

A Framework Study of Islamic Real Estate Management for Property Inheritance in Malaysia

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Abstract: This study has discussed on challenges and problem in managing inheritance properties. The biggest challenges is to create awareness of the need for estate planning as many Muslims have the mistaken notion that they need not do anything as their assets will be distributed in accordance with faraid rules. Now a days, the issues pertaining to the high number of unclaimed inheritance properties and the volume of freezing assets faced by Muslims have increased from RM40 billion in 2009-RM42 billion in 2011 and subsequently increased to RM60 billion in 2013. These valuable assets have been frozen and are counterproductive. Planning and managing wealth distribution play an important role to avoid assets from continuously remaining frozen. The accumulations of unclaimed properties inheritance have become a serious issue that needs to be solved immediately. Therefore, there is a need to take a drastic action to find a comprehensive solution and alternatives for solving this issue. Hence, an effective asset management and an efficient of estate planning towards property inheritance must be practiced wisely to ensure a smooth operation of the estate administration based on the principles and basic concepts that have been created as well as to the existing laws. A research methodology for this study is through reviewing and identifying on existing related literatures in inheritance property in Malaysia from various dimensions. This study aims to develop a framework of Islamic Real Estate management for property inheritance in Malaysia. The focuses of estate administration for property inheritance among the Muslim become initial approaches to develop the framework. The proposed framework is structured through questionnaires distributed to community as the main client in order to investigate estate administrators and legal practitioner's view about the estate administration for property inheritance. The outputs from the respondents will be analyzed. This result is expected to become an initial assessment of estate management critical factors for inheritance property in Malaysia and concurrently contribute to enhance the quality of estate administration and distribution.

Key words: Estate administration and distributions, inheritance, Islamic Real Estate, property, real estate management

INTRODUCTION

There have been increasing trends in volumes for unclaimed property over the years. The increasing number of frozen assets has become unresolved issues faced by the Muslim community in Malaysia. Statistics from Amanah Raya Bhd. (ARB) stated that there are RM38 billion in lands and property, RM1.5 billion with registrar of unclaimed monies, RM70 million with the EPF and about a million land titles still in the name of dead people. These showed a serious delay in processing the application for estate's distribution (Shafie *et al.*, 2014). There are many factors contributing to these delays that have been identified by the department involved. Although, several methods have been carried out to

resolve these problems the process is still cumbersome (Buang, 2008). Thus, it is necessary to identify the causes of delayed distribution of inheritance property left by a deceased. There is a need to formulate an Islamic Real Estate management framework to complement with the existing approach in real estate management practices.

Malaysia is one of the heading countries among the world, developed and aims to achieve a high-income nation status. Thus, an appropriate approach needs to be recognized in order to plan and manage the billion ringgit worth of assets. Ibrahim Lembut stated that the Syariah Judiciary Department of Malaysia is seeking for a solution on how to manage the issues of unclaimed assets. The wealth and assets which are valuable owned by Muslims can be used for development and should be utilized for

the glory of Islam in this country. Hence, it is expected to unlock the issues and problem regarding frozen national treasures worth billions of ringgit. These valuable assets have a very high potential to generate income for the development of the Muslim community and improving economic status among the Malaysians (Yg. Bhg. Dato' Mat Noor bin Nawawi, Deputy Secretary General of the Treasury (Policy)).

At the end of the day, each and every Muslim should have to weigh as to the best mode on how to manage his assets. When the properties and assets are not being well plan and manage it will be a loss for the Muslims. These assets should be utilized for ummah and socio-economic development. The management and administration of assets in Islam which refer to Faraid" exists in harmony with the wasiat. They are crucial and must be comply with the concept and regulations that have been outlined. Assets are 'trust' from Allah lent to human kind as a way to accomplish a blessed life. Owning the wealth and assets without benefiting the others is contradicting with the Islamic practices. Therefore, the effort to find a solution towards the frozen assets is very crucial to enable it and contribute to the economic prosperity of ummah. Hence, planning and management of estate distributions play important roles to avoid assets from continuously remaining frozen.

