

## THE ISSUE OF UNCLAIMED PROPERTY IN STATE OF SELANGOR

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**Abstract:** *In this research, the issue of unclaimed property in Selangor is being discussed. Unclaimed property has been identified as a significant issue by Malaysian researchers. Wealth cannot be utilized, which is detrimental to the Malaysian economy. It continues to grow year after year, with no end in sight. This research aims to uncover the causes that contribute to estate distribution delay, determine the implications, and identify the legislation issue on these ongoing problems. Unclaimed property is on the rise due to a few circumstances, including lack of public awareness, social and economic concerns, and administrative and legal issues. People educated about property administration will be less likely to inherit a frozen inheritance. The researchers adopted a qualitative technique, asking a series of open-ended questions during a semi-structured interview between December 2021 and January 2022. As the respondents have a general understanding of Islamic estate management and inheritance, a modest sample size is sufficient, and the researchers used judgmental sampling. To identify the code and themes, the researchers employed thematic analysis. As a result, this research provides an overview of the issues and solutions to lowering the rise in unclaimed property.*

**Keywords:** *Unclaimed property, property administration, Islamic estate planning, distribution of property, factors, and issues, Selangor*

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## Introduction

As many wealthy Muslims in Malaysia and other nations grow, Islamic estate planning involving inheritance property becomes more essential. Due to the complexity of real estate distribution after death, the researchers consider that it is necessary to carry out the estate planning done by the deceased during his lifetime due to potential issues that may occur after his death.

As the time goes by, the number of unclaimed properties keeps continues to climb. Thus, it is necessary to draw attention to the detrimental repercussions of Malaysian Muslims who neglect to plan their assets. Other factors contributing to Malaysia's limited use of Islamic estate planning are insufficient awareness of the importance and lack of expertise in this area. Aside from that, Muslims in Malaysia, mainly Malay, are hesitant to write Wasiyyah because they believe that Faraid is solely an acceptable method for distributing the deceased's wealth. In addition, some Muslims believe that inheritance planning is only for the wealthy.

Hence, this article will focus on the factors contributing to delay and lack of estate distribution, the implications in the deceased's estate administration, and the legislation issues on unclaimed property in Selangor. Hopefully, this study will provide insights and encouragement, especially to the Muslim community, to expedite administering their Islamic estate administration and not postpone it.

## Literature Review

### Islamic Estate Planning in General

According to the Islamic law of succession, there are four sources which are the Holy Quran, the Sunna – Prophet Muhammad's practice, the Ijma' – a consensus of the learner men of the community on what should be the decision on a particular point, and finally Qiyas – analogical deduction of what is right and just following the sound principles laid out by God. Moreover, Islamic law of succession distinguishes sharers and residuary. Sharers are entitled to a specific share of the deceased's property. Meanwhile, the residuary would take up the stake in the property after the sharers had taken their part (Shireen, 2019).

The share taken by each sharer varies in certain conditions. For instance, a wife takes  $1/4^{\text{th}}$  of the stake when the couple is without lineal descendants and  $1/8^{\text{th}}$  share otherwise. In another case, a husband takes a half share of the wife's stake if the couple is without a lineal descendant and a  $1/4^{\text{th}}$  share if otherwise. Next, a sole daughter takes a half share, but if the deceased has left behind more than one daughter, all daughters jointly take  $2/3^{\text{rd}}$  of the shares. Finally, if the deceased had left behind a son and daughters, the daughter would cease to share and become a residuary instead, with the residue being distributed to ensure that each son gets double what each daughter gets (Shireen, 2019).

### The Jurisdiction of the Administrative Bodies in Malaysia

Three main administrative bodies grant the authority to administer the deceased's assets. Firstly, Amanah Raya Berhad (ARB), Civil High Court, and the Estate Distribution Division. Each administrative bodies have a distinct jurisdiction, depending on the form and value of the asset, as well as the manner of death, whether the deceased died intestate (without a will) or testate (with will).

