

## Understanding the Roles and Responsibilities of Administrators in Managing Muslims' Estates in Malaysia

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**Abstract:** In Malaysia, the systems of law governing Muslims inheritance are governed by Islamic law or “hukum syarak”, some of which are codified in the state enactments. In 2013, statistic reveals that a total of RM66.6 billion worth of assets and property left behind by the deceased remained unclaimed due to poor administrative procedures in the distribution of estates to the rightful Muslim heirs. One of the causes of unclaimed distribution of property which has been identified is public confusion on the different roles and responsibilities of certain bodies and institutions such as High Court, Syariah Court, land administrator and Amanah Raya Berhad (ARB). Thus, the appointment of certain bodies or persons as administrators could be a crucial part in the administration of Muslims property because they are responsible for collecting, maintaining and protecting the deceased's estate pending on the final distribution. This study mainly aims to discuss the roles and responsibilities of administrators and identify some legal issues relating to administrators in managing estate of deceased Muslim in Malaysia. It seeks to provide some useful input or guidelines to the public, some related institutions and the policy makers in formulating and implementing the relevant laws in the Islamic estate administration.

**Key words:** Administrator, faraid, muslim's, estates, Malaysia

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### INTRODUCTION

Faraid or Islamic law of inheritance has a clear policy and it is comprehensive in nature because it is a commandment from Allah SWT who knows all things. Faraid principles are intended to facilitate distinctive Islamic conception of property, family, community, empowerment and justice (Sait and Lim, 2006). It protects the rights of heirs with predetermined fixed entitlements of eligible heirs. Therefore, it has to be respected and implemented to meet their divine objectives in faith-based societies. Nevertheless, the process of distributing the property by way of faraid in many cases is time consuming, complicated and costly (Buang, 2007). According to the Deputy Head of Syariah Advisory Division of the Attorney General's Chamber, Haji Mahamad Naser bin Disa in his paper presented at the Convention on Planning and Managing Wealth in Islam 2010, wealth of Muslims worth over RM40 billion could not be distributed to the rightful heirs because of the lack of concrete and uniformed laws, concerning Islamic trusts and inheritance, compounded matters over the administration and the management of properties left by

Muslim deceased. In 2013, statistic reveals that some RM66.6 billion worth of assets and property left behind by the deceased remained unclaimed and unsolved (Utusan Malaysia (2013, September 11) RM66 Billion Tidak Dituntut. Retrieved from: [http://ww1.utusan.com.my/utusan/Dalam\\_Negeri/20130911/dn\\_15/RM66-bilion-tidak-dituntut](http://ww1.utusan.com.my/utusan/Dalam_Negeri/20130911/dn_15/RM66-bilion-tidak-dituntut)). These unclaimed assets include movable and immovable property such as houses, land, unclaimed money in various institutions such as Employees Provident Fund, Tabung Haji, Amanah Raya Berhad (ARB) and many more. Consequently, there has been a big increase in the figure of unclaimed assets over the years and this shows the seriousness of problems in the administration and distribution of Muslims estate. According to the Director General of Institute of Islamic Understanding Malaysia (IKIM), Prof. Datin Dr. Azizan Baharuddin (A text of speech was read by Deputy Director of IKIM, Dr. Mohd Zaidi Ismail during the opening ceremony of 'Faraid and Inheritance Planning Seminar: Frozen Assets Issues and Solutions in Malaysia in 29 March 2016 at the Dewan Besar IKIM.) the faraid system is not a factor causing the issue of unclaimed or frozen assets in the country

because a lot of research showed that the problem was contributed by various factors such as lack of awareness on the importance of inheritance planning among Muslims, ignorance of the heirs in following the required procedures, fraud and disputes among the heirs. Factors contributing to this problem are due to the limitation in the judicial power of the Syariah Court (Awang, 1998; Buang, 2008; Mahamood, 2006), absence of a written inheritance code (Mahamood, 2006), poor administrative procedures in the distribution of estates to the rightful Muslim heirs, statutory limitations (Disa, 2009), complexity of law (Azmi and Mohammad, 2015), existence of various jurisdictions in the administration of estate (Mujani *et al.*, 2011), no uniformity between Islamic laws in all states (Noordin *et al.*, 2012), overlapping powers of the Civil High Court and Syariah Court (Awang, 1988; Rashid and Yaakub, 2015), the attitude of legal heirs, lack of knowledge and weaknesses of law (Rashid and Yaakub, 2015).

