CONFRONTING THE PROBLEM OF MANAGING UNCLAIMED INHERITANCE PROPERTY OF MUSLIMS IN MALAYSIA

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ABSTRACT

Unclaimed inheritance property of Muslims in Malaysia increases each year. The latest valuation of unclaimed inheritance property, comprising of moveable and immoveable properties, is estimated at RM66 billion in the year 2016 compared to RM40 billion in the year 2007. This increase negatively impacts the economy of the individual, society and country, with abundant uneconomical idle inheritance property and mounting arrears of immoveable property tax. The situation is caused by legislative constraints in the administration of property, especially immoveable property, and by negative socio-cultural practice in managing inheritance property from the deceased. The objective of writing this article is to discuss this issue and
available forms of solution in dealing with the problem in management of unclaimed inheritance property of Muslims. This research is a qualitative study adopting a library research approach as a method for data collection, as well as descriptive method of data analysis.

**Key words:** Confronting; management; inheritance property; Muslims; Malaysia


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1. **INTRODUCTION**

The laws on Muslim inheritance are properly compiled from al-Qur’an, al-Sunnah and *ijma*‘. But however, if inheritance affairs are not promptly managed, rightful heirs will be disadvantaged (Ahmad, Isa & Omar 2014). The delaying attitude in inheritance affairs causes inheritance property unclaimed by heirs to increase and reach a value of more than RM60 billion as reported by mainstream mass media (Anon 2016). Unclaimed properties at various entities have a big impact on the economic development of the country. The properties should be developed and productive and not be left idle and unmanaged until frozen (Ahmad et al. 2017c). Freezing of property contradicts the spirit of *maqasid shariah* (higher objectives of shariah) which recommends that it be properly managed for the benefit of the public (Laluddin et al. 2012). Hence, possession over property is more of a responsibility than an absolute ownership, that is, to discharge the responsibility of managing and utilising it for society and religion (Ahmad & Ibrahim 2006).

The seriousness of this phenomenon was presented at the House of Representatives to create awareness among Malaysian citizens so as to be more concerned regarding matters of inheritance management and administration. This issue is mostly caused by legislative constraints and negative socio-cultural practice of society which need to be examined in order to obtain a comprehensive solution to curb the problem from perpetuating.

2. **ISSUES**

In Malaysia, the problem of legislative constraints is evident in Muslim inheritance affairs which is split between two different jurisdictions as provided in the Federal Constitution, that is, administration of inheritance under the Federal jurisdiction based on List 1(4)(e)(i) of the Federal List, while provisions for Muslim inheritance laws are placed under State jurisdiction in List 2(1) of the State List (Ahmad & Ibrahim 2008). Consequently, there are multiple institutions which exercise administrative jurisdiction over Muslim inheritance at the Federal and State levels. At the Federal level, the main institution is the Civil High Court, Inheritance Distribution Section and Amanah Raya (Public Trustee) Berhad (Muda et al. 2008). At the State government level, the institutions with jurisdiction are the Shariah Court which acknowledges and verifies the specific inheritance portions of heirs in the form of a ‘Faraid Certificate’ based on *furaid* (inheritance) law as well as wills, gifts, legitimacy of offspring, marriage, matrimonial property and lineage (Ahmad et al. 2017a).

This situation is rather confusing for the general public, particularly Muslims, in determining which institution has the jurisdiction to manage Muslim inheritance because they have to attend two court proceedings at separate institutions which administer and settle distribution of the deceased’s estate (Mohd Ali 2014). The practice of waiting for the
application of heirs and stakeholders by agencies involved in inheritance management indirectly contributes to the increase of unclaimed properties (Muhamad 2007).

In addition, there are legislative constraints on immovable property which must be dealt with, for example, section 14 of the Land (Group Settlement Areas) Act 1960, section 42(2)(d) National Land Code (Act 56), Malay Reserve Enactment and Strata Title Act 1985. Property under the Land (Group Settlement Areas) Act 1960 are more likely to face difficulty and deadlock in settling estate distribution to rightful heirs because of the constraints in section 14 which limit inheritance of land ownership to only two heirs (Ahmad & Ibrahim 2010; Kadimi 2006). If the deceased leaves a husband or wife, then the living spouse and the deceased’s next-of-kin have the right to the whole of the land regardless of faraid law (Disa 2009).

Further, section 42(2)(d) of the National Land Code 1965 (Act 56) also limits inheritance of ownership to only one heir for agricultural land the size of less than 2/5 hectare. This matter will have an effect in the case the deceased has more than one wife and many offspring (Abu Hassan 2016) which makes consensus of heirs difficult to gain. According to Abdullah Muhamad (2007) rural agricultural land are more likely to face difficulty in settling distribution as, based on experience in land acquisition projects by the government, 10-20% of the owners are usually deceased and no inheritance claims have been made by the heirs.