**Table 1: Comparison between Estate Distribution Division, ARB and Civil High Court**

Term	Description	Assets Worth	Governing Law
Estate Distribution Division	- A government organization - Handle small estate only	- Assets worth not exceeding RM2 million - Must contain land and structure (immovable property)	- Small Estates (Distribution) Act 1955
Amanah Raya Berhad (ARB)	- A privatized government-owned firm	- Managing movable assets worth more than RM600,000 but not exceeding RM2 million	- Public Trust Corporation Act 1995 (PTCA 1995)
Civil High Court	-Has broader authority than Amanah Raya Berhad and Estate Distribution Division -Has unlimited monetary value	- Assets worth more than RM2 million - Including both movable and immovable assets	- Probate and Administration Act 1959

### Definition of Term

**Table 2: Summary of Will, Wasiyyah and Hibah**

Term	Definition/Description	Testator	Executor	Governing Law
Will	Made by non-Muslims to administer the deceased's assets	The person who creates the will, 18 years old and in sound mind	- A person dies intestate, apply for Letter of Administration  - A person dies testate, apply for Grant of Probate.	Testate – Wills Act 1959, Inheritance (Family Provision) Act 1971  Intestate – Distribution Act 1958
Wasiyyah	Made by Muslims to administer the deceased's assets	- The testator is called as Al-Musi  - Age of 18, free, in sound mind, not bankrupt  - A legal owner of the property	- The executor is called Wasi  -Distributing the assets to the rightful beneficiaries	Syariah Law
Hibah	A contract that grants property ownership to	- The donor must have legal title to	- The executor is called as Trustee	Syariah Law

	someone else without any use of force	the subject of the gift  -18 years, and, in sound mind	- Hold the property  - Transfer the property's ownership to the beneficiary	
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### Factors That Contribute to a Serious Delay in Processing the Application for Estate's Distribution

#### Current Practice of Leaving Wasiyyah

According to Table 1. From 1998 to 2005, the number of Wasiyyah made by Muslims was consistently lower than the number of will made by non-Muslims. However, the number of Wasiyyah made by Muslims surged rapidly within five years, and, every year, the number of Wasiyyah made by Muslims exceeds the number of will. As a result, the number of Wasiyyah outnumbers the number of will with 176,670 for Wasiyyah; meanwhile, 20,792 total of will made by Muslims and non-Muslims between 1998 to 2009. The rising tendency might be attributed to the increased demand and need for financial planning products and educational solid and promotional efforts by Amanah Raya Berhad (Alma'anum, 2010).

**Table 3: Number of Wasiyyah and Will at ARB from 1998 to 2009**

Year	Muslims (Wasiyyah)	Non-Muslims (Will)
<b>1998 – 2000</b>	13	281
<b>2001</b>	1	108
<b>2002</b>	4	110
<b>2003</b>	131	223
<b>2004</b>	221	652
<b>2005</b>	666	968
<b>2006</b>	8,278	1,595
<b>2007</b>	11,535	2,710
<b>2008</b>	121,731	11,606
<b>Jan2009</b>	4,987	338
<b>Feb 2009</b>	9,015	855
<b>March 2009</b>	7,321	491
<b>April 2009</b>	12,767	855
<b>Total</b>	<b>176,670</b>	<b>20,792</b>

#### Beneficiaries' Attitude and Ignorance

Ignorance and attitude of the beneficiaries occur when they are not concerned by the current issue of unclaimed property. Most of the time, estate distribution is delegated to the oldest son, responsible for making the application. Aside from that, most Malays try to postpone estate distribution which has led the distribution procedure to be complicated. The Malay views the estate issue as a humane subject to discuss. Those who are vigorous about discussing the estate distribution, they will most likely be labeled greedy with the deceased's assets.

### **Lack of Understanding of the True Concept of Inheritance Law**

Faraid's rule is to assess the rights of beneficiaries and their shares. According to Islam, the beneficiaries may withdraw their name in the Faraid from receiving all or a portion of his share and it is called as Al-Takharuj. However, the idea of Al-Takharuj is less often practiced in Malaysia since it is still constrained by a restrictive meaning of dispersion (Mujani, Wan Hussain, Yaakub, & Abdul Rashid, 2011).

### **The Existence of Various Administrative Bodies**

Muslims' asset administration in the Unfederated Malay states was placed under the Syariah Court of respective states. Meanwhile, High Court managed to testate and issued Grant of Probate and Letter of Administration, which were placed under the Ninth Schedule List 1 of the Federal register. Moreover, Syariah Court will decide the beneficiaries' division entitlement and issue a Certificate of Faraid.

### **Delays in the Process of Estate Management**

The estate distribution will face problems when the property claimed is not clear in terms of ownership or mixed with another person's property. Various matters need to be prepared by the heirs during the distribution process. It is complex and time-consuming, especially involving large estates worth more than RM2 million, absence of beneficiaries during the trial and the applicant's failure to be contacted.

Other than that, incomplete application information and the administrator cannot process the property division order. In addition, most of the cases were postponed because the applicant failed to submit the Certificate of Faraid to Syariah court and the beneficiary's inability to bring along the solid proof of the death certificate as some death is not reported to the National Registration Department (JPN).

