



**THE ADMINISTRATION OF UNCLAIMED ESTATES IN
WEST MALAYSIA: FORMULATING A LEGAL
FRAMEWORK**

BY

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ABSTRACT

Issues relating to the unclaimed estates are crucial, as it had been reported that there are more than a million cases of unclaimed estates since 2006. In 2016, it was reported that the latest value of the unclaimed estates in West Malaysia stands at RM60 billion. However, the exact types and actual value of unclaimed estates remain questionable and not specifically identified in any research, specific data or findings. In pursuant thereto, this research analyses the exact types and values of the unclaimed estates as well as the issues, factors and impacts of the unclaimed estates based on the qualitative and descriptive cross-sectional analysis through the governing statutes, reported cases, the semi-conducted interviews, surveys, and data obtained from the respective administrative bodies. The issues are also examined from the Islamic perspective based on Qur'an, Sunnah, and views of Muslim jurists. For the comparative analysis, the research also provides the reference of the system for the administration of unclaimed estates in Singapore and the United Kingdom. The research finds that there are four categories of unclaimed estates namely, the unclaimed money that is put under the custody of the Registrar of the Unclaimed Moneys, undistributed funds that is held on trust by the Public Trust Corporation, non-administered estates whereby no application has been initiated by the beneficiaries for estates distribution and the case of *bona vacantia* whereby personal estate of the non-Muslim's accrues to the Government and the real estate reverts to the State Authority, with the exception to the rights of *Baitulmāl* in the deceased Muslim's estate. Out of these four types of unclaimed estates, there is only one category that is left frozen which is the non-administered estates due to lack of ownership in the management of such estates. The research also discovers that the available system and mechanism in Malaysia are not accommodating in tracing the beneficiaries if there is no application to administer the estate. Hence, reforming the existing legal and procedural frameworks for the administration of the non-administered estates is highly necessary in order to manage the current situation and to prevent future non-administered estates from recurring.

خلاصة البحث

القضايا المتعلقة بالتركات التي ليس لها ورثة أمرًا بالغ الأهمية، حيث تم الإبلاغ عن وجود أكثر من مليون حالة من هذا القبيل منذ عام 2006م. وفي عام 2016م بلغت قيمة تلك التركات التي ليس لها ورثة في غرب ماليزيا 60 مليار رينجت ماليزي. ومع ذلك، فإن أنواع تلك التركات وقيمتها الفعلية تظل محل تساؤل، حيث لم يتم تحديدها بشكل دقيق في أي بحث علمي أو بيانات أو نتائج محددة. وفقًا لذلك، فإن الدراسة تقوم على تحليل أنواع التركات التي ليس لها ورثة والقيمة الفعلية لها، إضافة إلى دراسة القضايا والعوامل والآثار المترتبة على هذا النوع من التركات استنادًا إلى المنهج التحليلي النوعي والوصفي المقطعي من خلال القوانين الحاكمة، وكذلك دراسة الحالات المبلغ عنها من خلال المقابلات التي أُجريت، والدراسات الاستقصائية، والبيانات التي تم جمعها من الهيئات الإدارية المعنية. كما تم فحص هذه القضايا أيضًا من المنظور الإسلامي القائم على القرآن والسنة وآراء الفقهاء المسلمين. أما بالنسبة للتحليل المقارن، قام هذا البحث بمقارنة نظام إدارة التركات التي ليس لها ورثة في سنغافورة والمملكة المتحدة. وخلص البحث إلى أن هناك أربع فئات من التركات التي ليس لها ورثة وهي: الأموال غير المطالب بها والتي يتم وضعها تحت رعاية المسجل الخاص بهذا النوع من الأموال، والأموال غير الموزعة التي تحتفظ بها شركة ائتمانية عامة، والممتلكات غير الخاضعة للإدارة، بحيث لا يوجد طلب مُقدم من أجل توزيعها على المستفيدين، وأخيرًا حالة "المال المشاع" حيث تعود التركة الشخصية لغير المسلمين إلى الحكومة وتعود العقارات منها إلى سلطة الدولة، باستثناء حقوق بيت المال في ملكية المتوفى المسلم. ومن بين هذه الأنواع الأربعة من التركات التي لم يس لها ورثة، هناك فئة واحدة فقط تُترك مجمدة وهي الممتلكات غير الخاضعة للإدارة بسبب عدم الملكية في إدارة هذه الممتلكات. وتوصل هذا البحث أيضًا إلى أن النظام والآلية المتاحة في ماليزيا لا تستوعب في تتبع المستفيدين إذا لم يكن هناك تطبيق لإدارة التركة. وبالتالي، فإن إصلاح الأطر القانونية والإجرائية الحالية لإدارة الممتلكات غير الخاضعة للإدارة أمر ضروري للغاية من أجل معالجة الوضع الحالي ومنع تكراره في المستقبل.