Similarly, there is difficulty to settle distribution immovable property under the Malay Reserve Enactment in the case the deceased dies leaving a non-Malay spouse because the Enactment provides that transfer of ownership is allowed only to Malays whereas in faraid law, the living spouse, has a right to inherit from the estate of the deceased, regardless of race (Disa 2009). There is also legal constraint on property under the Strata Title Act 1985 under which is issued ownership for each lot in a multistorey building and for land plots in a gated community scheme (Portal Rasmi JKPTG 2017). Relating to strata title, completion of ownership is possession of the strata title document as proof of property ownership. Failure to obtain strata title document makes distribution of inheritance difficult to administer.

The problem due to negative socio-cultural practice of society starts with the attitude of the Malay society in not meeting the standards as outlined by Allah SWT in the context of human relationships relating to inheritance distribution, such as a lack of concern, contentions among heirs besides lack of knowledge about inheritance management (Ahmad & Laluddin 2010). This negative attitude is the cause for the increase in unclaimed properties and indirectly causes munasakhat (layered deaths of rightful heirs) cases to arise. The Assistant Director of the Small Estates Distribution Unit of Temerloh explained that there are many munasakhat cases in Alor Setar, Kedah. In fact, there was even one case involving 27 layered deaths, so it is not surprising if there are still unsettled applications of estate distribution from the year 1968 because of layered deaths (Wan Hassan 2010).

3. RESOLVING THE LEGAL ASPECT

The problem of split jurisdiction in the administration of Muslim inheritance between the State and the Federal governments in Peninsular Malaysia has led to multiple institutions and caused social confusion on where to begin application for inheritance. Wan Harun (2009) and Lakim (2016) suggested that there should be a single institution vested with authority to administer inheritance for all the people, Muslim and non-Muslim. The jurisdiction of all institutions of inheritance administration should be merged in this single institution which should be named as the Inheritance Court. This idea is supported by Mahbar (2016) who described in detail the tasks of the single institution, that is, receiving and managing all forms of inheritance applications, issuing letters of power of attorney and orders for division and distribution.
In addition, Lakim (2016) suggested that two inheritance courts should be established, separating the inheritance administration of Muslims and non-Muslims. Both courts should deal with inheritance as a whole process beginning from application until an order is issued. Mahbar (2016) also expressed that there should be a transformation action through consensus of inheritance administration institutions in Peninsular Malaysia so that each agency has a specialized jurisdiction for certain powers.

Settling estate distribution for property under the Land (Group Settlement Areas) Act 1960 very much requires consensus among the heirs to surrender ownership to only two heirs. If consensus is difficult to obtain, an order for appointment of administrator will be made by appointing the applicant or one of the heirs to act as administrator and manage the estate on the heirs’ behalf. According to Mohamad (2008) the land administrator may act to sell the land holding and divide the sale proceeds among the heirs entitled according to their portions under *faraid* as specified by shariah. This suggestion as a method for settling distribution is supported by other researchers such as Ahmad (2010) and Awang (2010).

As far as possible, FELDA (The Federal Land Development Authority) would like to appoint an heir to inherit the land holding of the deceased but it also has to take into account the other heirs (Awang 2010). Thus, in the 38th Muzakarah of the National Fatwa Committee for the Islamic Affairs of Malaysia, the view expressed was that if consensus among the heirs was difficult to gain, then the immoveable property under the Land (Group Settlement Areas) Act 1960 is required to be sold with priority given to the heirs to buy before it can be sold to outsiders and the sale proceeds will be divided among the heirs according to *faraid* calculation. This solution discussed and supported by the Muzakarah of the National Fatwa Committee has attracted the attention of Muhamad (2007). In response, he considered it less likely for heirs to buy out the rights of other heirs as the market value of land is very high. Thus, a short term solution has been suggested that a special savings be set up to collect funds to buy inheritance land under this Act. According to Disa (2007), this solution may be applied to agricultural land which is restricted by ownership transfer to only one person if it is less than 2/5 hectares, based on section 42(2)(d) of the National Land Code 1965.

Under the Malay Reserve Enactment, there is also a restriction that only Malays are entitled to own Malay Reserve land. This matter affects distribution of inheritance land where the spouse of the deceased is not a Malay as land ownership can only be transferred to a Malay (Abu Hassan 2016; Disa 2007). Ahmd and Ibrahim (2010) and Disa (2007) suggested and explained a solution that there should be a review of inheritance status under this statute especially in cases where the spouse is a non-Malay and thus is not entitled to inherit the land, whereas according to shariah the spouse is so entitled.

