

MANAGEMENT OF INHERITANCE PROPERTY IN SELANGOR

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Abstract

In Islam, every property or piece of land left by a deceased proprietor must be immediately managed by heirs. It is known as inheritance property, and it will be managed by the agencies concerned. In Islamic terminology, real estate is referred to as al-ard, al-'aqar, or ghoirul manqul, meaning immovable property. Every country faces unique obstacles in handling inherited property, and most people have issues that cause delays in the process of distributing legacy property. It is because, in terms of economics, land has worth that can contribute to any state's economy around the world. As for Malaysian land cases, it must refer to their respective Act depending on the type, case, or situation. The objectives of this paper are to explore the distribution and process of inheritance property and determine each role of agencies involved in managing inheritance property by using semi-structured interview. This paper will be useful enhancing the understanding of inheritance property management by the agencies involved.

INTRODUCTION

Any piece of land has high potential to be developed that will give benefit to the economy in Malaysia and including around the world. In Islam, any property or any piece of land that left by deceased proprietor need to immediately manage by heirs. It is called inheritance property that will be managed by involved agencies. In Turkey, women's wealth is a heritage. Inheritance law comes from family law which is the dimension of women's property rights (Yasun, 2018). From that, with a mechanism that can enforce progressive family law can enhance the reality of a woman's experience. The estate allocation in Turkey is 20% of women's property rights while 92% of male rights since 1926. This is because women have abrogated their inheritance rights to their male and female relatives (Yasun, 2018). According to Ismael (2016) the remaining of properties must be distributed immediately to the heirs after death of deceased proprietor. But before being distributed, the heirs must settle the debts of the deceased before claiming the balance.

According to Islamic law in Nigerian is not explained in depth about the time the estate is distributed (Ismael, 2016). After the British colonization, the Malaysian legislation had been compromised resulting in Muslims facing constitutional issues related to the distribution of Islamic heritage. Additionally, heirs have to bear high costs and a long period of time to realize the heirs need to claim the property behind the deceased. Although the legal system and standards that comply to Syariah principles are now being unified, they are still unable to produce a complete system to handle the entire inherited property

procedure. Because of that, the fate of the Muslims is still bad because without a clear guideline in claiming the right of the estate has spent a long time and a high cost. Until now there is still no way to assist in solving this problem practically even though the constitutional amendment has been made to simplify the process of claiming inheritance property. This paper addresses two main objectives to enhance the understanding of inheritance property management, which are;

- i. to explore the distribution and process of inheritance property
- ii. to determine each role of agencies involved in managing inheritance property

METHODOLOGY

The purpose of this paper is to improve understanding of inheritance property and its administration. Primary and secondary data are incorporated in this paper, as well as a desk search on past studies on inheritance property. Interviews with authorities which are representative from Department of Director General of Lands and Mines, Amana Raya Berhad, Valuation and Property Services Department, Court of Civil and Syariah, Majlis Agama Islam Selangor as well as private agency, As-Salihin Trustee Berhad that involved in managing the inheritance property in Selangor. The interview focuses on the roles of the agencies involved and the procedures used to manage the inheritance property.

REVIEW OF LITERATURE

Many challenges are faced in resolving conflicts related to the property legacy in using traditional African power structures. Land is a pricy commodity across the country (Mbaabu et al., 2018). In African countries there are various conflicts that can be concluded that resource management needs to be well managed. From that, Mbaabu et al. (2018) said that proving that with various structures can also cause disagreements and sometimes wars. Before Islam in Indonesia, the inheritance law is never fair where children and women are not entitled to inheritance.

As the development of civilization in terms of custom, ethnic and cultural diversity has influenced the law of succession (Hasbulah & Daud, 2015). Even from the time of the Dutch, Indonesia still sticks to the Islamic law including the inheritance of property in accordance with customary law. Hasbulah & Daud (2015) stated that an expert system in Indonesia, artificial intelligence has been used optimally to store information thus solving problems and making decisions based on stored information. However, it still holds the foundation of the Quran, Hadith, and Fiqh or Faraid.