Literature review

Real Estate management in Malaysia: According to Malaysian Valuation Standard in 2006 a definition of real estate refers to the physical land and those human made items which are attached to the land. It is the physical, tangible thing which can be seen and touched, together with all additions on, above or below the ground. The word real estate also includes vacant or improved land. Real estate management also involves all activities related to the real estate which include development, valuation and investment, facilities management, real estate agency and marketing, corporate real estate, feasibility studies, market study and finance (Nadiah, 2014).

While, real estate in Islamic perspective refers to property that consist of land al-ard, al-'aqar or ghoirul manqul or immovable property. It consists of everything that exists on and under the land such as buildings, crops and natural resources explained by Wan Abu Bakar. There is a resemblance of the usage of such term in Malaysia National Land Code in 1965 which elucidates that real estate is the surface of the earth and all things attached to the lands which include physical things such as buildings, plants as well as mineral resources.

Real estate makes up a very large component of the economy. It forms a substantial part of the wealth for country and a value of the resources that are found within the real estate sector is enormous (Usilappan, 2006). This showed that real estate has been recognized as one of the most important sectors and it is necessary parts for economics. As mentioned by Trump (2005) "real estate is the core of almost every business and it's certainly at the core of most people's wealth. In order to build your wealth and improve your business smarts you need to know about real estate".

An extensive number of researches had been carried out to study the significance and contribution of real estate to the nation (Usilappan, 2006). However, reviews of previous studies found out that there are very limited researches focusing on Islamic Real Estate management being conducted either at the international level or in Malaysia itself. It is a new knowledge exploration in the real estate management field. Apparently, the trend and demand for Islamic-based product and services have shown a significant increase among the society from local and abroad.

Hence, this study addresses the problem and issues in managing inheritance property in Malaysia in order to find the practical alternative solutions to the problem. The paper will also propose a framework for Islamic Real Estate management in order to have an effective and efficient practice in this field. However, this study will only focus on describing the most prominent issues and challenges faced by clients and will dwell on property inheritance classified as small estates. Comprehensively, the main focus of this study refers to the context of inheritance property of a deceased person or in Malay language known as "harta pusaka" or "pesaka".

Estate administration of Muslim's Estate in Malaysia: A small estate is defined as an estate consisting wholly or partly of immovable properties not exceeding the amount of RM600,000 and the Authority that has the power and jurisdiction to hear such cases are the land office under the small estate (distribution) Act, 1955. The small estate (distribution) Act, 1955 is general in its applicability whereby it is applicable for Muslims and Non-Muslims alike (Almaamun, 2010). However, recent amendments were done to the small estate (distribution) Act 1955 in 2009 which transformed majority of unclaimed estates as small estate.

If a Muslim dies intestate (without a wasiat or wil), his beneficiaries must take several steps before they can benefit from the inheritance. Distribution of the proceeds for an intestate estate may take 1 or 2 years or longer. When there are obstacles such as the failure of

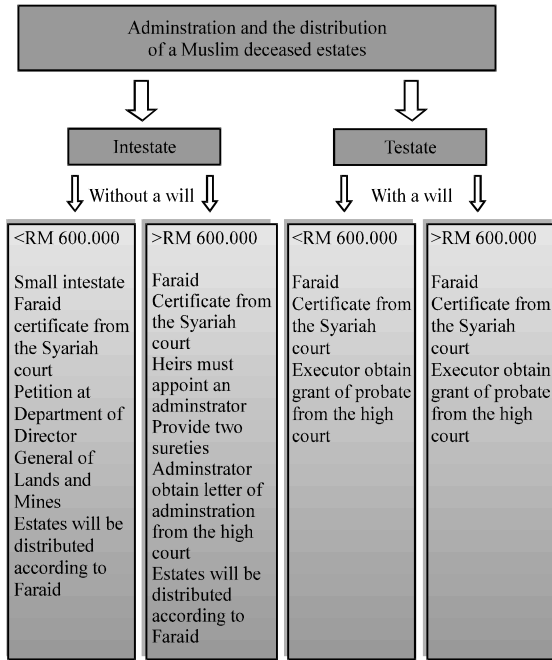


Fig. 1: Administration and the distribution of a Muslim Deceased's Estates in Malaysia (Almaamun, 2010)

beneficiaries to agree on the choice of administrators or the inability of administrator to provide adequate sureties it could be longer. Until all these legal requirements are met the estate of the diseased would remain frozen. (Almaamun, 2010).