In Malaysia when a person dies, his all assets will become his estate and are frozen. Thus, upon death, the next of kin of the deceased must apply for Letters of Administration in the case of intestate estate. If there are landed properties and the total value of the estate is <RM2 million, the application should be made to the land administrator. The application also can be made to Amanah Raya Berhad if the total value of the estate is <RM600,000. However if the total value of the estate is >RM2 million, an administrator will be appointed by the Court to administer the estate of a deceased person. The administrator is responsible to distribute a deceased person's estate when the deceased died intestate and he must follow the faraid law (Islamic inheritance law). Additionally, it can be seen that the administrator plays a great role in the administration and distribution of the Muslim's deceased estate because he or she is responsible to collect, manage and safeguard the deceased's estate pending on the final distribution. For Muslims there is public confusion on different roles and functions of the administrators because several bodies and agencies involved in the distribution of Muslim's estate (The Star. (2010, July 17). RM40 Billion in Assets Stuck. Retrieved from: <http://www.thestar.com.my/story/?file=%2F2010%2F7%2F17%2Fnation%2F6686295>). For that reason, a study will be conducted to examine the roles and responsibilities of administrator in the distribution of the Muslims estate by referring to the relevant laws applicable in Malaysia. The purpose of this study is to increase awareness and understanding among the society on the important roles and responsibilities of administrators in the distribution of Muslims estate.

## **ADMINISTRATION AND DISTRIBUTION OF MUSLIM'S ESTATE**

The word "estate" refers to the property of a deceased person or in Malay word known as "pesaka" or "pusaka". Estates of a deceased are of two types namely testate and intestate. A testate estate is an estate of a deceased person who dies leaving a valid will whereas an intestate estate is the estate of a deceased person who dies without leaving a will. Intestate estate may be divided into two categories, namely small estate and non-small estate (Table 1).

In Malaysia, the main statute that governs the law and procedure for the administration of estates in Malaysia is the Rules of Court 2012 (PU (A) 232/2012) which has come into force on 1 August 2012 where the 1980 High Court Rules and the 1980 Subordinate Court Rules have been merged into one common set of rules. The aim of the new Rules of Court 2012 is to facilitate and standardize civil case procedures in court as well as to improve the quality of the justice system in the country. In west Malaysia, the procedural rules on applications for grants of probate and letters of administration of the estate of a deceased persons and powers of executors and administrators are found in the Probate and Administration Act 1959 (Act 97) (Marican, 2008). The Probate and Administration Act 1959 emphasizes on the administration of non-small estate matters, provided that the deceased died testate and the value of the estates is more than RM 2 million. Other relevant statutes are the Small Estates (Distribution) Act 1955 (Act 98) and the Public Trust Corporation Act 1995 (Act 532). The Small Estates (Distribution) Act 1955 was designed to deal with the administration and distribution of small estates of deceased person namely where the total value of the estate, comprising movable and immovable property, does not exceed RM 2 million. The statute is a statute of general application which applicable throughout the country, to both Muslims and non-Muslims in Malaysia. The administration and distribution of small estates is within the jurisdiction of the collector or land administrator. The Public Trust Corporation Act 1995 underlines the laws relating to the Public Trustee and Official Administrator, to provide for the vesting of property, rights and liabilities of the Public Trustee and Official Administrator in a company. The Act also empowers Amanah Raya Berhad to administer the deceased's estate in its capacity as an administrative body.

**Four main bodies or institutions involved in the administration and distribution of muslims' estate: In**

Table 1: Administration and distribution of Muslim states

Small estate	Non-small estate
<p>The distribution of small estate is provided in the Small Estates Distribution Act 1955 (Act 98). Section 3 (2) of the Small Estates (Distribution) Act 1955 defines a small estate as the assets of the deceased consists in whole or in part is immovable property located in any state and the total value of not more than RM2 million on the date of application made (From 1 September 2009) An application for distribution of estates is made to the land administrator</p>	<p>Non-small estate refers to assets of a deceased person that exceeds RM2 million in total value in which letters of administration must be applied to the High Court for administration purposes. For Muslims, they also are bound to apply for the distribution of non-small estates to the High Court. On the other hand, the laws on the distribution of Muslims' property still the Islamic law</p>

Malaysia, there are four main authorized bodies which were initially engaged with the administration and distribution of Muslims' estate such as Syariah Courts, Civil High Courts, land office and Amanah Raya Berhad (ARB).