In addition, the problem in management and distribution of inheritance under the Strata Title (Amendment) Act 2013 (Act A1450) has to be resolved by urging the relevant authorities to issue strata titles for multi-storey buildings, especially in low cost housing projects, and private residential buildings (Muhamad 2006). The reason is that many owners of property under this Act do not have documents of title and rely solely on sale and purchase agreements as proof of ownership. According to Muhamad (2006) absence of document of title will make it difficult to manage inheritance distribution process as ownership cannot be vested in the heirs and only a letter of administration can be issued.

In this regard, a comprehensive solution is required for unclaimed inheritance property which is increasing every year. Muhamad (2007) suggested enforcement of the provisions in sections 351 and 352 of the National Land Code 1965, that is, action for reversion of ownership rights to the state if there is no application made to any institution by the heirs or stakeholders. Section 100 also needs to be enforced by revocation of ownership if land dues of the deceased are not settled due to abandonment or neglect.
4. RESOLVING THE SOCIO-CULTURAL ASPECT

The socio-cultural practice of society has indeed a dominant influence on human life including in affairs of inheritance distribution. According to Ahmad and Laluddin (2010) a significant solution to negative socio-cultural practice of Muslim society is the strengthening of *aqidah* and stabilization of Muslim identity. But actually, in a micro way, Islamic inheritance law has provided an alternative solution which is more practical and efficient through the mechanism of *takharuj* (Ahmad et al. 2017b). It is an important component in Islamic inheritance law as any withdrawal or surrender of an heir’s portion must be within the consensually agreed limits and rates (Ali & Ahmad 2013). The principle of *takharuj* offers conducive space for the heirs to settle distribution of inheritance property in the best way for the sake of public interest and the rights of heirs entitled (Ahmad 2017).

Indifference, unconcern and lack of knowledge in inheritance distribution on the part of the heirs can be overcome by holding awareness campaigns for society relating to the importance of timely inheritance management. The essence of the campaign is to emphasize the importance of expediting inheritance applications, explain the application process and clarify negative impressions of inheritance management such as complexity of management, high cost of administration and delays in processing (Muhamad 2006).

According to Mohd Salim (2007), awareness campaigns need to be implemented by the Small Estate Distribution Office Unit (UPPK) in suburban areas, remote places and isolated villages by distributing information leaflets to explain inheritance application. In addition, the District Land Administrator (PTD) can also hold an event to be attended by social representatives such as members of the Village Development and Security Committee (JKKK), village heads and social leaders to assist the government in conveying information to the society or target groups (Muhamad 2006). This awareness action program is supported by Ahmad and Laluddin (2010) who suggested that proactive action is required so that information reaches the society, particularly the Muslim community.

Thus, inheritance planning needs to be done during the lifetime of the asset or landowner to avoid or overcome social problems among heirs. Wise and detailed planning enables avoiding problems in inheritance, particularly to heirs left behind, and ensures that asset or land is better utilised (Wan Harun 2016; Abdul Rashid & Yaakub 2015).

In handling difficulties to begin an inheritance application caused by time running out, lack of mutual understanding, difficulty to obtain information and so on, Muhamad (2007) suggested changing ‘waiting for application’ applied in each institution of inheritance distribution to the practice of ‘beginning an application’ for the heirs by utilising the latest information technology. Relating to the difficulty of obtaining the deceased’s land documents, Halim (2016) suggested that a local registration centre be set up together combining all information on the property of the deceased such as liabilities, asset property, wills and so on through search sources. The role of this local registration centre is as source of reference for heirs to obtain information needed to settle inheritance distribution. In this regard, the practice can guide the ruler or government and community on the effect of the *zakat* on the development of personality and the structure of society towards being more harmonious and peaceful (Hassan et al. 2017; Hassan et al. 2018).

5. CONCLUSION

Failure to curb the problem of unclaimed inheritance property is due to legislative constraints, which restrict and prevent distribution, and the negative socio-cultural practice of society. Hence, its resolution based on shariah, which reflects the image and ideas of islamic inheritance law empowered with its own wisdom and philosophy, is an effective and pragmatic solution in handling the problem of negative attitude toward inheritance
management which has long shackled the Muslim society in Malaysia. In this regard, the government through certain institutions need to be pro-active in drawing up an action plan to disseminate information through road shows, non-commercial advisory clinics and talks including using mass media and internet so that the Muslim society in Malaysia is aware of this problem and its solutions.

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