Issues in Managing Inheritance Property

There are various challenges in managing the estate because each agency such as Amanah Raya Berhad will play their part in resolving to process the application made by the heirs. Many cases are interrupted due to the challenges faced by each agency involved. In fact, each heir also needs to cooperate and possess knowledge about the management of the estate so that the claim process can run smoothly and the period for obtaining the claim can be shortened. In Nigerian, Ismael (2016) said that the problems faced by Muslims in Kwara State are when the inheritance property is still not distributed even death occurs before the property is distributed. To overcome the problem, amongst the Muslim at Kwara State has set two perspectives. The perspectives are "a period of time when a person or something has to wait for a problem that makes something slow or late" and "an incredible slack that can be defined as a long period of time more than usual or expected when someone or something has to wait for problems that make something slow or too late (Ismael, 2016). From both perspectives it can be concluded that delay in managing inheritance property have many challenges to solve the distribution of inheritance property.

Meanwhile, the problem faced in Brunei is the attitude of intolerance between heirs as well as shallow knowledge of inheritance property in solving the problem of managing the property makes the process of managing the property delayed and difficult to be resolved by the heirs (Sabtu & Mahamood, 2017). It can be concluded that in Brunei Darussalam has faced the problem in regarding delayed in managing

inheritance property due to heir's knowledge in manage the distribution of inheritance property. In Malaysia, according to Shafie et al., (2017), the volume of unclaimed inheritance property increasing year by year. Because of that, the asset become frozen and difficult to managed by heirs. The total of frozen asset increased from RM 40 billion in year 2009 until RM 42 billion in year 2011. This number continue to increase until RM 60 billion in year 2013 (Shafie et al., 2017). Most of previous researchers also mention that the number of unclaimed inheritance property is high (Kamarudin & Abdullah, 2016, Saman, 2012).

Types of Inheritance Property

In inheritance property management have two types of inheritance property. For small inheritance property, the cases will manage by Distribution of Small Estate Unit while for regular inheritance property will managed by High Court where there have probate and letter of administration for managing inheritance property. There are two types of inheritance property as a follow:

Small Inheritance Property

The assets must have immovable assets and movable assets that the total value does not exceed RM 2 million.

- Land only <RM2,000,000;
- Land and house or building <RM2,000,000; and
- Land and house with movable asset such as vehicles, cash, gold <RM2,000,000.

Regular Inheritance Property

- Movable asset only <RM600,000 such as savings, shares, cash, and golds;
- Immovable assets such as land >RM2,000,000; and
- Contingency claim: under Civil Law Act 1956.

THE DISTRIBUTION AND PROCESS OF INHERITANCE PROPERTY

The Distribution of Inheritance Property

The main source of inheritance was the Qur'an and the hadith of the Prophet SAW which was followed by Ijma '. In addition, there were some Khilafiyah issues among companions regarding some inheritance cases that later became a hold on the fiqh sects that came after the time of the companions. In reference to the Qur'an there are several verses detailing the parts of the heirs in the distribution of inheritance. These verses are the 7th verse of Surah An-Nisa which tells the general part of the male heirs and the female heirs as in the Word of Allah Almighty:

“From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large, -a determinate share.” – An-Nisa:7

The details of the portion of each heir are stated in verses 11 and 12 of the Surah An-Nisa and the last verse of the Surah is verse 179. In these three verses God has explained the portions of the beneficiaries of the obligatory and the “Asabah” and the circumstances of their inheritance. Specifically, in verse:

“Allah (thus) directs you as regards your Children’s (Inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased Left brothers (or sister) the mother has a sixth. (The distribution in all cases (’s) after the payment of legacies and debts. Ye know not whether your parents or your children are

nearest to you in benefit. These are settled portions ordained by Allah; and Allah is All-knowing, Al-wise.” – An-Nisa: 11

