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**TRANSFORMATION OF ISLAMIC INHERITANCE LAWS IN
NORTHERN STATES OF PENINSULA MALAYSIA**

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Abstract

This article discusses about the applicable Islamic laws of inheritance in Malaysia and the conflicts that happened due to the delay in its distribution. The focus of this study lies in the transformation of Administration of Islam Law in Northern States of Peninsular Malaysia i.e. Perak, Penang, Kedah and Perlis relating to Islamic inheritance. This study aims to identify legal provisions relating to Islamic inheritance contained in the Administration of Islamic Law Enactments in Northern States of Peninsular Malaysia. Using doctrinal analysis as a research method, this study will be based on qualitative data to examine the imbalance forms and trends of Islamic laws of inheritance between the pre and post-independence eras. This imbalance will be explained in the form of comparison made on the Administration of Islamic Law Enactments of the respective states in the pursuit to make them in tandem with the current needs. The finding from this study indicates that the transformation in Islamic laws of inheritance is not balance because there is only one section provided for it since pre-independence until today. This has resulted in various conflict within Muslim community. Relevant authorities must take proactive actions to address the conflict. To this end, this study recommends that the authorities will enact specific enactment for Islamic laws of inheritance and enforce provisions that compel any relevant parties to speed up the distribution process of Islamic inheritance.

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1. Introduction

Law is a form of management system for human development that aims to govern and manage day-to-day human activities to achieve a prosperous life with an abundance of blessings from Allah SWT. Without laws, a society will freely enjoy their life without any limitations. This uncontrollable situation will certainly lead to imperfect life (Sulong, 2011, p.7). In the context of inherited property, people may easily involve in cheating, murder and illegal property-grabbing despite the property does not belong to them (Ayyub, 2006, p. 9 -13).

In Malaysia, the Federal Constitution has provided jurisdiction to the State Government to enact laws related to Islamic law or hukum Syarak, Islamic personal and family laws. This was stated in 9th Schedule, List II which provides:

Except with respect to the Federal Territories of Kuala Lumpur and Labuan, Islamic law and personal and family law of persons professing the religion of Islam, including the Islamic law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy guardianship, gifts, partitions and non-charitable trusts... (9th Schedule, List II, Federal Constitution, Contains Latest Amendments - P.U. (A) 164/2009).

In addition to that, the States' Admirations of Islamic Law are the body of laws that are substantive in nature and have been regularly amended in tandem with the current situation. As such, this article will emphasise the aspect of legal evolution in Islamic inheritance contained in the Administration of Islamic Law Enactments in Northern States of Peninsular Malaysia during pre and post-independence eras.

2. Problem Statement

The author focuses on two main issues that reflect weaknesses in Islamic law of inheritance which have led various conflicts. The two issues are:

2.1. Delay in Making Claim for Distribution of Inherited Property

Nowadays, heirs tend to delay the process to claim for the distribution of inherited property after the death of the property's owner up to few years (Abdul Rahman, Ngah, Mustafa, Abdul Mutalib, & Hamzah 2016). This attitude of delaying the process to claim for inheritance distribution has given negative impact to Islamic law or hukum syara' and the social and economic developments which have rightly been pointed out by various scholars such as Wan Harun (2008), Naiimi (2015), Mohamad (2016), Abdullah, Zakaria, & Mahad Musa (2016), Abdul Rahman et.al, (2016) and Zulkifli & Ahmad (2016) as demonstrated in Table 1 below. According to Abdul Rahman et.al (2016), the factor that led to some of the delays were the refusal of heirs to make claim for distribution of inherited property as well as the issue of property-related disputes which have been reported in the media recently (Utusan Malaysia, 2003).

Table 01. The effect of Delay in Making Claims for Distribution of Inherited Property

Hukum Syarak	Social	Economic	Hukum Syarak
Consuming and owning the property illegally.	Leads to conflict / disagreement	Assets abandoned or frozen / property in bank cannot be liquidised	Consuming and owning the property illegally.
Rights of deceased cannot be fulfilled such as debt and wills	Claim process is complicated	Land transaction cannot be done	Rights of deceased cannot be fulfilled such as debt and wills
Number of heirs increased because of munasakhah	The rightful heirs not detected	Government fails to collect land tax	Number of heirs increased because of munasakhah

In addition, the delays in making claim for inherited property distribution at Amanah Raya Berhad (ARB) has caused the increase of “money waiting to be claimed” throughout the country (Shafie et.al, 2014) as indicated in table 2 below. Within 5-year period (2009 – 2014), the total of “money waiting to be claimed” in ARB has reached RM 26 billion. As stated by Abdul Rahman (2006, p.87), claims for inherited property distribution should be speeded up so that the heirs will get the benefit of the deceased’s property through investment or commercial activities. Indirectly, it may create job opportunities and boost economic development of a state / country to a higher level.