APPROVAL PAGE

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DECLARATION

I hereby declare that this thesis 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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- In the Matter of Application for Declaration Status Religion of Deceased Nyonya binti Tahir, The Application of Ex-parte State Islamic Religious Council of Negeri Sembilan, and 2 others* (2006) JH 21 (II) 221
- In the Matter of the Estate and Effects of Timah binti Abdullah, Deceased the Official Administrator, FMS v Magari Mohihiko Hayashi Tose Udah binti Akar State of Pahang* [1941] MLJ 51
- Itam binti Saad v Chik binti Abdullah* [1974] 2 MLJ 53
- Kaliammal a/p Sinnasamy v Pengarah Jabatan Agama Islam Wilayah Persekutuan (JAWI) dan Lain-lain* [2006] 1 MLJ 685
- Majlis Agama Islam Wilayah Persekutuan v Lim Ee Seng & Anor* [2000] 2 MLJ 572
- Re Inquest into the Death of Lim Chin Aik, Deceased* [2014] 1 CLJ 136
- Re Mutchilim Alias Ashrhin, Decd; Ji Mawar v Attorney-General* [1960] MLJ 25
- Re Soo-Hoo Hem Leng* [1963] 1 MLJ 38
- Re Will of Samuel Emily, deceased* [2001] SGHC 299

LIST OF STATUTES

Administration of Estates Act 1925 (United Kingdom)
Administration of Muslim Law Act (Cap. 3) (Singapore)
Administration of Islamic Law (Federal Territories) Act 1993 (Act 505)
Administration of Muslim Law Enactment, 1952 (Selangor No.3/52)
Administration of the Religion of Islam (Negeri Sembilan) Enactment 2003
Administration of the Religion of Islam (State of Selangor) Enactment 2003 [En. 1/2003]
Age of Majority Act 1971 (Act 21)
Banking Act (Cap. 19) (Singapore)
Bankruptcy Act 1967 (Act 360)
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Births and Deaths Registration Act 1957 (Act 299)
Births and Deaths Registration (Amendment) Act 2017 (Act A1524)
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Financial Procedure Act 1957 (Act 61)
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Kampong Bharu Development Corporation Act 2011 (Act 733)
Land Acquisition Act 1960 (Act 486)
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Mental Health Ordinance 1961 of Sarawak [Ord. No. 16 of 1961]
Muslim Wills (Selangor) Enactment 1999 (Enactment No. 4 of 1999)

National Land Code 1965 (Act 56)
Post Office Savings Bank (Current Accounts) Rules (Singapore)
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Presumption of Death Act 2013 (United Kingdom)
Probate and Administration Act 1959 (Act 97)
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Rules of Court 2012
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Trust Companies Act 1949 (Act 100)
Trustee Act 1949 (Act 208)
Unclaimed Moneys Act 1965 (Act 370)

LIST OF ABBREVIATIONS

AC	Appeal Court
ARB	Amanah Raya Berhad
BVD	<i>Bona Vacantia</i> Division
BPP	Bahagian Pembahagian Pusaka
EPF	Employees Provident Fund
DCA	Department of Civil Aviation
EDD	Estates Distribution Division
eGUMIS	Electronic Government Unclaimed Money Information System
e.g	exempligratia, for example
FSA	Financial Services Authority
HM Treasury	Her Majesty's Treasury
IC	Identity Card
i.e	exempli gratia, for example
JAKIM	Jabatan Kemajuan Islam Malaysia
JKPTG	Department of Director General of Lands and Mines
KATS	Ministry of Water, Land and Natural Resources
KBDC	Kampong Bharu Development Corporation
LO	Land Office
MAIM	Malacca Islamic Religious Council
MAIN	Negeri Sembilan Islamic Religious Council
MAIS	Selangor Islamic Religious Council
MAIWP	Federal Territory Islamic Religious Council
MAS	Monetary Authority of Singapore
MAMPU	Malaysian Administrative Modernisation and Management Planning Unit
MAS	Malaysia Airlines
M.A.S	Malay Agriculture Settlement
NAED	Non-Administered Estates Division
NLC	National Land Code 1965
NRD	National Registration Department
PERKIM	Muslim Welfare Organisation Malaysia
PITPKB	Kampong Bharu Detailed Development Master Plan
PNB	Permodalan Nasional Berhad
PNMB	Percetakan Nasional Malaysia Berhad
PTO	Public Trustee's Office
SIRC	State Islamic Religious Council
SOCSSO	Social Security Organisation's
SPV	special purpose vehicle
sq ft	square feet
TDR	transfer development rights
TH	Lembaga Urusan dan Tabung Haji
VIPSS	"Virtual Information and Property Search System"
YB	Yang Berhormat
YDPA Fund	Federal Consolidated Fund

