

COMPLEXITY OF INTESTATE ESTATES DISTRIBUTION AND ESCHEAT LAW

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Abstract: *Previous works have discussed the jurisdictional aspects of administration of intestate estates of Muslims in Malaysia. This paper adds to the literature by showing the complexities of the current legal framework that may have caused slow distribution and determination of escheatable estates. The objectives of the paper include the examination of the existing law on reporting, claiming, and administration of estates as well as the effectiveness and adequacy of them. For this, relevant legislations are examined. The analysis of these legislations showed a number of complexities in subject areas. The paper is a preliminary work that needs validation. The authors suggest further research for a validated conceptual framework.*

Keywords: *Estates, Escheat, Deficiencies, Legal Framework*

Introduction

This paper discusses the legal framework for estates distribution and Escheat. By Estates we refer to both movable and immovable properties left by a deceased person, testate and intestate. Testate refers to those mentioned in a will or any other document expressing the wishes of the deceased, (be Islamic or otherwise); intestate refers to property not subjected to will (we include wasiyah and waqf), or the document of will is not validly executed, or the executor (and wasi) fail to execute the wishes of the deceased. An heirless estate may be intestate and there is the possibility that it will revert to the State (land in Malaysia belongs to the State and on application the State alienates it to individuals in perpetuity or for a specific time up to 99 years). When one passes away and survived by none, the land is escheated and

if cash it is given to the federal government. The reversion of land is called escheat under 46 of National Land Code, 1965.

Unclaimed estates that may include escheatable estates are valued at 60 billion (Hamim, 2016) and a million of land titles. Fatin Afiqah, (2016) has listed 4 main reasons, each of which consists of several others. All together, there are almost fifty reasons for unclaimed, late claimed and delayed distributed estates. The relevant of them to this discussion is the complexity of laws in Malaysia mentioned by Fatin Afiqah, (2016) and Fatin Afiqah and Mohammad, (2015). Fatin has listed 8 causes of delays due to legal complexity (see Table 1). However, to prevent further accumulation of unclaimed estates, She and other scholars have considered the jurisdictional aspects of several agencies relating to the entitlement of beneficiaries and claimants, the administration, and distribution of estates.¹ They have not reviewed the whole of existing legal framework for intestate estates from perspective of its complexities.

Table 1: Example

General Causes of Delay	Specific Causes of Delay and Lack of Distribution	Identifying Authors/ Year
Legal Complexity	<ul style="list-style-type: none"> • uncertainty of entitlement of heirs to estate: <ul style="list-style-type: none"> - limitation in GSA land - land title is still under the name of demised with multiple beneficiaries on one lot of land - absence of nominees - lack of integrated property database system - claimant not the rightful heir • lengthy and costly: <ul style="list-style-type: none"> - withdrawal of registrar’s caveat in case of trustee slow distribution system - delay in estate distribution system - devolution of property after death is long, complicated and costly - involving court procedures - order from the court on the presumption of death - file transfers to other agencies after valuation - difficulty in providing sureties for exemption of administration bond - involving multiple heirs - Location of land in different district - appointment of a lawyer or new administrator • weaknesses of measures (execution of hibah and will) • weaknesses of estate administration process 	<p>Mohiddin Md. Omar (2004) Md Ghazali I. (2008); Fatin A. (2016) Patrick S. (2007); Siti Mashitoh M. (2008); Md Ghazali I. (2008) Safina et al. (2012); Fatin A. (2016) Fatin A. (2016)</p> <p>Mohiddin Md. Omar (2004) Siti Norharliza A. J. (2008) Md Ghazali I. (2008) Ahmad Hidayat B. (2008); Kamariah Dzafrun K. B. (2009) Ahmad Hidayat B. (2008); Fatin A. (2016)</p> <p>Fatin A. (2016) Fatin A. (2016) Fatin A. (2016)</p> <p>Fatin A. (2016) Fatin A. (2016) Fatin A. (2016)</p> <p>Mohd Ridzuan A. (2010); Akmal Hidayah H. (2012) Abdullah bin Muhammad (2010); Wan Kamal Mujani (2011); Akmal Hidayah Halim (2012)</p>