The administration and distribution of a Muslim deceased's estates in Malaysia is shown by Fig. 1. The process starts with the determination of whether the deceased died intestate or testate. Small intestate matters will be handled by the Department of Director General of Lands and Mines after a petition is lodged by any person claiming to have an interest in the estate (INCEIF, 2006; small estates (distribution) Act 1955 (Act 98). When there is a wasiyyah left, the administration and distribution of an estate <RM600.000 goes to the high court. For estates valued >RM600.000 regardless whether the deceased died intestate or testate have to go through the high court. The difference between both is that an executor is required to obtain grant of probate while an administrator is required to obtain letter of Administration. In the absence of a wasiyyah, heirs must provide two sureties for the estates valued >RM600.000 (Almaamun, 2010).

The Syariah court in this matter only has rights to determine the eligible heirs and certify their shares by issuing inheritance certificate (Administration of Islamic Law (Federal Territories) Act 1993 (Act 505). As shown in

Fig. 1, Amanah Raya Berhad (ARB) has an authority to administer the movable estate which the value is not >RM600.000 whether a person dies testate or intestate. Such estate has to go through different procedures depending on the value of the estate. If the value does not exceed RM50.000 in cash, ARB will issue order and deliver it to the heirs.

On the other hand if the value exceeds RM50.000 but <RM600.000, declaration will be issued and afterwards the assets will be pooled together. After the net estates of the deceased have been determined, ARB will proceed with the distribution according to Faraid (ARB, 2006; Monir, 2009).

Under Malaysian law, all assets of a dead person will be frozen upon the person's demise until there is valid probate granted by high court. Therefore, it is important to prepare the plan on how to distribute the assets before the demise in order to avoid assets from frozen. When a person dies intestate there may be a delay in unlocking his estate's frozen assets due to one or more of the following reasons choosing an administrator, identifying, locating and valuing the assets of the estate, finding two sureties. Thus, there will be delay in distribution the estate to the beneficiaries since this process could take 2-8 years and in between, family contentions could occur. In complex situation, longer period is needed possible takes >10 years to solve the frozen assets. Worst, the estate may remain in a frozen state forever.

Even though, there is bad circumstances the individuals tend to face if they do not plan on how to manage and distribute their assets after they die. Unfortunately, many Malaysians still do not have a will. Muslim people are supposed to prepare the plan from wealth distribution through Islamic estate planning. The estate planning should be prepared for two elements of times: planning and coordinating of wealth distribution before the death and planning upon the death. Thus, it is not surprising if one of the recent issues involving Islamic wealth distribution and management field is about frozen assets.

MATERIALS AND METHODS

The research methodology is through identifying and reviewing the issues on existing related literatures in managing inheritance property in Malaysia from various dimensions such as law perspective, Islamic and conventional studies. Contents analysis approach, a type of secondary data approach was applied in this study.

RESULTS AND DISCUSSION

Proposed framework which refers to conceptual framework is designed based on the previous research with respect to estate administration and distribution towards effective and efficient management of property inheritance in Malaysia. These previous researches are beneficial in developing a framework of Islamic Real Estate management for property inheritance where the author had proposed the framework based on several concepts of estate planning and management including from the Islamic viewpoints (Shariah compliant).

Estate planning and management: The word 'governance' or 'manage' means to control, administer and organize. The word "management" means to manage a business or management, custody or control of operations. The word also means the administration or management or care and nurture of a matter or matters so that it becomes a good and proper in accordance with law or regulations. In other words, management can be defined as the implementation of policy decisions and completing objectives. Therefore, the combination of the words 'property management' or 'estate management' means the description of the property including management, maintenance, organizing, controlling and planning to develop the property in the future according to the rules and laws that have been set.