### **Implications of Delay in the Deceased's Estate Administration**

#### **Family Disputes**

The delay in the deceased's estate administration is a family feud. The development of family disagreement negatively impacts administration and may result in a delay in distribution. In addition, complicated procedures and lots of documents needed to pursue the distribution, could cause delay and prevents beneficiaries from receiving their portion of the bequest (Drs Nasrul, Md Said, Abdul Hakand, & Mohd Salim, 2019). According to an investigation of Malaysian administrative organizations, there seems to be no specific department handling family conflicts that happen during the estate distribution process. This ongoing estate administration issue requires a suitable solution, preferably one that can address the parties' emotional concerns.

#### **Assets and Relevant Documents are Destroyed or Disappear**

The main reason for filing an estate administration application as soon as possible is to ensure that the deceased's assets are dispersed and transferred to avoid the disappearance of important documents required by the court. Documents such as individual title deeds will hinder land transfer to beneficiaries and resolving such issues will require additional expense and effort (Drs Nasrul, Mohd Salim, Md Said, & Abdul Manap, 2017).

#### **Reduce the Property Value**

The economic implicated in the delay of estate distribution is that the estate's worth will be reduced because every item or piece of property to be dispersed is expected to be assigned a

monetary value for easy and accurate distribution to the heirs. The value of a property is usually determined by variables such as inflation rate in Malaysia, the type of property, the location of the property, the model and design of the property.

### **Series of Beneficiaries Death**

The delay in the deceased's estate administration has the connotation of a series of deaths involving the beneficiaries before dispersing the deceased's assets. However, suppose the beneficiaries die before the distribution even begins. In that case, the process will become more complicated, especially if there is a significant time gap between the deceased's death and the beneficiaries' death.

## **Methodology**

### **Respondent Selection**

The researchers employ judgmental sampling, also known as deliberate or authoritative sampling, as a non-probability sample approach. Members of the sample are chosen exclusively based on the researchers' expertise and judgment. As the sample members are not picked at random, the researcher's expertise is critical in this sampling technique. Judgmental sampling is most successful when there are just a few people in a group who have the characteristics that a researchers expect from the target population.

The researchers conducted interviews with three experts regarding sampling for the semi-structured interview. The first respondent is academic expertise specializing in Property Valuation, Facility Management, Social Research, Islamic Real Estate, and Real Estate Policies. The respondent has researched Islamic Real Estate. The second respondent is academic expertise at Malaysia's Universiti Tun Hussein Onn (UTHM). The respondent is from the Estate Management Department, and his areas of experience include Islamic Real Estate Management. The third respondent is a Senior Executive at Amanah Raya Berhad who has 13 years of experience in the Executive Group Marketing and Communications Division of Amanah Raya Berhad Kuala Lumpur branch with an education background in Executive Diploma, Mass Communication and Media Studies from Universiti Malaya.

## **Data Collection**

### **Semi-Structured Interview**

Semi-structured were employed to enable a detailed exploration of factors and implications of the delay in estate administration using a responsive and flexible approach. Therefore, this study followed the steps from DeJonckheere and Vaugh (2019) to design and conduct semi-structured interviews. It involved eleven steps as follows in Table 4:

**Table 4: Steps to Designing and Conducting Semi-Structured Interview**

<b>Step</b>	<b>Task</b>
1	Determining the purpose and scope of the study
2	Identifying participants
3	Considering ethical issues
4	Planning logistical aspects
5	Developing the interview guide
6	Establishing trust and rapport

7	Conducting the interview
8	Memoing and reflection
9	Analyzing the data
10	Demonstrating the trustworthiness of the research
11	Presenting findings in a paper or report

Each respondent determined the place for the face-to-face interview. The respondents were chosen based on relevant factors to the study's purpose. The interview questions were written in English, but respondents were given the option of being questioned in either English, Malay, or both. All respondents requested to be interviewed in both languages, and all respondents were asked identical questions. Furthermore, respondents were advised to refuse to answer any questions if they felt they were too sensitive. The interviews were audio-recorded at the respondent's office and lasted between 60 and 120 minutes.

### Document Analysis

Document analysis is a form of qualitative research in which the researchers interpret documents to give voice and meaning around an assessment topic (Bower,2009). Document analysis entails examining and interpreting all data to get a grasp of the subject at hand and produce empirical knowledge. These data assist the researchers in gaining more profound knowledge, uncovering meaning, and gaining insights prior to the research challenge.

