

## REVIEW ON ISSUES OF ADMINISTRATION AND DISTRIBUTION OF ISLAMIC INHERITANCE IN MALAYSIA

Hani Kamariah Mat Abdullah<sup>1\*</sup>, Suhaimi Ab  
Rahman<sup>2</sup>, Mohd Daud Awang<sup>3</sup>

<sup>1</sup>Master Student, Halal Products Research Institute, Universiti  
Putra Malaysia,

<sup>2</sup>School of Business and Economics, Universiti Putra Malaysia

<sup>3</sup>Department of Civilization and Government Studies, Faculty of  
Human Ecology, Universiti Putra Malaysia & Halal Products  
Research Institute, Universiti Putra Malaysia

### **Abstract**

*This study aims to explore the administration and distribution system of Islamic inheritance practised in Malaysia and identifying the appropriate form of federalism. To achieve this objective, the study utilise the qualitative methodology by performing document analysis utilising public record documents comprising of the Official Report of the House of Parliament, rules and regulations, books and journal references sources. It was found that each agency was created with an important role during the settlement process of administration and distribution of inheritance. The establishment of a diversified agency was set up based on a common goal, which was easing the administration and management of retired estate at the Land Office. Thus, this study proposes a collaborative between federal and state institutions of administration and distribution of Islamic inheritance with their own special function and jurisdiction that should be accomplished for the one common goal.*

**Keywords:** Islamic Inheritance, administration, distribution,

### **Article History**

Received:

Accepted:

Published: 31 October 2022

\*Corresponding Author

Email: hani\_kamariah@yahoo.com

### **Introduction**

An estate claim is made after the death of a family member. The distribution of Islamic inheritance is derived in the Qur'an from al-mawarith verses clearly describe the eligible parties to receive the inheritance and so are the eligible shares. Estate management through the Islamic inheritance law or faraid system is seen as an integral part of the five main aspects of maqasid syariah namely hifz mal. Benefit (hikmah) behind the rules of this commandment of Allah had proven when there is no bias gender between men and women to receive inheritance based on relation of consanguinity and marriage which was contradict the practice during Jahiliyah that do not take women into consideration to inherit. In addition, to ensure harmonization in society, Islam emphasizes acquiring and accumulating wealth in a lawful and wisely manner transferred to the right party.

Henceforth, faraid system demonstrates the management of the Muslims property who are highly regarded after death and also show the religion of Islam as a divine guidance and give justice even more to the abandoned family and tribes in order to admit the individual right.

However, the management and administration of Islamic inheritance is based on the law of human as humankind that responsible for managing and administering the nature. Laws relating to Islamic estate in Malaysia pursuant to the Probate and Administration Act 1959, Small Estate Act (Distribution) Act 1955 and the Public Trust Corporation Act 1995. Institutions in accordance with the provisions of these laws comprising the Civil High Court, Estate Distribution Section under the Department of Director General of Land and Mines and Amanah Raya Berhad which are from government agencies. The Syariah court from the state agency also plays an indispensable role in addition to issuance faraid certificates which determine the entitlement division by right beneficiaries and the portions for each of them. Furthermore, the Syariah Court have power in making an order towards collateral issues which are closely related to the determination of inheritance such as legitimacy of beneficiary, wills, grants (hibah), endowment and division of asset acquired during their marriage that have to be considered before the distribution of inheritance.

## **Literature Review**

Islam is a symmetrical religion that encompasses all aspects of human life. Each of the laws that have been ordered has the underlying reason and wisdom that are sufficiently significant or implied for those who think. The religion developed in the Malayan archipelago from the 15th century onwards through the advent of Arabic pedagogues who stopped at the port of Melaka. This has occurred via the application of monotheistic elements rather than due to the aspects of Islamic law (Ishak, 1979). Thus, Malay community is closer to customary practice. For instances two customs that are quite synonymous related to the distribution of estate are Adat Perpatih that originated from Minangkabau and Adat Temenggung from Palembang and Sumatra. There are several elements of customary practice that are contrary to the original laws of Islamic estate division, otherwise known as faraid. To resolve disputes and clashes between these adat and Islamic laws, every state government has taken the initiative to establish an Islamic Religious Council and the Malay Customs. The entity is tasked with advising the Sultan as the state's head of the Islamic religion regarding matters of religious administration.

Awareness of Islamic estate management is well-received in Malaysia by applying faraid law in fulfilling the allocation of inheritance (Noordin et.al,2013). The system conforms to the principles of Islamic law and practised effectively by the Shariah Court, despite the lack of written laws. Egypt has established their written laws known as Qanun al-Mawarith 1943, which encapsulates the faraid system. Furthermore, Allah has stipulated in verses 5, 7, 8, 11, 12, and 176 of Surah al-Nisa' that clearly pertain to inheritance, its eligible beneficiaries, and the acceptable share.

