



**RESOLUTION OF DISPUTES IN ADMINISTRATION OF
ESTATES IN MALAYSIA:
PROPOSING MEDIATION AS AN EFFECTIVE MEANS**

BY

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ABSTRACT

The purpose of this research is to examine the issue of family dispute among the beneficiaries in the administration of estate. It analyses the nature of family dispute as to see how the occurrence of family dispute affects the administration of estate, resulting in a delay in the management and distribution of the deceased's estate. This research also analyses the practicality of mediation as a mode of dispute resolution in addressing family disputes among the beneficiaries. In relation to this, the research adopts a non-doctrinal approach in determining the effectiveness of the practice by the administrative bodies in dealing with family dispute cases. Data in the form of primary and secondary sources are collected through a set of methods by way of interviews, case file references and library-based study. The research found that three factors lead to the occurrence of a family dispute, ranging from lack of knowledge of the beneficiaries, personal attitudes of the beneficiaries, as well as communication between the beneficiaries. Apart from this, the research also shows that there is no uniformity of practice by the three administrative bodies namely the civil High Court, the Estate Distribution Unit and Amanah Raya Berhad (ARB) in addressing family dispute suffered by the beneficiaries. Despite various practice, it was found that issues on family dispute do not receive a sufficient attention from the administrative bodies due to lack of effective means in addressing such issue. On the other hand, analysis on mediation shows that mediation excels in resolving the family dispute in estate administration which is mainly due to its effectiveness in addressing the emotional aspects of the parties. Therefore this research proposes that mediation is applied into the practice of the administrative bodies in addressing family dispute in the administration of estate.

ملخص البحث

يهدف هذا البحث إلى دراسة مسألة النزاع الأسري بين المستفيدين في إدارة العقارات. وهو يحلل طبيعة النزاع العائلي لمعرفة كيف يؤثر حدوث نزاع عائلي في إدارة التركة؛ ما يؤدي إلى التأخير في إدارة ممتلكات المتوفى وتوزيعها، كما يحلل هذا البحث التطبيق العملي للوساطة بوصفها وسيلة لتسوية المنازعات في معالجة النزاعات الأسرية بين المستفيدين. وفي هذا الصدد، يتبنى البحث نهجاً غير عقدي في تحديد فعالية هذه الممارسة من قبل الهيئات الإدارية في التعامل مع قضايا نزاعات الأسرة. تم جمع البيانات على شكل مصادر أولية وثانوية من خلال مجموعة من الطرق عن طريق المقابلات، ومراجع ملف القضية والدراسة القائمة على المكتبة. وخلص البحث إلى أن ثمة ثلاثة عوامل تؤدي إلى حدوث نزاع عائلي يتراوح بين عدم معرفة المستفيدين والمواقف الشخصية للمستفيدين فضلاً عن التواصل بين المستفيدين. فضلاً عن ذلك، يظهر البحث أنه لا يوجد توحيد للممارسات من قبل الهيئات الإدارية الثلاثة، وهي: المحكمة المدنية العليا، وقسم توزيع العقارات الصغيرة، وأمانة راية برهاد، في معالجة النزاع السري الذي يعاني منه المستفيدون. وعلى الرغم من الممارسات المختلفة، تبين أن القضايا المتعلقة بالنزاع الأسري لا يحظى بالاهتمام الكافي من الهيئات الإدارية، نظراً إلى عدم وجود وسائل فعالة لمعالجة هذه المسائل. من ناحية أخرى، يظهر تحليل الوساطة أنها تتفوق في حل نزاع عائلي في إدارة العقارات، ويرجع ذلك أساساً إلى فعاليته في معالجة الجوانب العاطفية للأطراف؛ ولذلك يقترح هذا البحث أن تطبق الوساطة في ممارسة الهيئات الإدارية في معالجة نزاع الأسرة في إدارة العقارات.