### Data Analysis

The researchers used Thematic Analysis which is a type of qualitative analysis. It is used to analyze classifications and present themes related to the date. In addition, it illustrates the data in great detail and details with diverse subjects via interpretations (Boyatzis, 1998). The researchers transcribed the interviews verbatim, read the transcripts, and listened to the recordings. This step was taken to ensure that the researchers were familiar with the data and that the actual process was high quality. Then, using a theme step method, the respondents' remarks were freely coded, and the research questions were selected as the crucial questions in the interview guide.

### Findings

#### Factors that Contribute to Delay and Lack of Estate Distribution

The factors delaying the deceased's estate distribution among Muslims in Selangor can be analyzed from two major angles, i.e., social, education level, and organizational and legal factors.

Coded For	Statements	Extracted Code	Theme
Social factor	<i>"Most cases in unclaimed property are caused by both the ethics and attitude of the heir. In terms of heirs, the stigma of "red grave" in Malay culture"</i> (Respondent 1)	- The heirs' ethics and attitude cause delay in estate distribution  - The issue of "red grave."  - The heirs do not allow to discuss the deceased's asset distribution openly	The factor

Education level factor	<p>“The heirs do not understand the concept of Faraid...” (Respondent 1)</p> <p>“The importance of Faraid education is the same as any other topic...” (Respondent 2)</p> <p>“The Faraid topic should be a core subject in university. ...” (Respondent 3)</p>	<ul style="list-style-type: none"> <li>- Lack of exposure and education</li> <li>- Many people do not understand how Faraid works</li> <li>- Faraid subject should be implemented since high school</li> <li>- Should not be an elective subject in university</li> </ul>	The factor
Organizational and legal factors	<p>“Unclaimed property does not have a foundation as Yayasan Al-Mafqud...” (Respondent 2)</p> <p>“The government has to do something, and politicians should intervene...” (Respondent 3)</p>	<ul style="list-style-type: none"> <li>-There is no one stop center for estate distribution</li> <li>- Do not have a foundation such as Yayasan Al-Mafqud that handles missing persons’ assets</li> <li>- Government should play a leading role in proposing a new Act for estate distribution and administration</li> </ul>	The factor

### Implications of Delay in the Deceased’s Estate Distribution

The implications of delaying the deceased’s estate distribution among Muslims in Selangor can be analyzed from two significant angles, i.e., social and economic impact.

Coded For	Statements	Extracted Code	Theme
Social impact	<p>“Abandoned houses have been filled with drug...” (Respondent 1)</p> <p>“Dispute happens between family members because of frustration...” (Respondent 3)</p>	<ul style="list-style-type: none"> <li>-Abandoned house can be a drug haven</li> <li>-Make residents surround scared and feel unsafe</li> <li>-Dispute happens between family members</li> <li>-Long waiting period can add more pressure between them</li> </ul>	The implication

Economic impact	<i>“Abandoned property or buildings will experience in value depreciation...” (Respondent 1)</i>	-The property will face depreciation  -Nature of property is facing depreciation as time goes by	The implication
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### Legislation Issue on Unclaimed Property

The legislation issue related to delay in the deceased’s estate distribution among Muslims in Selangor can be analyzed from two significant issues, i.e., the role of authorities and the existence of various administrative bodies.

Coded For	Statements	Extracted Code	Theme
Role of authorities	<i>“The government shall interfere with solving the issue...” (Respondent 1)</i>  <i>“The government did not take serious action towards the property owner.... The land or property should revert to the state government...” (Respondent 3)</i>	- The government should interfere in solving the issue  - Modify the current issue as existing law does not solve unclaimed property issue  - A property that failed to pay assessment tax for several years can be taken back by local government	The legislation issue
The existence of various administrative bodies	<i>“Existence of several administrative bodies confuses the heirs...” (Respondent 2)</i>  <i>“There is no one-stop center...” (Respondent 3)</i>	- Existence of many administrative bodies  - Different institutions will handle different values of property value  - Causes confusion to the public  - No one-stop center for estate distribution	The legislation issue

### Conclusion

Based on the difficulties highlighted above, it is evident that the main reasons why the inheritance property is not claimed are people’s attitudes, management, and administration factors. Law in Malaysia relating to the claiming process must ensure no oppression to the person involved during the administration and distribution process. On the other hand, authority bodies must do their part in the best interests. Moreover, the public attitude towards making a

Wasiyyah will be changed. The misconception of estate distribution will make the process more complicated.

Moreover, the community must seek knowledge and education regarding property inheritance so that a well-informed society can guide the community to a brighter and more affluent future. Thus, more attention and effort are required to this undisputed property issue. If this issue is not resolved as soon as possible, it will affect the eligible beneficiaries and harm the Muslim economy in Malaysia.

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