This determination provides fairly comprehensive justice and assurance of the property's position following the death of the deceased, whether personally or professionally. However, the manner in which the administration and management of estate is undertaken has not been mentioned in detail. To utilise the faraid system, a good and effective management needs to be implemented so that the wisdom behind it can be perceived by the heirs left by the deceased, while generating the economy of Muslim community (Zulaikha&Desintha,2014). In addition, this fundamental point should be underlined to avoid other unwanted consequence in the future, especially towards the beneficiaries' welfare.

After the Second World War, the administrative law of estate irrespective of religion and

race was conducted by the Civil Courts (Mustapha, 1983), which was based on the English law as any other applicable law in the country. As of today, the hedge administrator is the body or institution of the federal government, comprising of the High Court, the BPP from the Director General of Lands and Mines, and ARB. These agencies play different roles and functions, subject to particular jurisdiction based on special statute provisions. The associated Acts include the Probate and Administration Act 1959 for the High Court, the Small Estate Act (Distribution) Act 1955 for the BPP and Public Trust Corporation Act 1995 for Amanah Raya Berhad.

From diversity of institutions and inheritance laws, there are several categories and types of estate based on the valuation and form of estate left by the deceased. This is the measure of the position and authority for the institutions concerned. There are categories of estate as a measure to determine the jurisdiction of each agency, namely: first, immovable property consisting of non-transferable property from its original position (e.g. home, land, buildings, etc.); second, movable property that can be transferred (e.g. cash, home appliances, Employee's Provided Fund (EPF) savings, etc.). Meanwhile, the third category is a mix of movable and immovable property, which consists of both categories of assets. These categories of property are included in the interpretation of estate provided for in Section 2 of the Selangor State Islamic Wills Enactment 1993.

Property types are determined based on the valuation of the property, whereby there are several types in recognising the authority of the involved agencies. The first type of small estate can be defined as found in Section 3 of the Small Estates Act (Distribution) Act 1955. It consists of RM 2 million total amounts from immovable property and a mix of movable property with immovable. The second type of large estate is comprised of movable and immovable property or immovable property exceeding the value of RM 2 million, or a testamentary property despite its value being less than RM 2 million (Razimi,2016).

## **Problem Statement**

The existence of institutions and statutes adopted in the administration and division of estate is due to the dissolution of governmental administration power according to the federal system. The formation of a federal state in Malaysia is due to its strategic position, whereby the administration of this alliance has remained from 1948 onwards as a result of the British will. The Federation of Malaysia fulfils the characteristics of federalism where the formation of this country is a result of historical relics, besides the position of a federal state as a result of its geographical position. The diversity of cultures, races and religions of Malaysian citizens becomes a key factor in the selection of federalism systems that are accepted and appropriate in Malaysia (Bhattacharyya, 2010). However, the establishment of the British relics system does not guarantee a smooth running of the management and administration of Islamic inheritance on Syariah platforms (Noordin, 2012). Both levels of government administration have the same power over Islamic inheritance in Malaysia. However, the diversity of different agencies and statutes in the field of Islamic inheritance administration and distribution has brought different procedures and caused confusion among the civil society (Rahman, 2007; Razimi,2016;Talib.et.cl,2019). Probation and Letter Administration under the provisions of Section 4 (e) Federal Constitution stated in the Federal List.

In the event of a dispute between the two ruling governments at the central and state levels, the law stipulates that priorities are given to the Federal Constitution as set out in Article 4 of the Federal Constitution. The State Government can make its own law within its jurisdiction not mentioned in the Federal affair as it has its own legislative and internal law (Yusoff, 2006). According to Joseph (2007), Malaysia is said to be a quasi-federal state that does not have balance between the state government and central government. This is due to its unbalanced constitution, which gives more power to the federal government and enables them to interfere with the state's jurisdiction.

Although the Syariah Court is empowered by the Federal Constitution for any dispute involving specialised transactions of Muslim properties, it is limited in certain circumstances. For example, all statutes that apply in the management and administration of estate do not make the Syariah Court a major reference point in the issue of Islamic inheritance. This is up until the Islamic legal and Islamic governance and management systems are under the provision of the Probate and Administration Act 1959, Small Estate Act (Distribution) 1955 and the Public Trust Corporation Act 1995, which are still unclear. Therefore, Islamic estate settlement becomes difficult as the process requires dealing with more than one agency, although disclosure of information is now available online (Halim, 2014; Nasrul, 2017). The attitudes and awareness of the public are undoubtedly less likely to contribute to the assumptions, namely the land settlement procedure to be complex (Rahman, 2007; Noraini et.al, 2015; Hassin et.al, 2016; Nasrul, 2017).