¹ Fatin Afiqah & Mohammad, (2015). A proposal For a Single Tribunal of Estates Distribution in Malaysia. *Journal Teknologi*. 75:10, 1–16; Akmal Hidayah & Nor Azlina, (2015). Criminal Liability for Breach of Fiduciary Duty: A Case of Criminal Breach of Trust by the Personal Representative of the Deceased’s Estate. *Pertanika J. Soc. Sci. & Hum.* 23 (S): 125 – 136; Akmal Hidayah, (2013). Reforming Legal Framework for Administration of Estates in West Malaysia: An Overview; Akmal Hidayah, (2012). Administration of Estates in Malaysia: Law and Procedure (Petaling Jaya: Sweet & Maxwell Asia, p 1; Abdul Hamid Mohamad, “Administration of Property in Malaysia: A Civil and Shari’ah Law Perspective” [2002] 3 MLJ I.

<ul style="list-style-type: none"> • multiple agency jurisdiction • unclear procedure • conflicting rules of substantive and procedural laws • lack of comprehensive rules of Islamic law: <ul style="list-style-type: none"> - the status of unregistered waqf land or unregistered hibah could be contested by family members - the documentation of the existing measures are not effective - lack of uniformity of the statute of wasiyah - disputed wasiyah 	<p>Abdullah bin Muhammad (2010); Fatin Afiqah (2016)</p> <p>Fatin Afiqah (2016)</p> <p>Fatin A. (2016)</p> <p>Fatin A. (2016)</p> <p>Fatin A. (2016)</p> <p>Fatin A. (2016)</p> <p>Fatin A. (2016)</p> <p>Fatin Afiqah (2016)</p>
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Fatin Afiqah (2026) as modified by these authors

Legal complexity is a chaos that benefits no one but ‘the lawyers’ (White, (1992). A legal complexity in the context of judicial reasoning refers to the density of action addressed by a law, with multifaceted notion of justice, indeterminacy (lack of rule to settle conflict between different rules of justice (Kades, 1997) or open-textured, flexible, multi-factored, and fluid (Schuck, 1992) etc. This aspect is not the focus of this paper, as we have looked at this issue somewhere else. Katz (2014) has focused on measuring complexity in the form of linguistic simplicity or otherwise. This paper does not follow this stream too. The volumeness of legislation (hierarchical structure, a citation network and an associated text function), ambiguity of rules, disjointedness, and interconnectedness, unnecessary, ineffective and inaccessibility thereof are the elements that the UK Government’s Cabinet Office and Office of Parliamentary Counsel, 2013 have identified. We examine some of these aspects in Malaysian legislations relating to estates. Fatin (2016) did mention some of them above including multiplicity thereof, in the causes of late claims and late distribution of estate. Fatin (2016), nevertheless, has tried to find solution through a singular agency and simplified process for application relating to claiming estates. This is a limited approach; that alone may not result in claiming estates or escheat declaration.

Considering the above problem, the question is: does the Malaysian legal framework adequately and effectively mandates reporting of death of owners, of estates, their custody, administration and distribution, by beneficiaries and claimants, as well as relevant agencies? To answer the question, the objective of this paper is to examine the current relevant legislations for an easy integrated process for fast estates distribution and escheat declaration and whether or not the pre distribution or escheat declaration is fast and effective.

The writers believe that an adequate corpus of effective law can cause speedy reporting, possession, and distribution of estates or declaring them escheated. This will make the laws respond to the needs of the citizens better so that their rights are protected. To achieve this, we used an integrative literature review, whereby we integrate, analyse, critique, and synthesise the rules of various legislations, based on variables of a uniform method for reporting, claiming, vesting, administration and distribution or escheats declaration. These variables are also used to evaluate the complexity of law according to a set of it mentioned above. While the primary legal sources of data consists of Malaysian Statutes, an effort was made to have interview with official of Department of Land Administration, in charge of small estates to confirm or otherwise the practice of claims by Settlement Officer or Penghulu under Small Estate Distribution Act, 1955.