**Land administrator:** The land administrator is given the power and authority in dealing with the administration and distribution of small estate matters. The Land Administrator of a district in which the greater part in value of the property is situated shall have exclusive jurisdiction to deal with the distribution and administration of the whole estate wherever situated. (Section 4(2) of the Small Estates (Distribution) Act 1955) Petition for distribution of small estate begins when it is lodged by any person claiming to have an interest in the estate as a beneficiary or a creditor or a purchaser or the Penghulu or a Settlement Officer of the district or locality in which any land of the deceased is situated or the Official Administrator (Corporation) (Section 8(1) of the Small Estates (Distribution) Act 1955). In distributing the asset, the land administrator shall take into account the five categories of religious or customary laws (i.e., Muslim law, Adat Perpatih, the civil law, the native law of Sabah and the native law of Sarawak) which applicable to the distribution of the deceased estate, then he may distribute the estate in the manner provided for by the agreement unless it appears to be unjust or inequitable (Marican, 2008). If the deceased is a Muslim, the land administrator will conduct an inquiry and will require the applicant to obtain a "sijil faraid" (inheritance certificate) from the Syariah Court. The land administrator shall have exclusive jurisdiction to order distribution of the estate and he is given the power to grant letters of administration to such person as he shall think fit, subject to such security as he may require and may in his discretion dispense with security.

**High court:** Article 74 (1) of the Federal Constitution read with Ninth Schedule Paragraph 4 (e) (i), provides that the Civil High Court has the jurisdiction to deal with the procedural aspects relating to succession, testate and intestate, probate and letters of administration. Moreover, section 24(f) of the Court of Judicature Act, 1964 provides

a specific civil jurisdiction of the High Court where it empowers the court to grant probates of wills and testaments and letters of administration of the estates of deceased persons leaving property which involved two types of representative, namely executor and administrator. Therefore, the application for a grant of probate and letters of administration should be filed at the High Court and governed by Order 71 and 72 of the Rules of Court 2012 which regulate the law for non-contentious and contentious probate proceedings respectively.

**Syariah court:** Syariah court is governed by the Administration of Islamic law enactments or Administration of the Religion of Islam. As regards to the deceased Muslims' estate, Syariah court only deals with minor jurisdiction such as determine the shares allotted to the beneficiaries under Islamic law and issue 'Sijil Faraid' upon the request of the civil court and the Land Office or of any person claiming to be a beneficiary or his representative (Oleh, 2013). In Federal Territories, for example Section 50 of the Administration of Islamic Law (Federal Territories) Act 1993 provides that.

If in the course of any proceedings relating to the administration or distribution of the estate of a deceased Muslim, any court or authority, other than the Syariah High Court or a Syariah Subordinate Court is under the duty to determine the persons entitled to share in the estate or the shares to which such persons are respectively entitled, the Syariah Court may, on the request of such court or authority or on the application of any person claiming to be a beneficiary or his representative and on payment by him of the prescribed fee, certify persons who are entitled to share in the estate and as to the shares to which they are respectively entitled. the facts found by it and its opinion as to the persons who are entitled to share in the estate and as to the shares to which they are respectively entitled.

In applying the sijil faraid, the applicant shall make a request by letter, stating the names of the beneficiaries and their relationship to the deceased or the land administrator or the solicitor acting for the beneficiary. Previously, Syariah Court would only rely on the facts stated by the applicant which are not even under oath and

calculates the share each beneficiary is entitled to. Requests are made by letter, stating the names of the beneficiaries and their relationship to the deceased, sometimes by the Land Administrator and sometimes by the solicitor acting for the beneficiary. As a consequent, the facts submitted to him may not be true or only partly true. Presently, the application should be supported by sworn affidavits. The purpose is to ensure that no beneficiaries are excluded and they get their rightful share. However, it is doubtful whether all beneficiaries could be identified correctly or not in the affidavits because there is no link with the national registration office (Azmi and Mohammad, 2015).

**Amanah Raya Berhad (ARB) :** Amanah Raya Berhad or Public Trust Corporation is a Government-owned corporation (Section 10(3) of Trust Companies Act 1949). It is provided that if a court, the government of Malaysia or a person within or outside Malaysia has power to appoint, inter alia, a trustee, executor administrator or any other appointment of a fiduciary nature, ARB may be so appointed (Section 11(1) of the Public Trust Corporation Act 1995) Section 13(1) and (2) of the Probate and Administration Act 1959 provides that Amanah Raya Berhad has the power to act as an executor or administrator either alone or jointly with any person or body of persons. Moreover, Section 17(1) of the Public Trust Corporation Act 1995 gives the power to Amanah Raya Berhad to directly administer the estates of a deceased who dies leaving only movable property in Malaysia whether testate or intestate of which the total value of the estate below RM600, 000. Based on the above discussion, the High Court has the jurisdiction to deal with the procedural aspects relating to succession, testate and intestate, probate and letters of administration while Syariah Court only deals with minor jurisdiction such as determine the shares allotted to the beneficiaries under Islamic law and issue 'Sijil Faraid' upon the request of the High Court and the Land Office. Subsequently, Muslims have to go to both of courts i.e Syariah and Civil Courts for claiming the estate of a deceased person. However, if there are landed properties where the total value of the estate is less than RM2 million, the land administrator is given the power and authority in dealing with that matters. Nevertheless, Amanah Raya Berhad (ARB) has the power to directly administer the estates of a deceased who dies leaving only movable property in Malaysia whether testate or intestate of which the total value of the estate below RM600, 000. Normally these type of applications involved a summary jurisdiction whereby an order for distribution would be made straight away. On the contrary, where the total value of the estate