## **Methodology**

This study applied qualitative research approaches as the primary source of data acquisition needed to form an applied research. An applied research can be used to find the solutions and answers for research questions concerning the types of issues or problems arising from the community, the field of industry, or organisation (Kothari, 2004; Williman, 2011). Besides, the best method employed is one that meets the research objectives and answers the research question (Darlington & Scott, 2002). Therefore, qualitative research approaches permit one to study selected issues, cases or events in depth and detail (Patton, 2015). In order to re-evaluate the current system applied in the administration and distribution of Islamic inheritance in Malaysia, this study employed the case study design specifically, using analysed document.

Merriam and Tisdell (2015) asserted documents and artefacts as the primary source of data for qualitative studies. The purpose of document analysis is to provide a good understanding of a social phenomenon and examine historical questions (Rahman et.al, 2015). This study utilised public record documents comprising of the Official Report of the House of Parliament, rules and regulations. Maxwell (2005) places thus type of data collection as theoretical categories, the coded data may be derived either from prior theory or from an inductively developed theory and usually represent the researcher's concept. This allowed the allocation of understanding of events, situation and action of causes and objectives for government policy to establish an institution of administration and distribution of inheritance. The study also considered the analysis of documents from secondary sources, namely previous publications and studies covering scholarly debates and legal practitioners in understanding the study of Islamic inheritance law in Malaysia, as well as the concepts and types of federalism cooperation.

## **Findings**

### **High Court**

The High Court has the absolute jurisdiction of managing and administering the estate of Muslims and non-Muslims under Section 24 (f) of the Courts of Judicature Act 1964, Part II of the High Court. This jurisdiction is based on the Federal Constitution, Ninth Schedule-List of Legislations, List 1-List of Federal, Article 4 (e) (i). Application of Probate or Letters of Administration is an appointment of an administrator for the deceased's estate who is under the High Court's authority, which is open to all applicants whether Muslim or non-Muslim. Meanwhile, the application and implementation of inheritance law are different for Muslims and non-Muslims. The interpretation of the Court under the Public Trust Corporation Act 1955 also refers to the High Court of Malaya or the Court Judge.

In the High Court, the application to administer the property of the deceased is administered

by the Power Division, which is responsible for storing all data for the application of a letter of authority. This serves to administer intangible assets, probate grants for property left with will, and authority of administering with twin wills for a mixture of property with a will. Every application made will be recorded on the blue card to ensure that each application is only made once by review via Form B from BPP and the answer is given via Form C from the Kuala Lumpur High Court Registrar.

In 1905, British colonisers introduced the Official Admin Officer to administer the estate of Muslims in the Federated Malay State under the provisions of the Official Administration Enactment 1905. The Farm Admin Officer is the Court Officer (House of the Sixth Parliament of the Sixth First Division Bill.57, 1983), who has certain powers under the Probate and Administration Act 1959. Among these, they may take possession of the property in order to safeguard and possibly acquire direct inheritance of small estate to avoid the slow and long process of the court.

In addition, the benefit and postponement of duties or estate taxes can be obtained if the estate management is performed by the officer (Parliamentary Third Parliamentary Second Division No. 7 1972). However, the inheritance tax was abolished from 1 November 1991 onwards following the amendment of the Finance Act 1922 (Sulong, 2011). Therefore, the administration is conducted through several stages of collecting all properties left by the deceased and clarifying their debts including property duties, and the balance is then distributed to the affected beneficiary (Parlimen Malaysia).

### **Department Of Director General Of Lands And Mines**

The proposed amendment and extension of the Small Estate Assets Act 1955 raise the limit of the claim valuation limit under this Act from RM 10 000 to RM 25000. This is made in view of the fall in money value and the rise in property prices. Hence, the amendments have been made to facilitate the lower income group. If the claim is made at the Land Office, the expense of the management application is lower than the Court's application. In 1972, the amendment and extension of this law was brought to motion by the Member of Parliaments and the Small Estate Assignment Ordinance 1955 was administered subsequently by land officials (Parlimen Malaysia). Currently, several proposals have been presented to resolve long-standing estate claims at the Land Office and increase the Land Officers' representatives. The suggestions included the setup of a body authorised to administer the lands of inheritance, as well as positioning special officers accompanied by knowledge and tools to complete the application, as well as operate and execute the act efficiently. The special officer needs to focus solely on the settlement of estate and visit each mukim and village as an administrator or middleman who provides the perfect benefits to all heirs of small land (Parlimen Malaysia).