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

In a globalised world, estate distribution has become more complex and challenging with the emigration and relocation of families. It is thus not uncommon for a person to have properties and investments in many countries that are left unclaimed even after his death. In some cases, the whereabouts of deceased's beneficiaries are not known and the estate remains undistributed upon the conclusion of estate administration. Eventually, the deceased might not even leave anyone to inherit his estate. In such cases, estates would be categorised as unclaimed and could not be dealt with until and unless the existence of the rightful beneficiaries is ascertained.

In Malaysia, in addition to the issue of thousands of hectares of *waqf* land that is left idle and unproductive, another predicament faced by Muslims of a similar impact is the issue of the unclaimed and frozen assets left by the deceased. There are generally four types of unclaimed estates namely, the unclaimed moneys that is put under the custody of the Registrar of the Unclaimed Moneys, undistributed funds that is held on trust by the Public Trust Corporation, non-administered estates whereby no application has been initiated by the beneficiaries for estates distribution and the case of *bona vacantia* whereby personal estate of the deceased accrues to the Government and the real estate reverts to the State Authority, with the exception to the rights of *Baitulmāl* in the deceased Muslim's estate.

Issues relating to unclaimed estates are crucial as it has been reported that there are more than a million cases of unclaimed estate claims since 2006 worth

approximately RM38 billion.¹ However, the actual value did not include the unclaimed moneys in the financial institutions and other various agencies as the value could be higher. The figure has been reported to have increased to RM40 billion in 2010² and RM42 billion in 2011.³ In 2013, the value of the unclaimed estates was reported to increase drastically to RM52 billion⁴ and further up to RM66.6 billion in the same year.⁵ In 2016, it was reported that the latest value of unclaimed estates in the country stood at about RM60 billion.⁶

Even though the statistics revealed do not segregate the share of Muslims and non-Muslims, it is believed that most of the assets belong to the former. The assets comprise real estates such as houses and land, and unclaimed moneys in various institutions such as the Employees Provident Fund (EPF), Lembaga Urusan dan Tabung Haji (TH), Amanah Raya Berhad (ARB) and Permodalan Nasional Berhad (PNB).⁷

Most of the findings of the studies showed that the problem is a result of several contributing factors. These include undermining the importance of Islamic estate planning (among Muslims) and ignorance of the heirs about the procedures that need to be followed, while some of the beneficiaries are said to be apathetic in

¹ Abdul Halim Yusoff, "RM38b pusaka belum dituntut, Sejuta kes agih harta kepada waris tertunggak," *Berita Harian*, 4 July, 2006, 6.

² Raja Shahrir Abu Bakar, "Selesaikan masalah harta orang Islam tidak dituntut, Pewaris asset RM40b dicari," *Utusan Malaysia*, 5 August, 2010, 9.

³ Bernama, "RM42b harta dibeku," *Utusan Online*, http://ww1.utusan.com.my/utusan/info.asp?y=2011&dt=0331&pub=Utusan_Malaysia&sec=Muka_Hadapan&pg=mh_01.htm (accessed 19 January, 2019)

⁴ Badrul Hafizan Mat Isa, "Harta pusaka tertunggak RM52b," *Utusan Online*, http://ww1.utusan.com.my/utusan/Dalam_Negeri/20130217/dn_17/Harta-pusaka-tertunggak-RM52b (accessed 19 January, 2019).

⁵ "RM66.6b tak dituntut," *Harian Metro*, 18 May, 2014, 17.