Table 1. The Distribution of Faraid in Inheritance Property

Category	Distribution
Father	1/6 – The late had no children or have daughter only + balance of the distribution. 1/6 – The late have children
Mother	1/6 – The late have two or more nephew 1/3 – The late had no children
Husband	1/2 – The late had no children 1/4 – The late has a son
Wife	1/4 – The late had no children 1/8 – The late has a son
Son	2/1 – If share with the daughter All balance – If only have a son
Daughter	1/2 – A single daughter without a son 2/3 – More than one daughter and without son 1/2 – If share with a son

Managing Inheritance Property

Land Act (Group Settlement Areas) 1960 was passed under Article 76 (4) of the Federal Constitution and governed by government agencies such as FELCRA, RISDA, FELDA, LKPP and others. If the deceased leaves the property under the Land Act (Group Settlement Areas) 1960 along with land or other movable asset and the value is not more than RM 2 million, then the subdivision of the property is subject to the Small Estate (Distribution) Act 1955 through the Subdivision Section Inheritance / unit Distribution of Inheritance under the Department of Director General of Lands and Mines (Federal). If the total value of the deceased is not more than RM 2 million but the deceased is non-Muslim and has left a Will, then the distribution of his inheritance property is subject to the jurisdiction of the High Court.

The application for subdivision of a small estate under the Small Estate (Distribution) Act 1955 shall contain only immovable property or jointly movable property of a total value of RM 2 million. The applications must be submitted using Form A, the Small Estate (Distribution) 1955 regulations, which can be obtained at any unit of subdivision of inheritance or downloaded through the JKPTG website. The law applicable to the distribution of heirs to Islam is Faraid's law, while to non-Muslims it is based on the Distribution Act 1958, or the parties agree to distribute by consensus or mutual agreement.