However, the Amendment of the Small Estate Act 1955 in 1972 to the increased total estate of RM 25,000 and below was not successful as the officers and staffs in the land office were insufficient to carry out the work that would have increased after the amendment came into effect. At that time, the administration and management of estate was carried out by land revenue collectors consisting of state officials and government officials land, whose salaries were paid by the state government (Parlimen Malaysia)

On March 1, 1974, the Division of Estate Distribution was established by the Attorney General in the bid to place management and administration of inheritance under the Director General of Land and Minerals (Ministerial Functions Act 1969, Order 1991). The action was strengthened upon awareness regarding the requirement of the List 1 of the ninth schedule, Article 4 (e) (i) of the Federal Constitution. The government at that time thought that it was desirable that

the function was taken over by the Federal Government.

The following year on 1 July 1975, under the Federal Land Department located Small Estate Solicitor Officers in each state to assist at Land Office related to administration and management of inheritance which would increase upon the extension and amendments to the law on Distribution of Small Estates 1955. Therefore, the new position allowed the officers in the Land Office to only handle heritage management applications under the value of RM 10,000. Meanwhile, the Inheritance Solicitor Officer managed a small heritage up to RM25,000 and performed the duties as stated in the Department of Director General of Land and Minerals No. 16 / 1974. Currently, the BPP has 36 units throughout Peninsular Malaysia, which plays a major role in the other areas where it operates and implements the government land administration under the Department of Land and Mines Director General, Ministry of Natural Resources and Environment. Each unit manages a small estate application, for some districts that do not have unit, submission and acceptance of the application form through the District Land Office. Accepting an inheritance management application at the Land Office serves to facilitate the administration and avoid confusion among the community. The acceptance process is stated in the Circular Letter of the Director General of Land and Mines 16/1974 as follows.

Currently, acceptance via this way is still ongoing as the Heritage Office under the Ministry of Land and Mines until today is placed in different areas according to state. For example, Kedah has two branches, namely Kedah Utara-Alor Setar and Kedah Selatan-Sungai Petani. Meanwhile, Perak has Perak Utara-Taiping, Perak Tengah-Ipoh, Perak Selatan-Tapah, Perak Barat Laut-Parit Buntar, and Perak-Kuala Kangsar Perak. For Selangor, there are four units. Negeri Sembilan has two units (i.e. Negeri Sembilan Barat- Seremban and Negeri Sembilan Timur- Kuala Pilah), Johor has five units (i.e. South Johor - Johor Bahru, North West Johor - Muar, Central Johor - Kluang, West Johor - Batu Pahat and North Johor – Segamat), Pahang has two units (i.e. Pahang Timur-Kuantan and Pahang Tengah- Temerloh), Terengganu has three units (Terengganu Utara- Besut, Terengganu Tengah- Kuala Terengganu and Terengganu Selatan-Bukit Tinggi). Similarly, in Kelantan, there are three units (i.e. Kelantan Utara & Timur- Kota Bharu, Kelantan Selatan-Machang and Kelantan Selatan- Pasir Mas), whereas other states like Perlis, Penang, Federal Territory of Kuala Lumpur and Melaka only have one office in each of the state capital. Some unit of BPP have remained at the District Land Office, such as Pasir Mas, Kuala Pilah and Machang. For some areas under their care that do not have a BPP unit, the application form or request for inheritance shall be submitted to the District Land Office. Application forms and inheritance division requests will be collected and then handed over to the estate officer for talks with all heirs.

As the assistant land administrator, a qualified land settlement officer is responsible for managing land governance and performing any act in parallel with the requirement of the provisions of the National Land Code and laws relating to land registration, such as the Land Act (Group Placement Area) 1960. This includes assessing the price of land owned as contained in the Circular of Director General of Land and Minerals No. 25/1976 Revised 2007: The Duties of the Land Administrator in the Assessment of Properties of Owned Land. In addition, during the division's trial, assistant land administrators are able to advise the beneficiaries of the fall and value of the ground breaking after the distribution. For example, the burgeoning of land to some members on small land causes these assets to be difficult to sell and work, bringing about economic problems (Hassin, 2016; Kamaruddin & Abdullah, 2016). Accordingly, the method of division will be presented in faraid, consensus or rejection (takharuj) according to the requirements of all beneficiaries and then recorded as Consent or Parent Counsel (Young, 2016).