Table 02. Statistic of Claimed Waiting Money in Amanah Raya Berhad (ARB) from 2011 to 2015

YEAR	TOTAL ASSET (RM)	PERCENTAGE (%)	YEAR
2009	40 BILLION	0%	2009
2010	41 BILLION	+ 2.5%	2010
2011	42 BILLION	+ 2.5%	2011
2012	52 BILLION	+19.23%	2012
2013	60 BILLION	+15.38%	2013
2014	66 BILLION	+16.5%	2014

2.2. Non-existence of Specific Laws on Inheritance

In general, provisions of laws related to inheritance in Peninsular Malaysia maybe referred to Section 8, Small Estate (Distribution) 1955 [Act 98], Section 3, Probate and Administration Act 1959 [Act 97] and Section 12, Public Trust Corporation Act 1995 [Act 532]. These provisions only give power relating to inheritance to Small Estate Distribution Unit (UPPK), Department of Director General on Lands and Mines, Public Trust Corporation (ARB) and Civil High Court. It was rather limited in respect to States’ Administration of Islamic Law Enactments or States’ Syariah Court Enactments where these enactments provide only one section related to clarification of inheritance i.e. the confirmation and decision of heirs’ portions as stated in Table 3 below;

Table 03. List of Provisions in States' Administration of Islamic Law Enactments / Syariah Court Enactments Relating to Inheritance in the States of Research Locations

Enactment	Section
Administration of Islamic Law Enactment (Perak) 2004	54
Administration of Islamic Law Enactment (Penang) 2004	65
Syariah Court Enactment (Kedah) 2008	20
Administration of Islamic Law Enactment (Perlis) 2006	65

According to Lakim (2016), the non-existence of specific laws or procedures relation to the management of inherited property has led to the non-uniformity nature of the Islamic inheritance system in Malaysia. Bureaucracy factor and jurisdictional limitations between Federal and State have contributed to the difficulty in establishing a substantive statute on Islamic inheritance. Sabah is the only state in Malaysia that has managed to create rules or procedures on management Islamic inheritance which is known as "Guidelines on Application of Distribution, Appointment of Wali, Estate and Clarification of Estate Inheritance (Sabah) 2007" or "Garis Panduan Permohonan Pembahagian, Pelantikan Wali, Harta dan Perakuan Perwarisan Harta Pusaka (Sabah) 2007".

3. Research Questions

To learn what is actually the legal provision related to Islamic inheritance contained in the Administration of Islamic Law Enactment in the Northern States of Peninsular Malaysia?

4. Purpose of the Study

4.1. This study aims to help the relevant authorities to amend the existing legislation or pass new enactment related to Islamic inheritance. The existence of such amendment or new enactment would empower claim for distribution of Islamic inherited property such as summon, court order, fine or penalty to heirs of nominees who have delayed the management of inheritance distribution.

4.2. This amendment or establishment of new enactment will address any unresolved issues such as delayed cases, multi-layered death (*munasakhah*), total amount of money which has been transferred to the account of Unclaimed Money Fund, Money Waiting to be Claimed at ARB etc. Besides, this amendment or establishment of new enactment would also generate income to the State government through the payment of land taxes, assessment tax, and other payment related to deceased's properties.

5. Research Methods

This study employs qualitative method by investigating the trends in Islamic law of inheritance during pre and post-independence eras. More specifically, doctrinal analysis method has been used by this study to analyse Administration of Islamic Law Enactments in the Northern States of Peninsular Malaysia between the two eras. Data are obtained using library-based research method by referring to books, journals, acts, internet sources, newspapers as well as field-work based on interviews with relevant

authorities in the four states. The data were analysed in the form of comparison between the two eras against the backdrop of the needs to establish new and specific laws relating to Islamic inheritance.