The writers focus on legal framework. We assume a good legal framework must be given in easy legislations, preferably one, which addresses all properties of deceased, recorded by government agencies and private sector. To claim them, it has to require compulsory reporting of deaths, and of estates by beneficiaries, other claimants, and non-claimants. It also ought to vest the custody of intestate estates in one agency e.g. Amanah Raya or the Corporation, enabling it to distribute, or surrender them to the government faster.

This paper therefore begins with the examination of the existing framework, i.e. claimable estates, agencies where they can be claimed, reporting, claiming, taking into custody, administration, and distribution of intestate estates or declaring them escheatable. The paper will end with a summary of defects found and direction for future research.

The Current Malaysian Legal Framework

The current system is divided into two way of claiming estates: the systematic and unsystematic. The latter is a case-by-case method of identification of estates and claim thereto which almost all the times is the normal of the day. The former is an old method since the time of British Rule. The Kelantan Land Settlement Act 1955 (revised 1991) is a law that is restricted to the State of Kelantan, which provides ‘for revision of registers, recording of interests in land, settlement of claims, determination of owners, possessory title to land, and issue of documents of title to land, in areas from time to time declared in the State of Kelantan.’ The normal practice was in early time an area would be declared in which all transactions would be frozen until the claims to lands were settled and registered. However notwithstanding limits on the territorial jurisdiction of the land office, the process may be costly and cannot be performed all the time. Therefore the law may be out-dated.

The unsystematic method of claims is the main concern of this article. It is rich relatively in content and it has the foundation for a good workable framework of estates. Therefore, under this system, first, we will discuss claimable estates, and agencies that keep their records. Second will explain the reporting of death of owners, and of estates, their possession, by a single agency. The distribution of estates will be briefly discussed later.

Claimable estates

Claimable estate, in a sense, means all that properties (real or personal²) to which someone, under law, is entitled, and could recover it in the court of law³, testate or intestate. Where there is a will it is testate otherwise it is intestate. Irrespective of being testate or intestate, estates, they are called small and non-small estates. Small estate is up to one million, and above this amount is non-small estate⁴. However according to the Public Trust Corporation Act 1995 an estate real or personal, testate or intestate⁵, not exceeding RM600, 000 is divided into various categories, but it does not refer to it as Small Estate. The claimant might be the

² S 2 Probate and Administration Act 1959: "property" includes a thing in action and any interest in movable or immovable property. Under Public Trust Corporation Act 1995 "property" includes all property, movable or immovable, and all estates, interests, easement and rights, whether equitable or legal in, to or out of property, choses in action, money and goodwill. Note that the moveable properties of the deceased if domiciled outside Malaysia are government by the law of domicile at the time of his/her death.

³ Claimants include a beneficiary, creditors, purchasers, the penghulu, Settlement Officer, or the Corporation.

⁴ S 3(2), Small Estates (Distribution) Act, 1955.

⁵ Note that the Corporation under s 11 of the Public Trust Corporation Act can be appointed as executor. This will make it personal representative under will and hence the asset may be testate. Note also the Act does not interpret the word testate.

sole heir and there could be no one else to claim the estate as a purchaser or creditor. Often there could be several persons, some as beneficiaries others as claimants, in which case each may claim a share in the estate.

Where any of the above persons can petition to Small Estate Unit or the High Court for the distribution of estates, we call the property claimable estate too.

Generally, the governing rules come from written and unwritten Islamic and civil laws. Therefore, these laws are dense, multifaceted, multijurisdictional and multisourced. They are numerous consisting a web of property laws, under different field thereof. The civil and Shari'ah courts have jurisdiction over personal law cases simultaneously to the exclusion of one another. When a case involve both civil and Islamic law, the ambiguity and lacuna in law allow civil courts to interpret the law narrowly in the case of matters relating to jurisdiction of Shari'ah courts, and by default liberally⁶ when it wishes to exercise jurisdiction over the cases. In such circumstance of conflict, the law some time is indeterminate due to lack of clear principle of resolving it.⁷ This is important because the Malaysian law has two types of laws: Shari'ah and civil law.