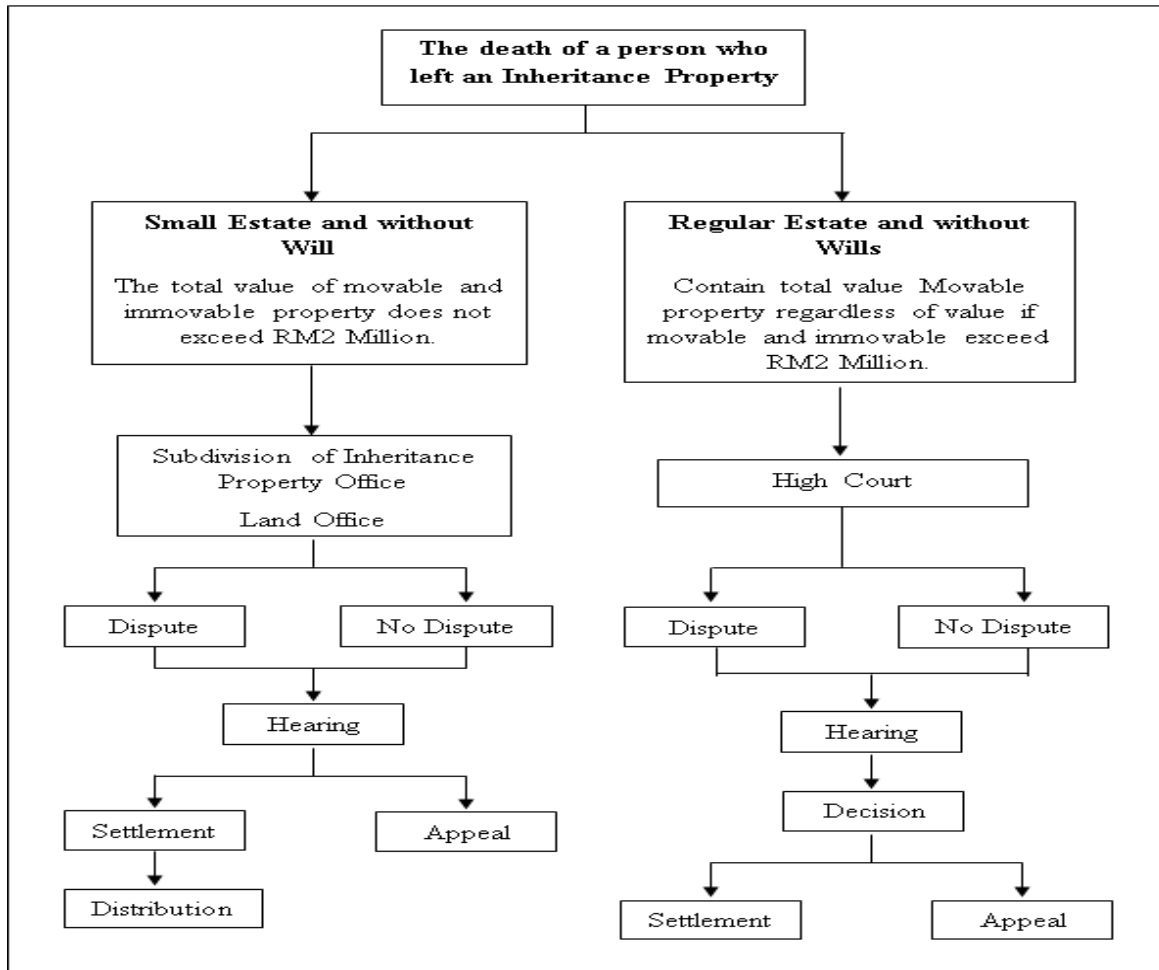


Figure 1. Process of Inheritance property

ROLE OF AGENCIES INVOLVED IN MANAGING INHERITANCE PROPERTY

Department of Director General of Lands and Mines (Federal) (JKPTG)

JKPTG is a department under the government which has a unit of inheritance distribution in each state depending on the district that creates the unit for distribution of inheritance property. Any application of registration inheritance property must be registered at JKPTG depends on their location of property or land. JKPTG is the prime mover in managing distribution of inheritance property. The JKPTG will proceed the application of distribution inheritance property to another next step. All or a portion of the immovable property of the remains of the deceased where it is located in any state and the amount which does not exceed RM 2 million will be proceed at JKPTG to process for distribution inheritance property and also with condition must have immovable asset that left by the deceased.

Nowadays, to make any application for managing inheritance property, the public need to make application by online to register their cases. This online application is intended for publics to open any file regarding inheritance property with JKPTG easily. Before the application accept by the JKPTG, the applicant seeking to apply the inheritance property management must ensure that all documentation is prepared and complete. The JKPTG will check the application first because any incomplete document will be returned and will be rejected.

Amanah Raya Berhad (ARB)

ARB is a public trustee of Malaysia as governed by Public Trust Corporation Act 1995 (PTCA 1995) to ensure settlement of the inheritance property or settlement of deferred inheritance property or as administrator of the inheritance property. According to the ARB, they keep everything entrusted to the public for the benefit of the living, for charity and others. The ARB was known as a public trustee in 1921. Until 1995, the ARB was incorporated as a “Amanah Raya Berhad” that act as an outsider company to manage the inheritance property.

According to ARB, inheritance property is movable asset, immovable asset and investment assets left by the deceased. The challenges in property management in ARB can be avoided if the deceased heirs can be identified. In fact, the duration of the management can be expedited if all heirs give cooperation. According to ARB, the time period for managing the inheritance property takes three (3) months depending on the type of assets owned by the deceased or relying on any dispute between the heirs which also to complete take years. Therefore, the selection of administrators is essential to help manage or administer the asset of the deceased. In ARB, the publics need to provide a fee that need to pay to the ARB for managing inheritance property.

Valuation and Property Services Department (JPPH)

The main role of JPPH is make a valuation on the asset in Malaysia. Inheritance situation, JPPH also play their roles which is value the deceased’s asset to know the ‘Duty of Inheritance Property’ including to determine the value of the deceased’s asset either exceed or not exceed RM2 Million which based on fee order from JKPTG. From that, each agency must play their roles to help heirs to process the distribution of inheritance property especially starting from JKPTG and others.