6. Findings

This study indicates that the Administration of Hukum Syarak Enactment (Selangor), 1952 was the first of its kind enacted in the Federation of Malaya. This legislation has been considered as a “model” for other Malay States in the Federation. This enactment consists of 10 parts and 180 sections but out of this, only Section 47 has touched on certification of Islamic inheritance i.e.:

“If, in the course of any proceedings relating to the administration or distribution of the estate of a deceased who professed the Muslim religion, any Court or authority, other than the Court of the Kathi Besar or a Court of Kathi, shall be under the duty of determining the persons entitled to share in such estate, or the share to which such persons are respectively entitled, the Court of a Khadi, if the gross value of the estate does not appear to him to exceed five thousand dollars, and the Court of the Kathi Besar in any case, may, on a request by such Court or authority, or on the application of any person claiming to be a beneficiary and on payment by him of the prescribed fee, certify, upon any set of facts found by such Court or authority, or on any hypothetical set of facts, its opinion as to the persons who are, assuming such facts, whether as found or hypothetical, entitled to share in such estate and as to the shares to which they are respectively entitled. The Court of the Kathi Besar or Khathi may, before so certifying its opinion, require to hear the parties on any question of law, but shall not hear evidence or make findings on any question of fact. In any case of special difficulty the Kathi Besar or a Kathi may refer the question to the Legal Committee for its opinion, and shall, and shall, if such opinion be given, certify in accordance therewith”.

The Enactment provides the roles of States Islamic Council or Majlis Agama Islam Negeri, the jurisdictions of Syariah Courts, administration of Mosque, administration of marriage, divorce and rujuk all of which are general in nature. The finding from this study discovered that there has been transformation and evolution in Islamic law of inheritance were rather not synchronised because there is only one section provided to Islamic inheritance since pre-Independence until post-Independence eras in particular in the four States of the research location, as follows;

a) Perak

Administration of Islamic Law in Perak was passed on 1 May 1965, consisting of 10 parts and 192 sections. It is similar to that of in Administration of Muslim Law Enactment, Penang No. 3, 1959 and Administration of Muslim Law Enactment, Kedah No. 9, 1962. However, Administration of Islamic Law (Perak) 1965 was repealed and replaced by Administration of Islamic Law Enactment (Perak) 2004 which contains 113 sections. Out of these sections, only Section 54 which empowers the court to approve heir's portion. Nevertheless, the provision was not given the status it deserved. In fact, there also exists loopholes that make the enactment not competitive as compared to other enactments (Yusof, 2016).

b) Penang

Administration of Islamic Law Enactment of Penang was passed on 15 April 1959. This enactment has 10 parts and 180 sections equivalent to that of in the Administration of Muslim Law Enactment, Selangor No.3, 1952. Factor of this similarity was due to the fact that both enactments came into effect for a period of seven years within the period of colonial rule. In these legislations, only Section 47 was dedicated to inheritance of estate similar to Section 47, Administration of Muslim Law Enactment, Selangor No.3, 1952. This enactment has been amended in 1993, 2000 and 2004 (www.esyariah.gov.my). Most recently, the Administration of Islamic Law Enactment (States of Penang) 2004 was established and it contained 11 parts and 124 sections in which on Section 65 was dedicated to Islamic inheritance. According to Ismail (2016), issues related to administration or distribution of the estate of a deceased who professed the Muslim religion was not given appropriate emphasis as compared to the issues related to crime, administration of Muslim marriage, divorce and rujuk, evidence in court, administration of Mosque, wakaf and administration of persons who converted to Islam (Muallaf). If there is application for distribution of the estate of a Muslim deceased, the matter should be directly referred to Malay customary law or hukum Syarak.

c) Kedah

Administration of Muslim Law Enactment, Kedah No.9, 1962 was passed in 1962. It consists of 10 parts and 174 sections. Section 44 which is related to Certification of Faraid is still contained in main enactment or “Enakmen Ibu” i.e. the Syariah Court Enactment (Kedah) 1979. However, Section 44 was subsequently repealed and replaced with Section 22 of the Enactment. After being gazetted, Syariah Court Enactment (Kedah Darul Aman) 2008 continues to include a section on certification of inheritance i.e. subsection 2 (1) which constitute part of previous enactment i.e. since 1962. Hence, the efforts to establish specific laws relating to inheritance of Muslim people are highly welcomed in facing the challenges that affect the Islamic legal institutions nowadays (Mustapha, 2016).