Under Shari'ah law the rights of beneficiaries and claimants are pronounced under several areas of the unwritten law, of which personal law for the beneficiaries, and contracts for claimants is mostly relevant. Some conflicts under law of contracts or commercial law may arise between Shari'ah and Islamic law. Other law may also be included, for instance, the property of a missing person may be subject to Evidence Act as well as Islamic law. The conflict may arise as regarding the disposal of his/her property and presumption of his/her death. The law still need adequate rules for settling the conflicts clear direction how to claim and estate.

In civil law, claim to a property of deceased persons may originate in local statutory law or common law or principles of equity. Whatever their origin, the heirs or other claimant can claim the property left by a deceased person, at the time of his death, regardless of being in his possession or some agency e.g. the courts, and the registrar of unclaimed moneys⁸. Several disjointed statutes will be followed in order for one to establish his right to the property.

Among the local statutes one is the Unclaimed Moneys Act, 1965. This specific statutory law is silent about money in unclaimed moneys fund, which may belong to a deceased person,⁹ or missing person, or his heir whose status may not be known too.¹⁰ Several other partly

⁶ See cases relating to the jurisdiction of Shari'ah courts decided by civil courts on matters of Islamic law. The civil courts have attempted to exclude Shari'ah courts from deciding cases where no written authority is given to them, even if by implication the matter could be within the powers of Shari'ah court; the latter, after many cases over a time has been settled, but other matters such as the issue of relief orders or injunctions by Shari'ah courts remain unsettled.

⁷ A string of case law has have evolved since 1985 where civil courts have tried to find a rule that was applied to the cases where conflict of laws and jurisdiction was argued; but later was overruled and changed. The law is still in need of clarity and uniformity.

⁸ See s 8 on definition of unclaimed moneys, Unclaimed Moneys Act 1965.

⁹ The owner of unclaimed money may be alive or dead when the account was active or after. Money may be unclaimed because the owner or her/his heirs do not know about the money or for other reason.

¹⁰ See rules about presumption of death of missing person in *Re Gun Soon Thin* [1997] 2 MLJ 351; *Re A Pen has Deceased* [1947] 1 MLJ 78; *Re Ex Parte Application of Tay Soon Pang @ Yeo Hak Seng* [2008] MLJU 928.

inconsistent legislations, related to estates,¹¹ make the laws complex in the sense of unneeded unclear and full of lacunas. The need for a new clear single legislation therefore is obvious.

Relevant Agencies

By relevant agencies we mean those where a beneficiary can lodge petition for distribution of estate, or claim that a specified property under their control is a claimable estate.

Under law of Malaysia, claiming all types of estates, is partly unclear and partly complicated, as it involves several agencies. For an estate not exceeding RM600 thousands (for the purpose of summary administration¹²), the relevant agency is Amanah Raya (hereafter referred to as Corporation), for small estates below RM2 million¹³ (for the purpose of appointment of administrator and distribution of estates), is Small Estates Distribution Unit (Land Registries)¹⁴ if intestate,¹⁵ and for estate above 2 Million or testate estates is the civil High Court. Obviously current conditions demand the existence of a single agency for claims and another for contention and dispute resolution. Two other agencies are not spoken of: the Shari'ah court and the Registrar of unclaimed money.

For every claim, a certificate of fara'id or entitlement to the estate and apportionment thereof based on the fara'id rules is needed. Some disputes over matters of Islamic law have to be referred to these courts too.

It ought to be the duty of an administrator or executor to enquire whether or not a deceased has some claimable asset with the Registrar of unclaimed money. The existing law, however, does not contain provisions to that effect. The moneys with Registrar of unclaimed moneys and courts are not linked with above agencies. It is clear that there is gape, and redundancy. If the money is not given to the heirs, it may cause deprivation of owners from their property without due cause.