Property is one of the basic needs of human life. Therefore, any property should be taken care of and should not be misused by the owner. In Islamic and civil law, property owners are encouraged to manage their property in order not to cause any problems either to the owners or the public. In the Islamic view, Al-Quran condemns stinginess, missing, wastefulness, selfishness, non-charity or illegal spending. Property management or estate management is very important to ensure the above following:

- To ensure outstanding property is active in various sectors of life to enable the development of the property and its widespread and comprehensively use
- To provide encouragement to Islamic wealth that will expand the scope of circulation of property, so it can be enjoyed by all people wisely
- To find a certain alternative which avoid difficulties that will boost an economic activities

Conventionally, the terms of estate planning and management are used to refer to the accumulations,

conservation and distributions of assets (Almaamun, 2010). The universal purpose of the estate planning process is to boost and preserve the financial welfare of individuals and their families (Almaamun, 2010). Estate planning includes not only the provision that are made for the devolution of a deceased's property at death but also those steps that should be taken to augment general family wealth and security while the people are still alive.

From the others view, a concept of management according to Kinicki and Williams (2003) stated that a management has four functions, i.e., Planning (P), Organizing (O), Leading (L) and Controlling (C). These four management functions are called management processes and the abbreviation for this term is referred to as "POLC". All these functions affect one another are ongoing and are performed simultaneously.

Proposed framework: Based on the several concepts of planning and estate management above the author had proposed a conceptual framework prior to the management of property inheritance and two related laws as a physical framework, i.e., civil and Islamic or Shariah laws according to Malaysian contexts.

The action of freezing or monopoly is abusing the law and regulations of legislation because doing so may cause a variety of negative symptoms and disasters on society and the state. Hence, the accurate and precise management method of the property is to ensure the passage of property occurs in a good and harmonies way. Thus, the inherent value of the property can be maximized through the direct use of land or investments. This will produce an increase in the standard of living among community or the state (Y.Bhg. Dato' Mat Noor bin Nawi, Deputy Secretary General of the Treasury (Policy) Malaysia in 2014 (Fig. 2).

According to Monir (2009) there is a conflict between the secular legal system and the Islamic religion in the country's legislation and any changes in the federal constitution for the improvement of land law are not easy to achieve but the law of the land should be improved so that it will be more compatible if not fully to the Shari'ah requirements. This is simply because the benefit of property inheritance has been proven during the past years in the context of socio-economic development (Monir, 2009). Since, the outcome of the development, land has given significant contribution towards the socio-economic development of people. Property inheritance should have suitable management framework as a guideline for better real estate management of properties in improving quality of life for Muslim community.

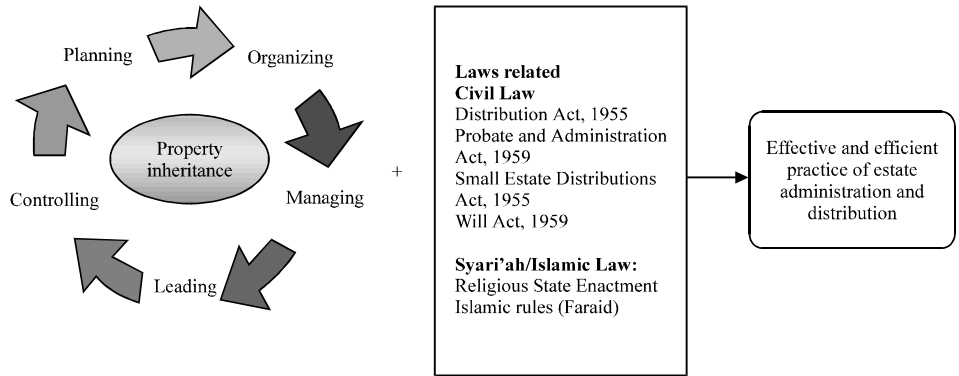


Fig. 2: A conceptual framework of Islamic Real Estate management for property inheritance

CONCLUSION

This study is a part of an on-going study that proposes to develop a framework for Islamic Real Estate management for managing property inheritance in Malaysia. The development of Islamic Real Estate management framework focusing on inheritance property is seen as a new contribution to the body of knowledge and as an alternative solution for problems and issues associated with the estate administration and distribution in Malaysia. It also offers a wide range of knowledge exploration for practitioners and academicians in the real estate field.

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