⁶ Ilah Hafiz Aziz, "RM60b harta umat Islam tidak dituntut," *BH Online*, <https://www.bharian.com.my/node/138450> (accessed 19 January, 2019).

⁷ Muhammad Hisyam Mohammad, "Muslims and Their Inheritance," *The Star Online*, <https://www.the-star.com.my/opinion/columnists/ikim-views/2016/02/16/muslims-and-their-inheritance/> (accessed 4 December, 2017).

claiming their rights due to lack of time, the high expenses incurred and an inconvenient bureaucratic process.

Unclaimed and frozen estates are counterproductive to their original functions, either as factors for economic development or even for consumption purposes. The beneficiaries are therefore losing out on potential benefits or utilities that they could derive from the ownership of such estates. The importance of broadening and increasing wealth ownership, especially among the Bumiputras has been highlighted and pursued in the Tenth Malaysia Plan (2011-2015) in order to ensure sustainability. More concerted efforts have been undertaken to unlock value from Bumiputera assets such as land. The 11th Malaysia Plan (2016-2020) continues to emphasize on the peoples' economies that inter alia include family well-being and social inclusion. The research is thus relevant to the Government policy to ensure that the ownership of the estates is rightfully delivered to the beneficiaries.

In addition, the research would establish valid and structured findings on the actual total value and types of unclaimed estates that have never been available before. The new knowledge and findings would serve as guidelines in assisting law makers, policy makers and stakeholders on what would be the appropriate legal mechanism to regulate and manage issues on unclaimed estates. As a result, the proposed legal mechanism is meant to be applied by the Government of Malaysia that would result in an appropriate legal mechanism for the management of the current unclaimed estate. The proposed legal mechanism would also enable the estate to be properly administered, transacted or liquidated into cash to be distributed to the rightful beneficiaries, which would lead to positive consequences to the economic growth of the country.

It is expected that the result of the research will have an impact to protect the rights and interests of the entitled beneficiaries that would enable them to enjoy the assets for a better family well-being and productive elements of such estates would be activated to produce economic and social benefits for the sustainability of the socioeconomic growth.

1.2 RESEARCH OBJECTIVES

The objectives of this research are:

1. To identify the total value and types of estates that are classified as unclaimed estates.
2. To examine the adequacy of the present governing law in the management of unclaimed estates and to compare the law of Malaysia, Singapore and the United Kingdom.
3. To identify the legal and procedural constraints as well as contributing factors in the administration of unclaimed estates based on the conducted survey.
4. To analyse the impacts arise from the problem of the unclaimed estates.
5. To produce recommendations for a comprehensive legal and procedural frameworks to govern the administration of unclaimed estates.

1.3 STATEMENT OF PROBLEM

In 2016, it was reported that the latest value of frozen estates in the country stood at about RM60 billion.⁸ However, it is very unfortunate that despite the constant reports on the increasing value of numbers of unclaimed estates by the local dailies, the

⁸ Ilah Hafiz Aziz, "RM60b harta umat Islam tidak dituntut," BH Online, <https://www.bharian.com.my/node/138450> (accessed 19 January, 2019).

Malaysian Administrative Modernisation and Management Planning Unit (MAMPU) in 2015 has adversely stated in its report on Transformation Plan for Estate Administration in West Malaysia that the reported data on the value of the unclaimed estates has never been supported by any valid research findings and mostly based only on the statements by Members of Parliament and individuals.⁹ In fact, the exact types and actual value of unclaimed estates remain hitherto uncertain and not specifically identified.

In addition, the existing legal mechanisms are inadequate to remedy the problem relating to unclaimed estates, especially when there are no proactive efforts on the part of the authorities to trace the rightful beneficiaries thus resulting in a fast-growing number of unclaimed estate cases. The existence of various laws that govern different types of unclaimed estates has also led to the distinctive methods in the administration and management of such estates. Hence, it is highly important that these types of estates together with legal and procedural mechanisms relating to the administration of such estates are clearly identified so that productive elements of such estates would be activated to the advantage of the rightful beneficiaries.

1.4 RESEARCH QUESTIONS

1. What are the total value and the types of estates that are now being classified as unclaimed estates?
2. To what extent the present governing law is adequate in managing the unclaimed estates?

⁹ Malaysian Administrative Modernisation and Management Planning Unit (MAMPU), *Transformation Plan for Estate Administration in West Malaysia*, Prime Minister's Department, (2015), (Unpublished report).