A simple solution based on (1) resolution of disputes, (2) comprehensive data storage, estates custody and administration, and (3) claims and distribution of all properties by few agencies could remove the legal complexity and jurisdictional confusions, and thus fast distribution of estates might be facilitated.

Reporting Death and Estates

The authors assume the Corporation (Amanah Raya) ought to be the sole trustee of intestate estates; land office and other holders of property information to be the custodians of property data reportable to the trustee, and courts to be dispute resolution tribunals. The Corporation to be given full custodial powers in addition to that under current law, to protect individuals and government. It should have the power to possess estates subject to wasiyah (without wisayah)

¹¹ The following laws need uniformity and clarity: the Unclaimed Moneys Act, 1965; Evidence Act and Enactment, as well State Administration of Islamic Law Enactments, and The Courts Rules 2012, Employees Provident Fund Rules 1991, Malaysia Army (Pay And Allowances) Regulations, 1961, Federation Army (Pay And Allowances) (Amendment) Regulations 2009.

¹² S 17 of Public Trust Corporation Act 1995

¹³ S 3(2) Small Estates (Distribution) Act, 1955

¹⁴ Small Estates (Distribution) Act, 1955

¹⁵ S 2 Probate and Administration Act 1959: "intestate" includes a person who leaves a will but dies intestate as to some beneficial interest in his movable or immovable property.

and fara'id or otherwise. It has to have authority to transfer them to heirs and claimants if claimed, otherwise and where there is residue, to transfer it to the government under escheat or bana vacantia.¹⁶ Under such an assumption, the laws are inadequate, unclear and complex. We will discuss these issues below.

1. Reporting death

Currently the death of all citizens has to be reported to National Registration Department (NRD) and then certified by the same department.¹⁷ However, the law is disjointed. There is lack of automatic reporting of death and supply of the list of heirs of the deceased, by NRD or another person, to the agencies holding estates or its data. The estates related legislations do not connect the registration of death or its certificate with estates. No law makes such reporting to the relevant agencies compulsory, so that all estates holder and data holder agencies could mandatorily report the assets of the estate to the custodian of intestate estates, and enable such authority to possess the estates.

In addition to the certificate of death, missing person's report also needs lodging. There is no such requirement under current law. Under existing law, missing persons, relating to intestates or unclaimed moneys, are presumed dead after the lapse of 7 years from their disappearance. This presumption has to be recognised by a court and a court order has to be issued to that effect. Only then, other process can commence. No provisions in the relevant legislations exists to give predefined circumstances for such presumption, or give such power of declaration to the custodian of estates, or requiring good process of notification and inquiries before one is declared dead, or heirless. This is important, because if the heirs of the missing person do not know the property they may not be able to claim it; in the absence of such a claim, the State may take it as bana vacantia, which may be challengeable under article 13 of the Federal Constitution of Malaysia.

2. Reporting Intestate Estates and Unclaimed Moneys

The distribution of an estate depends on its control and custody, which in turn depends on knowing it. One can know about an estate, if the estate, its owner, his/her heirs are reported. Only then estate can be claimed, possessed, administered and then distributed according to the rights of individuals or escheated to the government.¹⁸ Several unconnected legislations exist; however, none of them makes it mandatory to directly or indirectly report estates to one agency.

Unlike the process under Unclaimed Moneys Act, 1965, the Public Trust Corporation Act, 1995 does not provide for automatic reporting, after it is triggered by the death of the property-owner. The Corporation depends on the Court, the Government or a claimant to appoint it as an executor, and administrator.¹⁹ The Corporation can apply for grant of probate

¹⁶ This proposal may need to be reconciled with that of Fatin Afiqah and Mohammad (2015) on one unified agency for claims and distribution. Here we ask for mandatory reporting of estates by any one who knows about the death and property of the deceased, or whenever a property becomes unclaimed, and the making of application for distribution of estates by heirs, personal representatives, and interested persons.