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DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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PROPOSING MEDIATION AS AN EFFECTIVE MEANS**

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Chin Soo Ling & Ors v The Lay Gaik [2010] MLJ 320
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Choo Moi Kooi v Choo Choon Jin & Other Cases [2012] 3 CLJ 477
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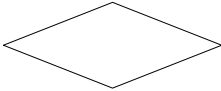

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Probate and Administration Act 1959 (Act 97)
Public Trust Corporation Act 1995 (Act 532)
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Small Estates (Distribution) Act 1955 (Act 98)
Syariah Civil Procedure (Selangor) Code 1991 (No.7)
Trustees Act 1949 (Act 208)
Wills Act 1959 (Act 346)

LISTS OF ABBREVIATION

ADR	Alternative Dispute Resolution
ARB	Amanah Raya Berhad
ASNB	Amanah Saham Nasional Berhad
CLJ	Current Law Journal
EPF	Employees Provident Fund
FELDA	Federal Land Development Authority
FMB	Finance Mediation Bureau
IUM	International Islamic Universiti Malaysia
JBG	Jabatan Bantuan Guaman
JKPTG	Jabatan Ketua Pengarah Pejabat Tanah dan Galian
JKSM	Jabatan Kehakiman Syariah Malaysia
KLRCA	Kuala Lumpur Regional Centre for Arbitration
LNS	Legal Network Series
MAMPU	Malaysian Administrative Modernisation and Management Planning Unit
MLJ	Malayan Law Journal
MMC	Malaysia Mediation Centre
NLP	Neuro-Linguistic Programming
OFS	Ombudsman for Fincial Services
PBUH	Peace be upon him
PTCA	Public Trusts Corporation Act
SEDS	Estate Distribution Unit
UKM	Universiti Kebangsaan Malaysia
UNCITRAL	United Nations Commission on International Trade Law
USIM	Universiti Sains Islam Malaysia

LISTS OF FLOW CHART SYMBOLS

Symbol	Symbol Name	Description
	Terminal (Start/End)	This symbol is used to mark the beginning and the end of the process.
	Process	This symbol is used to show an action involving the process.
	Decision	This symbol is used to change the flow of the process based upon different types of action.
	Flow Line	This symbol is used to make the flow of connection.
Y	Yes	
N	No	

TRANSLITERATION

ARABIC TRANSLITERATION

Transliteration = Alphabets Transliteration

a = ا	t = ط
b = ب	z = ظ
t = ت	' = ع
th = ث	gh = غ
j = ج	f = ف
h = ح	q = ق
kh = خ	k = ك
d = د	l = ل
dh = ذ	m = م
r = ر	n = ن
z = ز	h = ه
s = س	w = و
sh = ش	' = ء
ṣ = ص	y = ي
ḍ = ض	

Vowels

Short Vowels	Long Vowels	Diphthongs
a = ا	ā = آ	aw = وَاو
i = اِ	ī = يِ	ai = اِي
u = اُ	ū = وِ	

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

Administration of estate deals with the management of deceased's estate, starting from the time of his death until the distribution of the estate to his beneficiaries, subjected to the remnants of the estate. Administration of estate represents the technical part in the succession matter which involves legal and procedural rules that need to be complied with. These stipulated rules apply not only on those who administer estates but also on the deceased's family members who receive from the remaining of the estate as beneficiaries. However, knowledge regarding estate administration is not known to every member of society due to its complex nature, causing a variety of problems to occur during the administration.

The dispute among beneficiaries in relation to the administration of estates is one of the common problems in family institution. Disputes in succession matters refers to a conflict between the beneficiaries which occurs during the administration of the deceased's estate. The research focuses on the beneficiaries who are among the deceased's family members. Also known as family disputes, arguments among the family members usually revolve around legal matters, technical or social aspects of the administration of estate. As common as it may be, a dispute among the family members could disrupt the administration of estate if it is not properly addressed. Such dispute might lead to multiple problems to crop out at any stage of the administration. Basically, these unresolved disputes could cause a delay in the estate administration, a situation which has become rampant in the current Malaysian context of the law of succession. This negative outcome marks the inadequacy of a proper means in the administration

of estates. Such outcome also jeopardises the rights of parties related to the deceased, particularly the beneficiaries in receiving their respective portions from the estate. This draws the attention of the researcher to conduct a study about the family dispute in relation to estate administration in order to find better solutions in solving the ongoing problem.