At JPPH, they will deal more with the agencies involved such as JKPTG, ARB and MAIS. In the other hand, in JPPH, there are two types of valuation dates that are before 1991 and after 1991. If death occurs before 1991, the JPPH should check with the involved agency whether it refers to the date of application or the date of death on which they depend on the decision from the agency involved. Meanwhile, in case of death after 1991, JPPH will need to make a valuation depending on the date of application by the heirs.

Syariah High Court

Razimi (2016) stated the agency involves are High Court of Syariah. The Court that managing inheritance property have two which are Syariah and Civil or Mahkamah Tinggi. In Syariah Court, they are handling cases for determination of heirs and issued the “Certificate of Inheritance” to the heirs. Moreover, Syariah Court handling cases that relate to Islam such as marriage, grants, matrimonial property, illegitimate children and others.

In addition, Syariah High Court plays a role in determining who is entitled to the inheritance property that left by the deceased for Muslim or to the parts of the person entitled to receive it.

As-Salihin Trustee Bhd

When a person dies without a Will, an administrator or several administrators must be appointed to administer the deceased's estate where he will accumulate all assets and liabilities of the deceased and distribute the surplus of the deceased's estate according to Shari'ah after settling his debts. According to the As-Salihin Trustee, their role in managing the estate is to commence with procedures or methods in terms of administering, applying, appointing and administering duties and responsibilities in accordance with the provisions of the law found in the Probate and Incorporation Act 1959.

In addition, the administration of the estate is a daunting task for the Wasi appointed in the Will and the beneficiary will suffer in the event of selecting the wrong administrator. As-Salihin Trustee Berhad acts

as a trust company providing administrative services to Inheritance Property. They also have the expertise and experience to take on the heavy responsibilities of managing the following properties:

- Identify deceased assets and liabilities whether in Malaysia or overseas.
- Identify the rightful owners of the estate.
- Apply for a Faraid certificate from the authority to obtain the Administrative Authority Letter
- Pay off the debt
- Manage tax and liability matters
- Distribute the estate to beneficiaries according to Faraid
- Provides all related accounts and documents

Majlis Agama Islam Selangor (MAIS)

MAIS is a government body that is the middle ground for Muslims in facilitating their estate dealings. In addition, MAIS also acts as a Wasi or trustee or administrator in the management of the estate as well as Baitulmal if the deceased does not have an heir or heir to refer to the last place where the property will be conveyed. Most of the public will refer to MAIS to get the advice from them how to manage the inheritance property, Hibah, Will and others.

Baitulmal is the last place of reference if a deceased has no heirs or residual property after it has been given to the rightful heirs. Inheritance is one of the sources of Baitulmal that has been established by Faraid law. It is based on the book of Raudah al-Talibin in the text of Imam An-Nawawi, volume 5, pages 6-7, which states: "If the deceased does not leave a fardu heir, and does not leave the beneficiary, then he must be inherited by Dzawil Arham. In our view, it is true that the opinion of the Dzawil Arham is neither inherited nor given back to the surplus, which is when the Baitulmal affair is well governed by a fair leader."

DISCUSSION

Each process of managing inheritance property and process of distribution in inheritance property will take time to solve by agencies involve that need the cooperation from all the agencies and heirs to ensure the process run smoothly. Besides, to solve all the process, each agency involved need to understand, expertise and plays their role to help the public in managing their inheritance property that left by the deceased. Furthermore, each agency involved need to cooperate to give more awareness to the public and heirs about the importance of inheritance property management in future such as economy, development, social and others. Moreover, each agency involves and the public need to more aware on effect and advantages in future if the heirs claimed or unclaimed their inheritance property that left by the deceased. There are many advantages and disadvantages if the heirs claimed or unclaimed the inheritance property such as in terms of land acquisition issues, frozen asset and dilapidated of movable and immovable asset that included other factors such as economy, development, social and laws.