¹⁷ SS 18, 25, the Births and Deaths Registration Act, 1957

¹⁸ An heirless land is escheatable under s 46, 46A, or 47 and 351 of National Land Code, 1965. S 351 requires evidence of hairlessness. Reporting of death, estates, and heirs may provide such evidence.

¹⁹ S 11 (1), s 14 Public Trust Corporation Act; s 45 Probate and Administration Act, 1959

of will and letter of administration on its own²⁰; however, there is no clear mechanism for exercising such power and appointment by the parties.

Under section 45 of Probate and Administration Act, 1959, indirectly and at the good will of the named persons, estates are reported to the court. However, estate in the custody of Police²¹ needs to be reported and given to the Corporation. Under the Court Rules 2012 court also indirectly may know about an estate, consequent to an application for grant of probate or letters of administration²², or action through writ, or originating summons²³, or when a creditor sues an estate²⁴. Subsequently, a notice is served on interested persons and probably the corporation too, which may not end into distribution of estate. If an estate report is incomplete courts can order inquiry into the properties of the deceased.²⁵ The court informs the government when it thinks government has beneficial interest in the deceased's property²⁶. We presume escheat cases may be included. However, not all cases are brought to courts. Over all, it is clear that none of the relevant laws make it the duty of any one to report the estates. Therefore if the owner or a claimant does not bring action to the court, its wheel of justice will not turn on for unknown time.

Under the Small Estates (Distribution) Act 1955, the Collector may get estates list if the specified persons claim it²⁷. No specific time is given for such a claim. Hence, if no petition is made, the estate can remain unknown to land office, unclaimed, and undistributed for a long time, unless on lapse of 6 months, after the issue of death certificate, Settlement Officer or penguulu reports to the Collector the lack of petition for distribution, or grant of letters of administration. However, the law says that Collector *may* direct them to lodge a petition for distribution.²⁸ In practice, this is hardly carried out,²⁹ presumably for two reasons. Since there is no automatic reporting of death to land officers, the Settlement officer may have no evidence of death of the owner. As such, he may not be able to commence the proceeding of claiming estate on behalf of heirs. However in rural areas the role of penguulu may be clear, as he would know about the death of the landowner and his heirs. This was found to be true when we did conduct our search for the whereabouts of landowners and tracking the heirs of deceased ones. Would the head of villages or the chairman in a mosque committee in urban areas be included in this role, is not clear. The penguulu may be reluctant because it is not mandatory on the Collector to direct petition for distribution of estate by the Settlement Officer or penguulu³⁰. Where such a report is made to the Collector and he decides not to

²⁰ S 13, 16, 18, Public Trust Corporation Act, 1995

²¹ S 23(2) of Police Act, 1967; 16(5) of Public Trust Corporation Act, 1995

²² Form 159 under O. 71, r. 5, Courts Rules 2012.

²³ O. 15, r. 13A. The court may issue a notice in Form 17 to any interested person. O 15 is however partially relevant because the court deals with subject matter of action. This may include the service of judgement/order on persons affected by the order of court against an estate (see O. 44 r. 3).

²⁴ O. 27, r. 2, Form 49; 78, 79, 80 and 81 notice by advertisement and verification of claims

²⁵ O. 43, r. 2, as set in form 76

²⁶ O. 71, r. 32, Court Rules, 2012

²⁷ S 8, s 18, Small Estate Distribution Act, 1955

²⁸ S 8, 18, Small Estate Distribution Act, 1955

²⁹ This was made known to us when an enquiry from KPTG was made during a formal interview.