## **Amanah Raya Berhad**

Amanah Raya Berhad before being renamed in 1955 under the Companies Act 1956 was known as the Department of Public Trustees since 1921. It was announced by an officer known as the Public Trustee and Bankruptcy Officer. The department provided free assistance to the poor who were not able to appoint lawyers in handling their affairs. Subsequently, the Department of Public Trustees and Officers were then re-organised into two separate departments on 1 November 1966 (Parlimen Malaysia).

This department under the Public Trustee Act 1950 was repealed through the Public Trust Corporation Act 1995 to be corporatized. Prior to this, it is a government department providing services in the management and administration of estate by being an administrator or executor, the administration of trust property by becoming a trustee of the ordinary trust or trust fund (e.g. the National Offshore and Defence Fund), and being the trustee of the Unit Trust Unit. The department carries out its services with the objective of ensuring and determining the rights and interests of the beneficiaries are being kept in accordance with the law. It expedites the settlement and distribution of the property of the deceased and the resulting beneficiaries, administers trust property in accordance with the law and deed of trust so that beneficial interest is secured under the administration of the estate, and trust to obtain the best return possible under the authority of the Trustee Act 1949. It also safeguards the interests of registered unit holders, regulates the management of unit trust funds in trust deed, assists in the settlement of debts incurred by the deceased's inheritance, and claims for damages due to accidents where no administrator is appointed (Parlimen Malaysia).

The functions and goals of this Department are still maintained after being incorporated accordingly. The purpose of the department is to transform the way operations and functions become a corporate entity, by practising a corporate culture that is not bound by strict government procedures, and performing more quickly. Once the department is incorporated and registered under the Companies Act 1965, the duties of the Administration Officer under Act 98 and the Trustee under the Trustee Act 1950 will be merged.

The purpose of corporatizing the department is in line with the privatisation of the state in order to reduce the size of the public sector, save the government's financial resources, improve the efficiency and productivity of commercially-operated businesses by the government as a private trust company, and seize profitability as the trustee business has the opportunity to become a business other than fulfilling social responsibility (Parlimen Malaysia). Nevertheless, this corporation is distinguishable from other private companies as it was established under the law of Public Trust Corporation 1995. It also adopted the Probate and Administration Act 1950 to carry out services in the administration and management of trusts and estate. ARB is Malaysia's wholly-owned key trustee company with 99.99% shareholding by the Minister of Finance Incorporated, while the remaining 0.01% is owned by the Federal Land Commissioner. Amanah Raya Berhad was placed under the regulation of the Legal Affairs Division in 1996 following the dissolution of the Ministry of Justice of Malaysia, which took over the company's departure from the department. The existing functions and additional powers of the Public Trustee and the estate administrator officer are given to a corporation that may be appointed as a trustee, executor, administrator, guardian, representative, agent, representative and manager or any other fiducial appointment. Amanah Raya Berhad provides services covering estate administration, writing, storage and execution services, and trust services.

## Syariah Court

Based on the Constitution of the Association, the Syariah Court was established under the state government. The jurisdiction of the Syariah Court is focused on self and family law including those relating to property. Although such provisions are included under the power of the state government, there are many federal laws that restrict the field and application of state law (Ahmad & Ibrahim, 2010). Amendment to Article 121 of the Federal Constitution adds clause (1A) separating the jurisdiction of the Civil Court with the Syariah Court. Under this provision, the Syariah Court is given a special position of having exclusive jurisdiction governing the implementation of Islamic law on Muslims, pursuant to the State Administration Enactment on any matter under its jurisdiction.

Although all parties in the case of the deceased's estate claim are Muslims, the Syariah Court has no jurisdiction over the matter of probation and authority of the property administration. This has been placed under the jurisdiction of the Federation, the Civil High Court, without being exempted from the Muslims. This was confirmed by the Syariah Appeal Court Judge in the case of *Jumaaton & Raja Delila v. King Hizaruddin*. (Wilayah Persekutuan, Rayuan Mal Bil.4 tahun 1997; Jurnal Hukum, Jld. XII, Bhg.II,1998; Utusan Malaysia yang bertarikh 21 Julai 1998). In this case, the Syariah Court only serves in the division of inheritance, which has the power to handle the case. The determination of the beneficiary through the issuance of faraid certificates is in accordance with the provisions in List 2, the Ninth Schedule of the Federal Constitution.

However, the faraid certificate is not a requirement or necessity for any of the parties to obtain it before the estate management is made. There are other options such as denial, family pact or equal distribution with the terms of consent for all beneficiaries involved. The Syariah Court is required to manage things that are closely related in determining the estate distribution in the question of wills, grants, wakaf, status nasab, marriages, property, and determination of nasab. Such matters will be referred to the Syariah Court to seek judicial orders in the event of a doubtful matter; a related case may be so difficult and tough that an inquiry is made in more detail under the jurisdiction of the Syariah Court. To decide such cases, the application must be filed separately and must first determine the order before making the inheritance.