d) Perlis

Administration of Muslim Law Enactment Perlis, which was passed in 1963, contains 12 parts and 136 sections. In this enactment, only Section 11 that provides the jurisdiction of Kathi Court in determining heirs / beneficiaries and estate portions according to Islamic law (hukum Syarak). The enactment has subsequently been amended to become Administration of Islamic Law Enactment (Perlis) in which the provision on certification of Islamic inheritance has been changed to Section 65. The number of sections in Administration of Islamic Law Enactment (Perlis) was decreased due to the repeal of previous provisions and establishment of new enactments such as Islamic Family Law Enactment (Perlis) 2006, Administration of Syariah Court Enactment (Perlis) 2007, Syariah Court Mal Procedure Enactment (Perlis) 2007, Criminal Offences in the Syarak Enactment (Perlis) 2007, Criminal Procedure in the Syarak Enactment (Perlis) 2007, and Control of Islamic Religious Schools Enactment (Perlis) 1988. Nevertheless, it was discovered that, since the British colonization until the post-independence era, the aspect of administration of Islamic inheritance has never been given appropriate status in the legal system applicable in the respective state (Ahmad, 2016).

Based on the above data analysis, this study recommends that the authorities will enact Islamic Law of Inheritance Enactment and enforce provisions that will make it compulsory for any relevant parties to speed up the application for the distribution Islamic inheritance in the pursuits to avoid conflict in claiming the ownership of deceased's properties and family crisis in Muslim community.

7. Conclusion

The Government must be more concerned with the issue of delays in the distribution of the estate of a deceased who professed the Muslim religion. The effort to empower the Islamic law of inheritance in Malaysia is a proactive move and very significant. The development of Administration of Islamic Law since 1950 until now as stated in this study indicated that the aspect of administration of the estate of a Muslim deceased was not legalized as equivalent to the other enactments which have been given the status that conforms with the current development. Thus, it is high time now for the authority to start transforming the law on Islamic inheritance as the soonest possible time so that it can be developed for the sake of the sustainability of Muslim property and the ummah as a whole.

References

- Abdul Rahman, M. F. (2006). *Bagaimana Mengurus Harta Pusaka*. Kuala Lumpur: PTS Professional Publishing Sdn.Bhd.
- Abdul Rahman, M. F., Ngah, K., Mustaffa, J., Abdul Mutalib, R., & Hamzah, M.H. (2016). "Kelewatan Dalam Pembahagian Harta Pusaka". *Journal of Global Business and Social Entrepreneurship (GBSE)*, 2, 180-187. Retrieved from gbse.com.my/ eISSN 24621714/
- Abdullah, M., Zakaria, Z., & Mahad Musa, Z. (2016, 22 September). "Implikasi Harta Pusaka dalam Konteks Hukum dan Nasab", dibentangkan dalam Seminar Kebangsaan Transformasi Pengurusan Harta Pusaka di Malaysia 2016 bertempat di Dewan Tuanku Canselor Universiti Sains Islam Malaysia (USIM), Bandar Baru Nilai, 71800 Nilai, Negeri Sembilan, Malaysia.
- Administration of Muslim Law Enactment, Selangor No.3, 1952.
- Administration of Muslim Law Enactment, Pulau Pinang No.3, 1959.
- Administration of Muslim Law Enactment, Kedah, No.7, 1962.
- Administration of Muslim Law Enactment Perlis No.7, 1963.
- Administration of Islamic Law Perak No.11, 1965.
- Administration of Islamic Law Enactment (State of Penang) 2004.
- Administration of Islamic Law Enactment (Kedah Darul Aman) 2008.
- Administration of Islamic Law Enactment (Perlis) 2006.
- Administration of Islamic Law Enactment (Perak) 2004.
- Administration of Syariah Court Enactment (Perlis) 2007.
- Ahmad, J. (2016, 11 November). Hakim Mahkamah Tinggi, Jabatan Kehakiman Syariah Negeri Perlis, Aras 4, Darul Qada' Tuanku Syed Sirajuddin, Persiaran Jubli Emas, Jalan Pegawai, 01000 Kangar, Perlis. Temubual dengan pengkaji, pejabat Hakim Mahkamah Tinggi, Jabatan Kehakiman Syariah Negeri Perlis, Malaysia.
- Ayyub, H. (2006). *Fiqh al-Muamalat al-Maaliyyah Fi al-Islam*. Cet.3. Kaherah: Dar al-Salam.
- Criminal Offences in the Syarak Enactment (Perlis) 2007
- Criminal Procedure in the Syarak Enactment (Perlis) 2007
- Control of Islamic Religious Schools Enactment (Perlis) 1988.
- Islamic Family Law Enactment (Perlis) 2006.
- Ismail, J. (2016, 16 October). Pendaftar, Mahkamah Tinggi Syariah, Jabatan Kehakiman Syariah Pulau Pinang, N0.3, Jalan Batu Gantung, 10450, Pulau Pinang. Temubual dengan pengkaji, pejabat Mahkamah Tinggi Syariah Pulau Pinang, Malaysia.

