

THE ROLE OF LEGAL HEIRS TO RESOLVE UNCLAIMED PROPERTIES IN MALAYSIA

MOHAMAD ALI ROSHIDI AHMAD

Department of Accounting and Finance, Faculty of Management and Economics
Universiti Pendidikan Sultan Idris
roshidi@fpe.upsi.edu.my

ABSTRACT

In Malaysia, in the event of a Muslim's death intestate, the estate will be distributed according to the Faraid system after deduction of funeral expenses, settle the debts and consider the will. It will take time to determine the distribution of the estate by the competent authorities. In spite of this, the estate will become unclaimed properties in the absence of any claim that has been made for a certain period of time even though the legal heirs to the deceased still traceable. In another case, the estate will become ownerless property in the event that the legal heirs is untraceable. Unclaimed properties become a serious problem in Malaysia now. Based on the report in 2020, we found that there was around RM70 billion of unclaimed properties left by the surviving family members of deceased in Malaysia. Despite the increase in the total value of the unclaimed estate in Malaysia, the authoritative bodies concerned are taking this issue seriously. We need a more practical way of solving this rather than allowing it to accumulate in the long run. If this issue were left unattended, it could jeopardize the rights of the heirs to the unclaimed estate and thus the property would remain unaffected. This paper will focus on the discussion of the causes of the issue of this unclaimed properties, as well as the role of legal heirs to reduce the unclaimed properties in Malaysia.

Keywords: *Unclaimed properties, estate planning, legal heir*

INTRODUCTION

In Malaysia, delays in claiming inheritance have become a big problems which is widely concerned by the authority and the public. This delay contributes to the increase in unclaimed asset over the past few years, which is alarming hence an immediate need for a proper solution. In 2020, it was reported that the unclaimed property amounted to RM70 billion which saw an increased in number compared from the past years (Mohamad Ali Roshidi, 2020; The STAR, 2020). Several causes that lead to the unwanted delay have been identified and clustered in the form of legal, economics, religious and social (Rusnadewi, Siti Aishah, & Noor Inayah, 2013).

Unclaimed property in Malaysia increases each year. The latest valuation of unclaimed property (both movable and immovable) was estimated at RM70 billion in 2020, compared to RM66 billion in 2016 (Sinar Harian, 2019). This growth has had a negative impact on individuals, society, and the country's economy, uneconomically idle inherited property, and increasing arrears in real estate taxes. Legislative restrictions in the administration of property, especially immovable property, and negative socio-cultural practices in handling inheritance property from the deceased are to blame for the situation.

UNCLAIMED PROPERTY

In a globalized world, the rise of unclaimed property has become more complex and challenging with the migration and relocation of families. Although the concepts of property management have been recognized and have benefits permanently purpose, unfortunately, there are still many in Muslim community during this country that lacks interest and neglected to form a planning, especially from the purpose of preparation in inheritance distribution of property before they died.

These issues arose and lots of didn't realize the necessity and importance of wealth planning regarding the first distribution of property inheritance to their legal heirs after the death. Unclaimed property issues may also occur when beneficiaries are unaware of the estate administration processes that must be followed, and some beneficiaries consider the estate distribution process to be lengthy, costly and inconvenient, causing the deceased's properties to be frozen, leaving them idle and unmanaged.

There are many factors contributing to these rise in unclaimed property have been identified. One explanation for this may be that, most Malaysians are unfamiliar with unclaimed properties. Without adequate guidance, resolving the above cases may take ten years or more. Not only is there a lack of community knowledge, but there are still few obstacles that prohibit people from prosecuting wealth (Azizi, Muhammad Ashraf Aliff & Mohd Rashdan, 2020). The significant is, where the different protocols must be followed when dealing with the deceased's property. As a result, the individual in charge of the deceased's assets should be well-versed in estate administration law. He has to be able to figure out where to go and what to do about the deceased's death. This individual serves as the personal representative of the deceased's estate and must be well-prepared. Furthermore, the solution to handle these issues is we need to find an effective mechanism or tool to be practice like hibah or wasiat (Muslim will) in order to distribute the inheritance properties wisely after the death. Besides that, the foremost important thing is about the management wealth planning regarding our properties which will be left. Early planning and systematic management need to be prepared. After a person's death, the circulation of their estate had to be halted before the inheritance was distributed to the heirs who were entitled.