Syariah Court is subject to the jurisdiction of the state. As such, the management and administration of the Syariah Court varies by state. An initiative that has been practised in the state of Terengganu to accelerate the distribution of estate and reduce overdue cases is by establishing a special talk hall, a mall-faraid hall specifically for faraid investigations. It was brought into effect in May 2016. A Judge is appointed to handle this hall so that focus is given towards discussing faraid-related cases, as a platform to produce Syari'e Judges who specialise in faraid cases. This also ensures that case trips and investigations are not interrupted by the schedule of other mall cases.

In line with the setting up of the Special Talks, a positive score on the Key Performance Indicator (KPI) set by the Department regarding the setting time of faraid hearing is shortened. It becomes from 21 days to seven days from the date of registration of the case, with the target to start the investigation within one month. The implementation or enhancement measures implemented by the Terengganu Syariah Court have given a good impact. The recording application for inheritance distribution or the Faraid Certificate reached a high case resolution compared to the year before the existence of a special speech board, as recorded from 2015 to 2018. In case of Malacca, the faraid case lies under the jurisdiction of the Syariah High Court in other states. The existence of a special unit of inheritance administration as in the Syariah Court of Terengganu is impossible as the number of judges in the Syariah High Court of Melaka is limited to only two. This will result in the imbalance of the Judge duty in handling cases in the



Syariah High Court.

The same situation occurs in the state of Perak where a subordinate court is placed in each district. However, faraid cases will take precedence as this is an application case made in private compared to other cases. In addition, the recognition of orders from the Syariah Court is welcomed by other bodies or organisations involving the property of the deceased from the Road Transport Department. They require the claim of the deceased's property by submitting the Faraid Certificate from the Syariah Court. By submitting the Faraid Certificate along with other documents, the administrator can claim the property of the deceased to be shared between the other beneficiaries. The Employees Provident Fund (EPF) also places some conditions on the application under the Power of Attorney, among others, thereby recognising the Syariah Court Order (EPF's Death Withdrawal Sheet). KTN further recognises the jurisdiction of the Syariah Court on matters involving the management of land under Islamic law, such as grants, wakaf, wills, treasures and including inheritance. This authority is provided in Section 412 (A) of the National Land Code, which was amended in 1992 to execute a Court order including the Syariah Court under Section 417. Under this provision, a judge of the Syariah Court may render an order made through the distribution and distribution of which Islam does not have provisions for in the National Land Code so as for the Registrar or the Land Administrator to implement it.

## **Discussion**

The existence of various regions in the administration and distribution of Islamic lands is based on certain values relating to the estate of inheritance. This includes the main element of the estate land under the division of JKPTG heritage, the appointment services of the ARB administrators under ARB, handling the appeal cases at BPP level, and issuing a court for administering authority over an estate of more than RM 2 million. Meanwhile, the probate for property is on the same valuation with wills and the Syariah Court plays a major role in the administration and distribution of property when it involves the Islamic law in Muslim properties.

## **The Main Element Of Land In The Asset**

An administrative administrator officer performs their duties as assistant land administrator gazetted under the state government during an administrative hearing and distribution of inheritance. As assistant land administrator, the hedge officer is qualified to handle land governance and execute any action in line with the requirements of the provisions of the National Land Code. This includes reviewing the prices of land owned as contained in the Circular of the Director General of Land and Minerals No. 25/1976 Revised 2007: The Land Administrator's Duties in the Assessment of Land Ownership Price. In addition, during the division's trial, assistant land administrators are able to advise the beneficiaries of the fall and the value of the ground breaking after the distribution. Examples include ground breaking to some experts on small land. Thus, the way of division will be presented first whether the division is made by consensus, denial or according to faraid law, in accordance with the requirements of all beneficiaries.

## **Handles Appeal Cases**

In addition to handling cases over an amount of RM2 million and properties involving non-Muslims, the High Court also has the power to handle appeal cases subject to change or revoke the grant pursuant to Section 24 of the Courts of Judicature Act 1964. Subject to Section 29 of the Act 98 also refers to the higher Court if there is an appeal on the distribution order made by the collector under Act 98, within 14 days from the date of the decision and if more than the number of days stipulated an order extending the duration of the appeal shall still be made in the High Court.