is more than RM2 million, the application must be made to the High Court. In the same way, if there is contentious matters regarding the deceased's estate, the beneficiaries may apply to the High Court irrespective of the value of the estate.

As a result, the existence of various jurisdictions in the administration and distribution of the estate lead to overlapping powers and duties and as a consequence create public confusion on the different roles and functions of each body (The Star. (2010, July 17). RM40 Billion in Assets Stuck. Retrieved from: <http://www.thestar.com.my/story/?file=%2F2010%2F7%2F17%2Fnation%2F6686295>). For instance, rural communities usually have limited knowledge due to lack of information from mass media. Consequently, the estate management system become less effective as people get confused about where they should start the application. Another essential point, non-compliance by certain bodies or institutions to their respective jurisdictions also cause difficulties for the beneficiaries who rely on the information given to them either by the institution or other interested parties (Halim and Mohd, 2015). In this, situation the beneficiaries have to bear higher costs in terms of fees or costs should not be imposed for the purpose of managing the estate of the deceased.

#### **DIFFERENCES BETWEEN EXECUTOR, ADMINISTRATOR, PERSONAL REPRESENTATIVE AND TRUSTEE**

**Executor:** Executor is a person appointed by will to administer the property of the testator and to carry into effect the provisions of the will. In other words, an executor is a person appointed by a testator to carry out the directions and requests in his will and to dispose of the property according to the testamentary provisions after his death.

Section 2 of the Probate and Administration Act 1959 defines executor as a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided and includes a person deemed to be appointed executor as respects settled land. In addition, section 2 of Civil Law Act 1956 defines executor as: The executor or administrator of a deceased person and includes as regards any obligation, any person who takes possession of or intermeddles with the property of a deceased person.

**Administrator:** Section 2 of the Probate and Administration Act 1959 defines "administrator" as A person to whom administration is granted. In other words, an administrator is a person appointed by the

Court to administer the estate of a deceased person. The difference between executor and administrator is an executor is required to obtain Grant of Probate while an administrator is required to obtain Letter of Administration.

**Personal representative:**Section 2 of the Probate and Administration Act 1959 defines as: “Personal representative” as the executor original or by representation or administrator for the time being of a deceased person and as regards any liability for the payment of death duties includes any person who takes possession of or intermeddles with the property of a deceased person without the authority of the personal representatives or the Court.

In brief, personal representative is executor in the case of testate estate or administrator in the case of intestate estate. The difference between executor, administrator and personal representative is based on the nature of their appointment (Halim and Mohd, 2014). In the case of *United Asian Bank Bhd v Personal Representatives of Roshammah (decd)* [1994] 3 MLJ 327, it was held that the executors and administrators are collectively described as personal representatives of deceased’s estates and O 8 r 14 of the Subordinate Courts Rules 1980 indicates that proceedings may be initiated against a person appointed to represent the estate.

**Trustee:** According to the Trustee Act 1949 (Act 208) there is no specific interpretation on the word ‘trustee’. Nevertheless, Section 2 of the Specific Relief Act 1950 (Act 137) defines trustee to include ‘every person holding, expressly, by implication or constructively, a fiduciary character.’ According to Oxford Dictionary of Law, trustee is a person having nominal title to property that he holds for the benefits of one or more others, the beneficiaries. Trustee may be individual or corporate bodies and may include judicial trustee, custodian trustee and the Public Trustee.