CONCLUSION

The distribution and process of inheritance property management from each agency that involve either under government agencies or private agencies have been defined. There are shows each of the agency have different jurisdiction in managing inheritance property until distribution of inheritance property to the heirs. Among the agencies that involved are JKPTG, JPPH Klang and Shah Alam, ARB, MAIS, Syariah High Court and As-Salihin Trustee Berhad. The overall finding indicate that the respondents have their role to help the publics and next generation in managing inheritance property. Each involve agency have different roles to solve the challenges and problems during process of managing inheritance property and during process distribution of inheritance property in Malaysia.

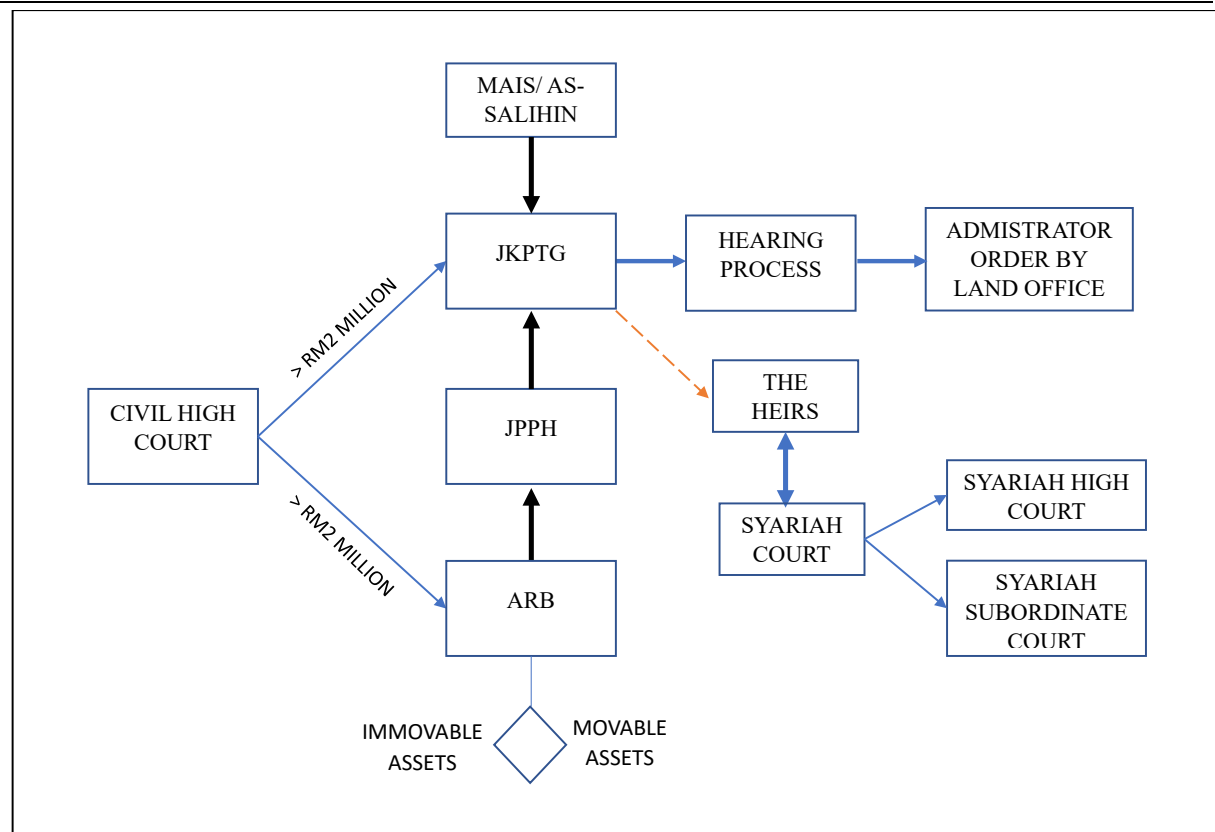


Figure 2. The Summary Process of Managing Inheritance Property

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