khan, A. S. 2020. Legal implications of conversion to Islam on civil marriage: Narrative of converts in Malaysia. *Islamiyyat* 42 (2): 103-111.
- Al-Sanusi, A. R. 2003. *'Itibar Al-Ma'alat wa Mura'ah Nataij Al-Tasarufat*. Riyad: Dar Ibn Al-Jauzi.
- Al-Shafi'i, M. 2001. *Al-Umm*. Riyad: Dar al-Wafa'.
- Al-Shatibi, I. 2004. *Al-Muwafaqat fi Usul al-Shari'ah*. Beirut: Dar al-Kutub al-'Ilmiyyah.
- Usamah, Adnan. 2011. *Qa'idah (Yaghtafir fi Wasa'il Ma La Yaghtafir fi al-Maqasid)*, Mafhumuha, Shurutuha, wa Farqu Baina Nazoriyah (Al-Ghayah Tubarir al-Wasilah). *Majallah Al-Shari'ah Wa Al-Qanun* 38(2): 568-580.
- Al-Yubi, Mohammad. 1998. *Maqasid Al-Shari'ah Al-Islamiyyah wa 'Alaqatuha bi Al-Adillah Al-Shar'iyah*. Riyad: Dar al-Hijrah.
- Zaidan, Abd al-Karim. 1996. *Al-Wajiz fi Usul al-Fiqh*. Beirut: Muassasah al-Risalah al-Nashirun.
- Al-Zuhaili, Mohammad. 2000. *Al-Tadarruj fi al-Tashri' wa al-Tatbiq fi al-Shari'ah al-Islamiyyah*. Kuwait: Al-Majlis al-Wattani li al-Thaqafah wa al-Funuun wa al-Adab.

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