1.2 STATEMENT OF THE PROBLEM

The research is undertaken based on the notion that the estate administration of a deceased person is a complex and comprehensive process which involves numerous tasks and procedures to be complied with. The complexity in such estate administration, especially during the process of distributing the asset often causes disagreement among the family members which consequently caused them to feud over the estate. Despite the involvement of multiple administrative bodies in Malaysia in assisting the family members in the administration of estate, the family dispute remains unsettled and continues to exist. This situation renders the estate administration incomplete and seriousness of this problem is evidenced by the fact that in Malaysia, around sixty billion ringgit worth of unclaimed estate as reported in 2016.¹

The litigation process under the civil High Court may assure a decision, but lacks the amicable elements which is vital for both disputing parties as they are suffering from the disputes. On the other hand, the practice of the Estate Distribution Unit did not directly address the disputes among the family members as they are expected to resolve the dispute by themselves before the issuance of distribution order or letter of

¹ The value amount of unclaimed estate in 2007 is around forty billion ringgit. The amount increases to fifty two billion ringgit in 2012 and again increases to sixty billion in 2018. See Fazira Shafie, Wan Zahari Wan Yusoff and Syed Muhammad Dawilah el-Edrus, "Factors of Failure and Delay in Islamic Inheritance Distribution in Malaysia," *Jurnal Teknologi (Sciences & Engineering)*, (2016).

administration passed by the land administrator.² As for Amanah Raya Berhad (ARB), there is no specific method in addressing the disputes other than discussion and negotiation during the meeting with the beneficiaries. There is also no detailed guidelines as how to perform the negotiation with the disputing parties and the results of such method sometimes did not succeed.

The lack of an effective mechanism for addressing and solving the family dispute is regarded as the main issue that leads to the problem of delay in deceased's estate administration.

1.3 RESEARCH OBJECTIVES

The study aims to achieve the following objectives:

1. To study the structure of the administrative bodies in charge of probate and estate administration matters.
2. To determine the causes leading to dispute among the beneficiaries in probate and estate administration.
3. To analyse the approach taken by the administrative bodies in dealing with problems in probate and estate administration.
4. To examine the potential of mediation as alternative dispute resolution in addressing the family disputes in the administration of estate.
5. To suggest mediation be part of the practice by the administrative bodies in addressing disputes in estate administration.

² The term "land administrator" refers to the officers of the Department of Director General of Lands and Mines that handle the estate cases. See Section 2 of Small Estates (Distribution) Act 1955.

1.4 RESEARCH QUESTIONS

1. How a deceased's estate being administered in peninsular Malaysia?
2. What are the causes of family disputes in the administration of estate?
3. What are the steps taken by the administrative bodies in addressing family disputes in the administration of estate?
4. How does mediation assist in dealing with family disputes in estate administration?
5. How to implement mediation into the practice of the administrative bodies?

1.5 SIGNIFICANCE OF THE STUDY

The current research is seen as a platform to view the insights of estate administration in the Malaysian context by highlighting the scope of family disputes as well as the practice by the administrative bodies in addressing such disputes. Analysis on the scope of family disputes allows the public to see and realise the real sight of estate administration in Malaysia. It as well allows them to understand the actual role of the beneficiary, apart from just being a recipient of deceased's estate.

The current research could contribute significantly to the area of knowledge and academia, particularly in the legal and procedural aspects of estate administration. The current research would also be a practical reference for students, researchers, academics and practitioners in understanding how a deceased's estate is being administered in accordance with the existing law. The procedural aspects discussed in the current research would also be beneficial as it covers the practical aspects of estate administration.

Furthermore, the current research would also be useful for the administrative bodies in Malaysia, both; the government and the private sectors. This is especially as

the current research proposes mediation as a solution for the settlement of family disputes in estate administration. Since part of the research analyses mediation in an effort to remedy the shortcomings that exist in the current practice by the administrative bodies, such will ultimately benefit the administrative bodies as it provides a platform to improve their existing approach in addressing disputes in relation to the estate administration.