- Lakim, A. (2016, 22 September). "Pengurusan dan Bidang Kuasa Kes Harta Pusaka Mahkamah Syariah di Malaysia: Cabaran dan Tranformasi" dibentangkan dalam Seminar Kebangsaan Tranformasi Pengurusan Harta Pusaka di Malaysia 2016 di Dewan Tuanku Canselor Universiti Sains Islam Malaysia (USIM), Bandar Baru Nilai, 71800 Nilai, Negeri Sembilan, Malaysia.
- Mohamad, A. H. (2016, 29-30 March). "Pengurusan Harta Orang Islam: Konflik Bidang kuasa Mahkamah dan Kesannya ke atas Ekonomi Ummah" dibentangkan dalam Seminar Faraid dan Perancangan Perwarisan: Isu Harta Beku dan Penyelesaiannya di Malaysia bertempat di Institut Kefahaman Islam Malaysia (IKIM).
- Mustapha, K. (2016, 21 October). Ketua Pendaftar, Jabatan Kehakiman Syariah Negeri Kedah, Aras 2, Bangunan Mahkamah Syariah, Kompleks Pentadbiran Kerajaan Persekutuan, Bandar Muadzam Shah, Anak Bukit, Alor Setar, Kedah. Temubual dengan pengkaji, pejabat Ketua Pendaftar, Jabatan Kehakiman Syariah Negeri Kedah, Malaysia.
- Naiimi, N. (2015, 19-20 May). "Pengurusan Sepakat yang Membawa Berkat: Melestarikan Harta Faraid Menerusi Akad-Akad Muamalat" dibentangkan dalam Seminar Hibah 2015 Peringkat Kebangsaan bertempat di Kompleks Pusat Islam, Universiti Utara Malaysia, Sintok, Kedah, Malaysia.
- Shafie, F., Wan Yusof, W. Z., & al-Edrus, S.M.D. (2014, 9-10 April). "Pengurusan Harta Tanah di Malaysia Menurut Perspektif Islam: Isu dan Cabaran bagi Perwarisan Harta dalam Konteks Pembangunan Modal Insan" dibentangkan dalam Seminar Antarabangsa Kelestarian Insan 2014, Batu Pahat, Johor, Malaysia.
- Sulong, J. (2011). *Pembaharuan Undang-undang Pentadbiran Pusaka Islam, Pulau Pinang*: Penerbit Universiti Sains Malaysia.
- Syariah Court Enactment (Kedah Darul Aman) 2008.
- Syariah Court Mal Procedue Enactment (Perlis) 2007
- Utusan Malaysia, (Tuesday, 29 July 2003) "Anak Mohon Ibu Junjung al-Quran, Nafi Wasiat Ayah", "Pasal Harta Pusaka - Abang Robohkan Kediaman Adik", (http://www2.bharian.com.my/bharian/articles/Abangrobokkankediamanadik/Article/index_html); "Dua Anak Syed Kechik Halang Abang", 17 January 2010 (<http://www.as-salihin.biz/2010/01/harta-pusaka-syed-kechik-rm400-juta.html>)
- Yusof, M. R. (2016, 21 November). Ketua Pendakwa Syarie, Bahagian Pendakwaan, Jabatan Agama Islam Perak, Tingkat 3, Kompleks Islam Darul Ridzwan, Jalan Panglima Bukit Gantang Wahab, 30000, Ipoh, Perak. Interview via telephone, 11.30 am.
- Zulkifli, B. N. A., & Ahmad, M. Y. (2016). Kekangan dan Penyelesaian Kelewatan Pengurusan Aset Pusaka Tak Alih Orang Islam di Malaysia, *Islamiyyat*, 38(1), 53-63.