FACTORS OF UNCLAIMED PROPERTIES

Lack of Awareness

Nowadays, though society and community are enriched of advances and forefront in technology and IT, but they are still lacks of awareness and knowledge of financial importance in life and continues to be the reason and factors behind the rise of the unclaimed property. Then, what is the difference and contrast between 'awareness' and 'knowledge'? Awareness can be either self-reported or tested. Measuring awareness or knowledge of issues creates challenges. The measurement of awareness has the object and the focus of what the respondents know as well as what they do not know. It can either be tests of maximum performance or the tests of particular and typical performance. Awareness is also the state or ability to observe, to feel, or to be conscious of events, objects, or audible patterns. In this level of consciousness, awareness data can be confirmed by an observer without undoubtedly understanding. The knowledge of beneficiary must contain 'awareness' but mere awareness does not contain any type of knowledge.

A property is not about money, but to protect the survivors and make sure the inheritance will be distributed according to the wish of the deceased, as well as to speed up the entire claiming process. Unclaimed property inheritances in Malaysia may not be solely due to the ignorance, lack of awareness and apathy of the heirs. Some people may have just forgotten

the property they had for a long time before. Ignorance will definitely impact any issues regarding property distribution especially following the death of a family member or close relative. Without doubt, administrative difficulties may also lead to the accumulation of current staggering amount of frozen property. There are also cases where the heirs do not want to claim the property or land because they think, it is not worth the effort, for instance when the value of the property and asset cannot cover the quit rent or the debt of the deceased. That is why we think that, a lack of public awareness is one of the biggest hurdles to returning more property to owners.

Hence, it is important to inform the public of the early plans for the division of the property and estate before the death so that the legal heirs will not have difficulty in managing the estate. Although in Islam, it has established guidelines in faraid's knowledge on the division of deceased inheritance (Rusnadewi & Noor Inayah, 2010), it is nevertheless practically not as easy as it may be because it involves many parties and very complicated processes. This is due to the inheritance settlement process which is usually takes time because it involves processes in certain bodies and requires high commitment for the beneficiaries to manage it.

Consequently, the management of the inheritance has often encountered difficulties in distributing it to the rightful heirs. In general, we can see the factors that contribute to this issue involving many parties. Therefore, everyone should play their roles and responsibilities on their asset and property so that there are no more unclaimed property issue in the state.

Lack of Education

Property management has been one of the core topics that we as Muslim or non-Muslim should be well educate with. This property management education is very important as it will be used by everyone not just old people but also those who are still young. Through this property management, you will be able to learn more about inheritance and unclaimed property. Unclaimed property that keeps risen in our country has been a headache issue for the government. As we have discussed in the upper part, we know a briefly on the factors, the solution and the current situation of the unclaimed property in our country. In this subtopic we will learn more on how education can affect the unclaimed property issue.

Unclaimed property may not face by everyone but it is common issue when it comes to a big family especially. Unclaimed property happens because when someone dies in the family but the assets, money and property are not being given to the right heirs. This may happen due to dispute over divisions of inheritance. This will prolong the division of the inheritance and may lead to the property will be unclaimed in the future (Azizi, Muhammad Ashraff Aliff & Mohd Rashdan, 2020). I strongly believe that for this issue people should have a better education in regards of property that are left by family members who die. Rarely we see that people have knowledge regarding property management unless he undergo the situation first. This situation of unclaimed property rises due to some of the factors such as, the heirs already claim their inheritance but as there are many procedures to follow with, they end up giving up and not continue with their application to claim for inheritance. Inheritance such as land are usually having a long procedure and to claimed for land, will need to deal with government since has acquisition with government. If such cases happen, they usually are requested but then was left half ways when the heirs faced a difficulties (Wan Kamal, Hirwani, Noor Inayah & Rusnadewi, 2011).

If people who are involve as the heir's lack of knowledge and understanding about their rights, it will also lead to the increase of unclaimed property in our country. As all of us are aware, Islam has mentioned about faraid. If the public still don't understand the concept of faraid that mentions about the rights of beneficiaries and their portions and not an order for property divisions. If public are well aware of this concept, the numbers of unclaimed property will also go down drastically. In short, with lack of knowledge and understanding, it will give

a big effect to the numbers of unclaimed property cases. If the public tend to take thing easy, then their knowledge will be limited to what they only know and this issue of unclaimed property can never be solved in a long time. The ignorance of the public should be terminated and the public should take part and get some knowledge about property management and especially the property that need to be claimed.