Finally, the current research could contribute to the development of the Malaysian law of succession. Being part of a legal research, the current research analyses the legal rules and procedures of the estate administration and at the same time, it points out the lacunas and weaknesses of certain areas of such law. This can be utilised by the government, particularly the law reform division in amending some relevant provisions through the proposed legal and theoretical framework from the research.

1.6 SCOPE AND LIMITATION OF THE STUDY

In analysing the family disputes in the administration of estates, the research covers two parts; the family disputes in administration of estate and mediation as the dispute resolution mechanism in administration of estate. Each parts are divided into several sub topics for further clarification.

Under the first part, it is important to understand the connection between family disputes and the administration of estate. Hence, elaboration on the concept of estate administration and family disputes is made by analyzing several key areas including the historical aspects, overview of the processes in estate administration prior to the analysis of family disputes. Discussion on this areas allows the researcher to determine how does the family dispute occur and at which stage that the family dispute is likely to happen in estate administration. While the historical aspect highlights the origin and the

development of the law of succession in Malaysia, it also covers the previous dispute settlement practice in *Tanah Melayu*. As for the process in the administration of estate, this research looks into the procedures for obtaining the letters of representation from various administrative bodies, being considered as the initial step in administration of estate as well as the management and distribution of the asset.³ Every part under this area is carefully examined in order to identify where the family disputes are likely to occur.

As regards the application of letters of representation, a thorough study is conducted on the administrative bodies which includes the civil High Court, the Estate Distribution Unit and Amanah Raya Berhad. Focus will be made on the jurisdictional authorities of each institutions in dealing with estate cases. This includes the authority to grant letters of representation and related orders to the applicant. This is important as obtainment of letters of representation from one of these bodies determines how the rest of a deceased's estate will be administered. At the same time, the research looks into the approach taken by these administrative bodies in relation to family disputes.

As the study covers the three administrative bodies, it is imperative for the research to also cover the two types of estates, namely the testate and intestate cases. Under testate cases, the focus will be on aspects such as the position of will of the deceased. The application of letters of representation namely grant of Probate from the High Court is examined from the application until the issuance of such grant. On the

³ The word letters of representation used in this thesis refer to the collection of instruments and documents utilized by the administrative bodies in Malaysia. Such documents include the grant of probate and its varieties as well as the letter of administration and its varieties under the civil High Court, distribution order and letter of administration under the Estate Distribution Unit and Declaration and Direction under the Amanah Raya Berhad. The term letters of representation should not be confused with the term grant of representation which strictly refers to the grant of probate and letter of administration from the civil High Court.

other hand, the intestate cases will involve analysis on the application of letters of administration to the High Court and the Estate Distribution Unit. Another aspect that is taken into account is the role of personal representative in the administration of estate.⁴ Analysis on the relationship between the personal representative and the beneficiaries is conducted, not only to identify the rights and duties of the two parties but to see from which party does the family disputes are likely to occur.⁵

On part of family disputes, the research analyzes the types of family dispute and the areas in estate administration where the dispute is likely to occur. At the same time, the research examines the factors and the implications of family dispute to the estate administration.

Moving to the second part of this research, in proposing a suitable mode of dispute resolution, the research focuses on mediation where a thorough study on it is made in order to understand its potential, advantages and disadvantages in overcoming the family dispute in the administration of estates. Mediation is then, proposed in accordance with the current practice of the administrative bodies in Malaysia. It is important to note that the Syariah Court is not included in the discussion despite having jurisdiction on certain matters that are related to the administration estate, particularly for the Muslim subjects. This is because mediation is proposed to the bodies that grant the letters of representation and specific orders that relates to the appointment of personal representative and distribution of asset and Syariah Court does not do such

⁴ Personal representative refers to executor in testate cases as well as administrator in intestate cases. See Section 2 of Probate Administration Act 1959.

⁵ Certain institution such as Amanah Raya Berhad (ARB) is authorised to act as personal representative. Apart from issuing letters of representation, ARB is statutory empowered to act as a personal representative in administering the deceased's estate. Refer to section 14 of the Public Trusts Corporation Act 1995.