³⁰ 18. (1) Where a proprietor of any land has died and no proceedings, to the knowledge of a Settlement Officer of the district, or the penguulu of the locality, in which the proprietor's land is situated, have within six months of the date of death been taken to obtain a grant of probate or letters of administration or for distribution under this Act of the estate of the deceased, the said Settlement Officer or the said penguulu shall report the matter to the Collector and the Collector may thereupon direct the Settlement Officer or the penguulu, or some other Settlement Officer of the district or some other penguulu, to lodge a petition for distribution of the estate unless

direct the Settlement Office or the penghulu to lodge petition for distribution of the estate, the Collector is under duty to report it to the Corporation³¹. Nevertheless, the whole process depends on the report of death certificate or report by the penghulu. Where this two are not activated, the Corporation may not get report too. Both reporting of death certificate and lack of petition may require new statutory provisions imposing duties on the NRD and penalty or incentive against and for the penghulu.

The unclaimed Money Act 1965 deals with money, securities, income and dividends held by courts and financial institutions. It makes it the duty of the court, the company, firm, and any person who possesses unclaimed money, to transfer it to the government. The money under current law becomes unclaimed when they are not paid to the owner within one year, 2 years, and seven year.³² The unclaimed money has to be paid to the government after 15 years³³. Before laps of 15 years it can be recovered without interest. However, this Act neither justifies why income from unclaimed money should not be returned to claimants, nor clearly accommodates estates. There is no reason why such money cannot be under custody of the Corporation. Despite its defect, this Act seems to be better than the Public Trust Corporation Act, which does not have similar custodial powers and timeline. Both can be created for estates under jurisdiction of the Corporation. The money under unclaimed Act can be given to the Corporation if there is a reform of law of inheritance.

Under National Land Code, 1965, the heirless lands are escheatable. Similarly, abandoned land may revert to the State³⁴. We assume some abandoned lands may be estate lands; therefore, both are relevant to this discussion. Nevertheless, this rules are not effective, because the power of land administrator or land officer is limited by availability of evidence that can be used to either escheat or revert the unclaimed or abandoned lands.³⁵ Only when the death of the land owner is reported to the registrar of titles, either by the NRD or the penghulu, the land officer may be able to take action under the relevant provisions of the National Land Code 1985.

3. Custody of Estate and Unclaimed Moneys

Custody of estate by an agency may serve two benefits: preventing unscrupulous administrators to control estates for their own gain, and the ease to distribute the estate faster. Currently, the Corporation is vested with custody of estates.³⁶ This makes it a good candidate for the unrestrained custody of all intestate estates and unclaimed money, under different accounts, which can represent the unrepresented claimants, and the government³⁷. Existing lacuna in the law does not support this.

he has reason to believe that the land was not part of a small estate, in which case he shall report the matter to the Corporation.

³¹ S 18, Small Estate Distribution Act, 1955.

³² SS 8, 10, Unclaimed Moneys Act, 1965.

³³ S 5(1), 11(2) Unclaimed Moneys Act, 1965; Order 90, rule 17(1), Courts Rules, 2012.

³⁴ S 46, National Land Code, 1965.

³⁵ SS 351, 352, National Land Code, 1965.

³⁶ See ss 11, 12, 13, 14, 15, and 16, Public Trust Corporation Act, 1995. Where there remain some funds in the hand of administrator that he is unable to distribute, he has to transfer it to the Corporation (Amanah Raya): s 86, Probate and Administration Act, 1959.

³⁷ Amanah Raya is attached to the Ministry of Finance' s 5, 8, and 9 of Public Trust Corporation Act, 1995

Section 16 of the Public Trust Corporation Act 1995 empowers the Corporation, *on evidence of intestacy*, to take into its custody any property that is intestate until letters of administration is obtained from the court. Section 39 (1) of the Probate and Administration Act 1959 expressly provides that intestate estate vests in the Corporation until administration is granted. If the estates are vested in the Corporation then it can possess them too. However their possession is given to the Corporation under s 45 of Probate and Administration Act by an order of court if an interested person, the corporation, person having the custody or control thereof at the time of the death of the deceased, or being at that time an attorney or employee of the deceased make an application to the court³⁸. Court order may not be needed if there is duty of the Corporation to receive estate, and the law makes it the duty of the named persons and entities to report and deliver the estate to the Corporation, as the case may be. The provision for reporting it to the court and the court ordering the custody thereof would not be needed.