To solve this issue of lack of knowledge and understanding, there are a few actions that can be taken by both the government, public sector and also individually. In order to lessen the rate of unclaimed property, all of this people are involved to create a better understanding and also to make sure the public have at least the average knowledge about management of property. If we were to ensure this, not just it will be benefited individually but will also benefited to public sector, government and private firm. If you have the knowledge as from now, this unclaimed property issue would not even be an issue because you will write the will as you still are alive.

Education and understanding about the concept of faraid and what is their rights are very important and cannot be taken easy by individually, firms and government. If all this are taken seriously by the public, we can absolutely lessen the rate of unclaimed property in Malaysia. Each of us must first be willing to learn more about the property management and this will help us to be more understandable toward this issue. Education or lack of understanding in regards of property management shouldn't be the obstacles towards this issue.

Social Issues

Apart from the lack of awareness and education related to property inheritance, the rise in unclaimed property in Malaysia also stems from social issues that have been long entrenched in this country. This includes the attitude of society who often neglect to manage inheritance, procrastination, and unwillingness to cooperate among the legal heirs.

a. Attitude of Society

Property inheritance often involves complicated processes and procedures. Therefore, it is reasonable for some individuals to refrain and avoid themselves from getting involved in matters that are complicated and tangled. However, this behaviour is so common that it has become a habit that is difficult to eradicate from society. As a result, when death occurs, all heirs will be indifferent to the property left behind because they do not want to suffer additional hassle in managing the inheritance procedures. Hence, property left untouched and contributes to the increase of unclaimed property in our country. There are also cases where the heirs are handing over the duties to the eldest son who is said to have more legit responsibility to make the application (Muhammad Amrullah & Wan Noraini, 2018).

The ignorance of the other heirs and the attitude of avoiding responsibility are among the reasons which are said to lead to the neglect of the property. On the other hand, there is no doubt that some people are very sceptical on matters related to property inheritance issue, especially among the Malays. This issue is considered taboo and heirs who demand to manage the inheritance are being called greedy and labelled as obsessed with the property of the deceased, thus resulting in dispute and conflicts among family members (Mohamad Ali Roshidi, Hartini & Azam Abdelhakeem, 2021). Because of this, the legal heirs who have an understanding and awareness of the importance of managing property inheritance are wary to manage the property for fear of being misunderstood by others. Hence, such thinking should be purified as it will hinders the noble efforts of the heirs to perform their duties.

Furthermore, according to Wan Suraya, Wan Shahzlinda Shah and Umami Munirah Syuhada (2016), the Islamic community already knew about inheritance should be divided according to faraid law after the deceased's death, so the community felt that there was no need to plan early. This perception should be altered by society in order to protect the heirs from

suffering further difficulties in relation to the abandon property. Therefore, we can see that the unchanging attitude of our society has tremendously contributed to the rise in unclaimed property in Malaysia. These irresponsible attitudes are already ingrained in the community for so long and we must take immediate measures to address the issue of the rise in unclaimed property in this country.

b. Procrastination

Next, the increase in unclaimed property is also due to the attitude of the society who often procrastinate in managing the property inheritance. The procrastination can occur due to a variety of reasons. One of the reasons is that legal heirs often take it easy in storing documents related to deceased inheritance assets because there is no particular commitment in managing it. Documents required includes birth certificates, marriage documents, divorce papers, religious exchange letters, and letters relating to land grants. Failure to submit the document will complicate the process for obtaining inheritance and distribution order.

Other than that, the misconceived stigma circulating in the society that there should be no urgency to speed up the distribution of property to avoid misinterpretation and out of respect for the deceased also restrain the process of distribution of the estate from being made instantly (Mohamad Ali Roshidi, Hartini & Azam Abdelkareem, 2021). For example, when a legal heir wants to hasten the inheritance processes, he is said to be rude, greedy, and negatively charged. As a result of this practice, there has been a lot of misunderstanding among the heirs involved and eventually delayed the inheritance process for many years.