## **Providing An Inheritance Administrator Service**

In the event of death, beneficiary appointed lawyer will still name the individual as an administrator or executor. The individual then will manage all processed along the distribution. Beneficiary may refer to an institution that provides administrative services and carries out the process of collecting and managing the assets and debts of the deceased, and then distributing the inheritance to the entitled beneficiary. ARB is a governmental department that provides services in the management and administration of estate by becoming an administrator or executor. It may allow the administration of trust property by becoming a trustee of the ordinary trust or large trust fund. Administrative authorisation and probate are directed to the corporation upon their appointment as an administrator under Section 13 for any movable or immovable property exceeding RM 600 000. Appointment of ARB as the executor will facilitate all steps, including ensuring payment of the deceased debts before distribution so that the property is securely divided to the entitled beneficiary.

## **Involving Islamic Law Issues**

Some of the collateral issues that are closely related to the heritage are the affairs of the deceased's property, such as wills, grants, wakaf, charity, and zakat, which must be resolved first. This is so that only the inheritance can be divided among heirs. Hence, the status of the property should be clearly stated; whether the property is the property of the trust that is exercised after the death of the deceased, or indeed the property is the property of the beneficiary. Similarly, family property such as maintenance, muta'ah and property that jointly acquired by husband and wife during conventure needs to be identified and resolved first. In addition, the relationship between blood, heredity, kinship and marriage becomes a condition of inheritance. Therefore, the validity of the marriage, the determination of the law, and the confirmation of the heirs must be decided by the Shariah Court. Indeed, the distribution of inheritance involves Islamic and personal law paced under the jurisdiction of the Shariah Court, which is subject to the State Administration of Islamic Affairs Enactment.

Determination of collateral issues such as nasab, Islamic wills, grants, and matrimonial property is under the jurisdiction of the Syariah Court. If the issue arises in the administration of estate distribution at Amanah Raya Berhad and in the Pusaka Office, the decision will be reliant upon the judgment order of the Syariah Court.

## **Conclusion**

The history behind government policy establishment for an organisation or another agencies to take over the management and administration of estate was based on the true intention of each agency in resolving deferred cases at the Land Office. This was the result of the work and roles undertaken by the Land Office regarding numerous land governance in every district. The establishment and existence of BPP under JKPTG were generally based on the main elements of land division. The skills and powers capable of managing land clearance are linked with economically and well-organised personnel, according to National Land Code. Similarly, the establishment of Amanah Raya Berhad putting key social importance before reaching the objective of this co-trustee was enacted to increase the efficiency and profitability. Meanwhile, the High Court's function is still maintained based on the changes in estate valuation across other agencies. The Syariah Court is still retained as a judicial body authorised to issue a distribution order beyond the determination relating to faraid, such as nasab, marriages, and property acquired by husband and wife.

Research suggested for inter-agency collaboration to be implemented in facilitating heirs

estate as each agency has a specific function and role according to its own expertise, skills, and jurisdiction. When the application is submitted, the parties from separate agencies will unite in the process of completing the same application case according to their respective jurisdiction and expertise, representing each agency.

## References

- Bhattacharyya, H. (2010). *Federalism in Asia: India, Pakistan and Malaysia*. Routledge.
- Halim, A. H., Arshad, A. (2014). Penentuan harta pusaka di Malaysia: Kajian dari perspektif undang-undang sivil dan syariah. *Kanun: Jurnal Undang-undang Malaysia*, 26(2), 153- 172.
- Hassin, W. S. W., Shahar, W. S. S., & Zan, U. M. S. M. (2016). *Faktor-faktor yang mempengaruhi hartapusaka beku di Malaysia*. Proceeding of the 3<sup>rd</sup> International Conference on Management & Muamalah
- Ishak, O. (1979). Hubungan undang-undang Islam dengan undang-undang adat. Dewan Bahasa dan Pustaka.
- Joseph, M. F. (2007). *Federal Constitutions: comparative study of Malaysia and the United State*. Universiti Malaya Press.
- Kamarudin, M.K. & Abdullah, A. (2016). Amalan pembahagian faraid di Malaysia. *Journal of Global Business and Social Entrepreneurship*, 2(3), 11-19.
- Kothari, C. R. (2004). *Research methodology : Methods and techniques* (2nd ed). New Delhi : New Age International Publishers. Lewis, J. (2009). *Design issues in research practice*. SAGE Publication Ltd.
- Merriam, S. B & Tisdell, E. J. (2015). *Qualitative research*. John Wiley & Sons Inc.
- Merriam, S. B. & Tisdell, E. (2015). *Qualitative research: A guide to design and implementation* (4th ed). John Wiley & Sons Inc.
- Merriam, S. B., & Grenier, R. (2019). *Qualitative research in practices : Examples for discussion and analysis* (2nd ed). Wiley
- Merriam, S. B., & Grenier, R. (2019). *Qualitative research in practices : Examples for discussion and analysis* (2nd ed). Wiley
- Nasrul, M. A. D., Salim, W. M. N., Said, M. H. M. & Manap, S. N. A. (2017). Administration of estates in Malaysia: Jurisdiction and misconception. *UUM Journal of Legal Studies*, 8, 183-196. [journal.uum.edu.my/index.php/uumjls/article/view/uumjls.8.2017.4649](http://journal.uum.edu.my/index.php/uumjls/article/view/uumjls.8.2017.4649)
- Noordin, N. H., Ismail, M. I., Abd Rahman, M. A. H., Haron, S. N., & Abdullah, A. (2016). Re- evaluating the practice of hibah trust in Malaysia. *Humanomics*, 32(4). 418–436. <https://doi.org/10.1108/H-05-2016-0044>
- Noordin, N., Shuib, A., Zainol, M. S & Adil, M. A. M. (2012). Review on issues and challenges in Islamic inheritance distribution in Malaysia. *OIDA International Journal of Sustainable Development*, 3(12), 27-38.