As most Muslims estates remain intestate (2/3), their custody by the Corporation may prove beneficial to the beneficiaries and the government if it disposes it faster. However the law does not bestow such powers on this agency. Powers similar to that of the Registrar of unclaimed money may enable the corporation declare some estates *bona vacantia*.

The Unclaimed Moneys Act is not connected to other estate related legislations; the moneys are within custody of Registrar of unclaimed moneys. Such money may be surrendered to and claimed from the Corporation. This will make the law more cohesive.

4. Administration

The current law vests estates in the Corporation till administrators are appointed.³⁹ Or, the Corporation can be the administrator, if no probate or letter of administration is granted within 6 months after the death of a property owner.⁴⁰ This needs not be transitional, and conditional, because empirical evidence show administration by heirs last longer than a year⁴¹. Section 77 of Probate and Administration Act does not make it compulsory on the administrator 'to distribute the estate of the deceased before the expiration of one year from the death.' However there is no limit within which he has to distribute it. This makes the law less effective in terms of fast distribution. Hence, it is suggested that administration can be solely vested in the Corporation, of all estates without an order of the court or minister, with power to delegate such authority to individuals for short period. It could have statutory duty to finalise estates administration faster, including the outsourced one.

It is pertinent to note that an effective and efficient administration of estate is possible if the information about the estates is available to the Corporation. This might be made possible if the property data is integrated nationwide. Currently, different departments of the State and Federal Government jealously guard their data. This is true about the private sector for fear of breach of conditionality of private information, which was mentioned during our discussion with various parties on the limitation on disclosure of personal data under the Personal Data

³⁸ S 45 probate and Administration Act, 1959

³⁹ S 16 Public Trust Corporation Act, 1995, s 39; Probate and Administration Act, 1959.

⁴⁰ S 81, Probate and Administration Act, 1959.

⁴¹ Fatin Afiqah (2016), *Enhancement of Muslim Estate Distribution Process towards Reducing the Delay and Lack of its Distribution*, 184-186.

Protection Act 2010. However it is expressly clear that this legislation does not apply to State or Federal Government.⁴² While there is no fault in the provisions of the above statute, however it will be much helpful if provisions are added to the existing estate related legislations for various related agencies to compulsorily provide such property information to the relevant estate agencies in the interest of public.

5. Claims of distribution and declaration of escheat

The discussion by Fatin Afiqah and Mohammad (2015) on claims for distribution suffices. In the context of reporting and custody of estates by the Corporation, it is proposed that 6 months for mandatory reporting of the estate and 15 years for making claim for distribution be fixed. Failing to claim estates within 15 years, the estate to be escheated⁴³. The claimant could recover the estate before the lapse of 15 years with profits, thus making section 11 of Unclaimed Moneys Act consistent with section 20 of Public Trust Corporation Act, 1995.

A tribunal responsible for claims ought make a distribution order, and it ought to be enforced by the Corporation and Small Estates Distribution Unit. Appeal from this tribunal can be made to the high courts in contentious cases. The benefit of this structure would be to know the estates, beneficiaries and distribute them faster.

Summary of Deficiencies

Deficiencies in terms of legal complexities in the current legal framework are multiple. The framework is fragmented, inconsistent in some aspects, not cohesive, and infested with redundancies; therefore they make it a good example of complex law.

This study is preliminary and was conducted in a very short period of time. The opinions offered here are yet to be validated, therefore the viability and reliability of those idea may further be investigated. In addition, study is also needed to strengthen the basic ideas proposed here and offer solutions for a single easy to read legislation on the law of inheritance in general and estates in particular with emphasis on fast distribution and declaration of escheats.

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⁴² S 3, the Personal Data Protection Act 2010

⁴³ The difference between escheat and bona vacantia is not clear. NLC uses the term escheat while the Federal Constitution uses bona vacantia. Courts rulings are not clear too on the subject matter or entitlement thereto.

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