Procrastination in applying for property inheritance also will result in overlapping deaths among the heirs of the property and will further complicate the inheritance process. In fact, there are many cases of estate settlement that have not been made and are long overdue since death. Not to mention, a lot of property settlement's case even take decades to resolve.

c. Unwillingness to Cooperate Among The Legal Heirs

Unwillingness to cooperate among the legal heirs also one of the factors of the rise in unclaimed property. As we know, heir is a person who entitled to the properties of another death's person (Wan Suraya, Wan Shahzlinda Shah & Umami Munirah Syuhada, 2016). For example, if a grandfather died, his wife (grandmother), siblings and his children are called as his heirs. In today's generation, real estate planning is such an effort and planning that had been arranged, either by the deceased himself when he is still alive, or by the one who been giving the trust to handle with the real estate and properties. When someone dies, the inheritance of the property left by the deceased was entitled to be divide among the heirs. The division of the property must be made to the heirs of the deceased as well, in order to avoid from any problems when the owner of the property dies.

According to Azizi, Muhammad Ashraf Aliff & Mohd Rashdan (2018), the lack of communication and cooperation will finally lead to misunderstanding between the deceased heirs, which include the wife and siblings as well. In order to avoid this thing happened, they (the heirs) need to have and arrange an effective communication and cooperation. An effective communication and cooperation will help them to have a good relationship and control their emotion to handle with the situation especially in dividing the property between them. Before dividing the properties, everyone must know that it is necessary for the heirs especially the siblings to feel obligated to settle the deceased's debt first, and then, they can go for the faraid law as usual.

They also stated that, the attitude does not want to cooperate with the heirs as there is an intention to take all the inheritance and desire more property. This statement clearly explained that most of the people have such an attitude which sometimes they tend to be selfish because of the division of the properties that have been left by the deceased. In dividing the

properties, it must follow the faraid law that has been stated in the agreement, but sometimes, the heirs cannot accept the arrangement and division that have been stated, which finally will lead to misunderstanding and fights between the heirs. The fights will then be the factors of unclaimed property because of their unwillingness to cooperate with the heirs.

THE ROLE OF LEGAL HEIRS

Apply for Letter of Administration

The administration of estate officially begins when the legal heirs (beneficiaries) send the application to the related administrative bodies. Administration requires a procedure that deals with the estate of the deceased in compliance with the rules prescribed by an individual approved to administer the estate at its completion. In practice, the administration of estate formally begins with the application by the respective administrative bodies for letters of representation. With the presence of various administrative bodies in Malaysia, the legal heirs need to make sure that the application is submitted to the right administrative body. In comparison, between the grant of probate, the letter of administration appoints an administrator to administer the deceased's asset, which is determined by the high court (Muhammad Amrullah & Wan Noraini, 2018). However, the legal heirs will have to choose who will be the administrator when applying the letter of administration. They can appoint an administrator among themselves or from the trusted bodies. If the legal heirs lack of knowledge about this matter, they can appoint the administrative bodies to smooth the process. The appointee of the administrator must be in written, verified and it must be agreed by all the legal heirs.

The responsibility of the administrator is not easy. They must collect all the information about the property that have been left behind by the deceased including movable or immovable. If the legal heirs delay in claiming the properties, but only thought to claim after five or ten years later, surely the important document about the properties and others might be missing. So, the administrator must get all the document that are needed to avoid the process of claim the property may be delay. The information of the eligible legal heirs must be collected and if the legal heirs' dies, the death certificate must be shown.

The person applying for the letter of administration therefore needs to recognize, locate and assess the deceased's properties to decide what the value is. There are two types of asset that left by the deceased that included in the division of inheritance, namely movable property and immovable property. The value of the estate will determine where Letter of Administration (LA) must be applied. For the distribution application made at the Estate Distribution Division, the value of asset that consisting only of immovable properties such as land and houses, or a combination of both immovable and movable properties where the valuation amounts is up to two million ringgit (Fatin Afqah & Mohammad Tahir, 2011). While for the civil High Court, the valuation of movable and immovable properties are above RM2 million or solely movable properties above RM600,000. Meant while, the Amanah Raya Berhad (ARB) has the authority to control the movable properties where the value is below RM600,000.