- Noordin, N., Shuib, A., Zainol, M. S., & Adil, M. A. M. (2013). Delay in Islamic inheritance claim- an ignorance issue. *Procedia-Social and Behavioral Sciences*,90, 504-512. <https://doi.org/10.1016/j.sbspro.2013.07.120>
- Osman, M. A. (1983). *Perkembangan perkembangan Malaysia*. Penerbit Fajar Bakti Sdn. Bhd.
- Parlimen Malaysia, Retrieved from <https://www.parlimen.gov.my/index.php>
- Patton, M. Q. (2001). *Qualitative research and evaluation methods* (3rd ed). SAGE Publication.
- Patton, M. Q. (2015). *Qualitative research and evaluation methods*.(4th ed.). SAGE Publication.
- Rahman, A. S. (2015). *Kajian terhadap undang-undang pengurusan dan pentadbiran harta pusaka Islam (faraid) di Malaysia*. Jawatankuasa Pembaharuan Undang-undang Malaysia, Bahagian Hal Ehwal Undang-undang, Jabatan Perdana Menteri.
- Rahman, F. A. (2007). *Bagaimana mengurus harta pusaka*. PTS Professional.Batu Caves.Selangor.
- Razimi, M. S. A. (2016). Concept of Islamic inheritance law (faraid) in Malaysia: Issues and challenges. *Research Journal of Applied Sciences*.Universiti Utara Malaysia, 11(12), 1460-1464. <https://www.medwelljournals.com/abstract/?doi=rjasci.2016.1460.1464>
- Talib, H., Ghani, N. A., Salam N. Z. A., Rahman, N. S. A., Rahman, N. S. A & Samad, F. A. (2017). Isu-isu tuntutan harta pusaka: Satu sorotan literatur. *Proceeding of the 4th International Conference on Management & Muamalah 2017*. Selangor.
- Wilayah Persekutuan, Rayuan Mal Bil.4 tahun 1997; *Jurnal Hukum*, Jld. XII, Bhg.II, 1998; Utusan Malaysia yang bertarikh 21 Julai 1998.
- Williman, N. (2011). *Research method*. Routledge. London.
- Yusoff, A. & Agustino, L. (2011). *Federalisme di Malaysia : Potret hubungan pusat-daerah*. Analisis. Centre for Strategic and International Studies, 40(2), 193-216.
- Yusoff, M. A. (2006). *Demokrasi kepimpinan dan keselamatan dalam politik Malaysia, desentralisasi, autonomi daerah, dan federalism : Tinjauan di Indonesia dan Malaysia*. Universiti Kebangsaan Malaysia.
- Zuleika, A., & Desintha, N. P. (2013). Islamic inheritance law (Faraid) and its economic implication. *International centre for edducation in Islamic finance*. Tazkia Islamic Finance and Business Review, 8(1), 97-117. <https://doi.org/10.30993/tifbr.v8i1>

### **Dewan Negara, Parlimen Malaysia**

Dewan Negara Parlimen Kedua Penggal Keempat Bil. 1,1967

Dewan Negara Parlimen Kelapan Penggal Keempat Bil. 15,1994

Dewan Negara Parlimen Ketiga Penggal Kedua Bil. 7 1972

## **Dewan Rakyat Parlimen Malaysia**

Dewan Rakyat Parlimen Keempat Penggal Kelapan Bil.31,1994

Dewan Rakyat Parlimen Keenam Penggal Pertama Bil.57, 1983

Dewan Rakyat Parlimen Kelapan Penggal Keempat Bil.32,1994

Dewan Rakyat Parlimen Ketiga Penggal Ketiga Bil.7, 1973