Before the administrator can apply for the letter of administration, they need to apply the faraid certificate from syariah court. In addition, the syariah court is also regarded as one of the administrative body. Its role with the other bodies is slightly different, because the court's authority in this matter is to issue the faraid certificate in inheritance cases involving Muslim properties. However, the faraid certificate does not provide the authority to administer the properties since it is the function of affirming the entitled (Muhammad Amrullah & Wan Noraini, 2018). After the letter of representation is obtained by the administrator, they will have the authority to administer the deceased's properties.

Sorting Out The Estate Into Some Components

In order for the estate of the deceased to be distributed, legal heir need to play their role as it is their responsibilities to sort out the estate of the deceased into a few components. First and foremost, the legal hair is assigned to separate or segregate the estate into different categories. The categories are will, trusted (amanah), gift (hibah) and also endowed (waqf). They need to be able to differentiate the elements of the categories as it plays a crucial part in distribution of estate. This is because this kind of estates do not fit to be distributed among the legal heirs since it is not entitled as the deceased estate. Therefore, these four components or elements need to be separated first.

After eliminating these elements as part of the estate of deceased, the legal heirs are responsible to manage the balance by settling the expenses of funeral and mortuary. Other than that, the legal heirs need to consider the debt of the deceased. In Islam practices, it can be categorised in two categories that are debt to Allah and debt to mankind. As for the first category, which is debt to Allah, it includes zakah (obligation charity), nazar (vows), fidyah and hajj. As the legal heirs, they need to settle this part of obligations that are supposedly be done by the deceased during his time when he or she was alive. As the second category which is debt to mankind that includes debt to friends or anyone and loan from financial institutions like bank (Mohamad Ali Roshidi, Hartini & Azam Abdelkareem, 2021). Then only, the estate can be distributed to the legal heirs according to faraid system.

Apply For Grant Of Probate

In the case where the deceased died leaving a valid will, the document that legal heirs need is grant of probate. The process of validating a will and administering the will like how the deceased wishes for is called probate. Generally, there are few processes that they need to go through in order for the distribution of estate to happen. An executor is basically the individual who is entitled and assigned to manage the affairs of a deceased person's probate estate. Executor is the individual named by the deceased in the will. Therefore, it is obvious that executor plays such a big role in order to ensure the deceased's wishes are fulfilled. So, the legal heirs must play important role to assist the executor in the process of probate application (Mohamad Ali Roshidi, Hartini & Azam Abdelkareem, 2021)

When a person died, the estate that is owned by them will be automatically frozen. In other words, the family members of the deceased do not have the ability to withdraw or make any transactions through the deceased's bank account. This means that none of the deceased's assets can be moved, sold or cashed until the completion of grant of probate, in the case where the deceased leaves a will.

The High Court will consider and decide at a hearing once the application is made by the executor. The estate administration will then further the progress of the grant of probate when it is issued. The process will take some time and the estimation could take from 6 to 12 months. There are a few documents that are required; death of certificate, executor's identity card, original copy of will, identity cards of beneficiaries etc. The distribution of estate can be progressed once the grant of probate is issued. Executor will then distribute the estate by following the rule that has been left. Therefore, the grant of probate is really important in making sure the properties are claimed. Thus, legal heirs need to make sure that the grant of probate is applied by the executor, so that the distribution of estate can be made efficiently.

Understanding The Procedures

In consideration of resolving unclaimed properties in Malaysia, legal heirs should play their role to understand the procedures for the distribution of estate that will take place. By understanding the whole procedures, they are able to give cooperation and commitment to the executor or administrator of estate in order to ease the process. They shall be equipped with

basic knowledge from time to time so that the claiming of estate could be done without any circumstances when death happens (Azizi, Muhammad Ashraf Aliff & Mohd Rashdan, 2020). Most of the legal heirs do not understand the process of claiming of the estate that should be made after the death of the deceased causes the value of unclaimed property reaches RM70 billion. Some of them have no idea on the process that they have to go through in order for them to claim for the estate. They are clueless on the government agencies that they need to go to, and also the documents that they should prepare for the claiming process (Mohamad Ali Roshidi, 2020). In some cases, there are also legal heirs that worry about the cost that they need to pay for in order for the claiming process to happen.

Therefore, legal heirs should play their role in gaining basic knowledge about the distribution of estate such as faraid. They need to be fully aware of the consequences that will happen towards the amount of unclaimed properties in this country. Muslim community for example, need to raise their awareness in understanding the procedures that it takes so that there will be no further issue arise in the nearest future. This issue is really worrying various parties in this country as the amount of unclaimed properties is too high. Indirectly, it shows that legal heirs did not really take part into this. Therefore, they should be able to grasp the concept of estate distribution and the procedures that they need to go through.

CONCLUSION

People face some difficulties in claiming the deceased properties and there are some factors attributes towards the increasing of unclaimed properties. Highlighting the factors via this paper may gives some insights and knowledge on how people reacts to the certain changes of procedures, rules and regulations, application of estate and other process. In addition to that, the several institutions such as Amanah Raya Berhad and Jabatan Ketua Pengarah Tanah dan Galian must come into an effective and efficient way to address the legal heirs and distribution of deceased estate. As for the legal heirs, it is vital to acknowledge and have fundamental knowledge in claiming the deceased properties as it benefits them in generate more income as well as boost the economic activities. They can use the funds for many purposes such education, investment, travelling and purchasing new house. Although the cost of application for the distribution is quite high and has a lengthy process, legal heirs have right to claim the properties.

REFERENCES

- Akmal Hidayah Halim, Nor Azlina Mohd Noor & Azhani Arshad (2018). Administration of unclaimed estates in Malaysia: The peculiarities of unclaimed money, undistributed fund and bona vacantia. *The Journal of Social Sciences Research*, V6, 1075 – 1079.
- Azizi Abu Bakar, Muhammad Ashraf Aliff Mohamad Rapi & Mohd Rashdan Sallehudin (2020). Property inheritance management: Issues unclaimed property. *Webology*, V17(2).
- Fatin Afiqah Md Azmi & Muhammad Tahir Sabit Mohammad (2011). The causes of unclaimed, late claimed or distributed estates of deceased Muslims in Malaysia. *International Conference on Sociality and Economics Development*, V10.
- Mohamad Ali Roshidi Ahmad (2020). Masa sesuai cairkan harta pusaka beku. *Bernamea.Com*, 18 Sept 2020.
- Mohamad Ali Roshidi Ahmad, Hartini Jaafar & Azam Abdelhakeem Khalid (2021). The role of Penghulu on small estate distribution. *Turkish Journal of Computer and Mathematics Education*, V12(3), 1122 – 1128.
- Mohd Khairy Kamarudin & Nasrul Hisyam Nor Muhamad (2018) Islamic estate planning and management: Malaysian experience. *International Journal of Management Applications*, V1(1), 8 – 16.
- Muhammad Amrullah Drs Nasrul & Wan Noraini Mohd Salim (2018). Administration of estate in Malaysia: Determinant of factors behind the delay in the distribution of the deceased's asset. *Journal of Nusantara Studies (JONUS)*, V3(1), 75 – 86.
- Muhammad Amrullah Drs Nasrul, Wan Noraini Mohd Salim, Muhamad Helmi Md Said & Siti Nuramani Abdul Manap (2017). Administration of estates in Malaysia: Jurisdiction and misconception. *UUM Journal Of Legal Studies*, V8, 183 – 196.
- Rusnadewi Abdul Rashid & Noor Inayah Yaakub (2010). Masalah kegagalan dan kelewatan pengagihan harta pusaka di Malaysia. *Jurnal Intelek*, V5(2).
- Rusnadewi Abdul Rashid, Siti Aishah Hassan & Noor Inayah Yaakub (2013). A need for legal framework of gift inter vivos (hibah) in Malaysian estate planning. *International Journal of Business, Economics and Law*, V2(3), 29 – 31.
- The STAR, 31 March 2020.
- Wan Kamal Mujani, Hirwani Wan Hassan, Noor Inayah Yaakub & Rusnadewi Abdul Rashid (2011). Constructions of failure and delay under Islamic estate management. *International Business Management*, V5(6A), 326 – 330.
- Wan Suraya Wan Hassin, Wan Shahzinda Shah Shahar & Ummi Munirah Syuhada Mohammad Zan (2016). Faktor-faktor yang mempengaruhi harta pusaka beku di Malaysia. *Proceeding of The 3rd International Conference on Management and Muamalat 2016, KUIS*, 31 Oct. – 01 Nov. 2016.