#### **THE APPOINTMENT, POWERS, DUTIES AND RESPONSIBILITIES OF ADMINISTRATOR AS PERSONAL REPRESENTATIVE**

The appointment, powers, rights and duties of administrator as personal representative are provided under the Probate and Administration Act 1959 (hereinafter referred to as “PAA”). Basically, in intestacy, no one has the authority to act on behalf of the estate until he or she has obtained letter of administration from the court and the principle applies to both Muslims and non-Muslims (Marican, 2008). For example, in

non-contentious proceeding, the application for letter of administration must be filed by a petition in originating summons in Form 6 and shall be supported by an affidavit in Form 159 and any other information and/or documents as the Registrar may require (Order 71 rule 5 of Rules of Court 2012). The petition is usually filed by a beneficiary who has priority over other beneficiaries and consents from all beneficiaries is required. The court has a discretion as to whom the letter of administration is to be granted. Section 30 of the Probate and Administration Act 1959, provides that in granting administration the Court shall have regard to the rights of all persons interested in the estate of the deceased person or in the proceeds of sale thereof. The proviso to the section reads: “Provided that, where the deceased died wholly intestate as to his estate, administration shall, if application is made for the purpose, be granted to some one or more of the persons interested in the residuary estate of the deceased, unless by reason of insolvency of the estate or other special circumstances the Court thinks it expedient to grant administration to some other person”.

Under Section 13(2) of the PAA, it is provided that, administration may be granted to any trust corporation either solely or jointly with another person and the corporation may act as administrator accordingly. Moreover, Section 21 of the PAA provides that no representation shall be granted to a person of unsound mind (Section 2 of the Probate and Administration Act 1959 (PAA) defines “person of unsound mind” means; a) a person found under section 10 of the Mental Disorders Ordinance 1952 (Ord. 31 of 1952), to be of unsound mind and incapable of managing himself and his affairs; b) a person certified insane by a medical practitioner and by an Asylum Medical Officer under section 4 of the Lunatics Ordinance of Sabah [Cap. 74]; and c) a person found under section 5 of the Mental Health Ordinance 1961 of Sarawak (Ord. 16 of 1961) to be of unsound mind and incapable of managing himself or his affairs and includes any other person of unsound mind incapable of managing himself or his affairs) or lunatics. Furthermore, the representation shall not be granted to a person while he is minor (Section 20 of the PAA 1959). Under section 2 of the Age of Majority Act 1971, a person’s minority ceases at the age of 18 years and this age shall be considered as the age of majority to every male and female. However, under the Trustee Act 1949, the property can only be vested in a person (as trustee) at the age of 21 years unless he has married at a younger age. (Section 36(2) of the Trustee Act 1949) The representation shall not be granted to more than four persons in regards to the same property. (Section 4(1) of the PAA 1959).

If the beneficiaries of the estate include a minor or a unsound mind person, letter of administration shall be granted either to a trust corporation or to not less than two individuals (Section 4(2) of the PAA 1959). The administrator also may expressly renounce his right to the representation. It may be made orally by the person renouncing or his advocate, on the hearing of any petition or probate action or in writing signed by the person so renouncing and attested either by an advocate or by any person before whom an affidavit may be sworn. (Section 8(1) of the PAA 1959) If one of the executors or administrators dies, the representation of the estate shall accrue to the surviving executors or, except in cases to which section 4 of the PAA applies, administrator or administrators. (Section 14(1) of the PAA 1959) It should be noted that the administrator is also entitled to a commission for his service. Section 43 of the PAA 1959 provides that: "The Court may at its own discretion allow administrators a commission not exceeding five per centum on the value of the assets collected by them".

According to Halim and Mohd (2015) there are several powers of personal representative in managing and preserving the deceased's estate. These powers are as follows:

- Power to dispose of property Section 60 of the PAA
- Power to enter into a contract Section 71(1) of the PAA
- Powers of personal representative as to appropriation Section 74(1) of the PAA
- Power of assent or conveyance by personal representative Section 72 of the PAA
- Power to appoint trustees of minor's property Section 75 of the PAA
- Power to postpone distribution Section 77 of the PAA

Furthermore, Section 68 of the PAA provides several duties of personal representative in the case of intestate property. The duties can be summarised as follows:

- To hold the immovable property of the deceased on trust subject to the right of sale
- To hold the movable property on trust, to call in and convert into money such part of it as shall not consist of money
- To postpone the sale and conversion for such a period as the personal representatives without being liable to account
- To pay all such funeral, testamentary and administration expenses, debts and other liabilities of the estate

- Where estate are held on trust, the personal representative may invest the residue of the assets as may not have been distributed

It should be highlighted that before a letter of administration can be granted, the administrator has to provide security or administration bond in Form 162 and the signature of the administrator and any surety shall be attested by a Commissioner for Oaths (Order 71 rule 34, Rules of Courts 2012). Section 35(1) a) of the PAA provides that the administrator is required to provide an administration bond as a form of security for the due administration of the estate. The purpose of administration bond is to prevent the deceased estate from being misappropriated or misused by the administrator who may abscond with the estate and this may ensure the administrator performs and exercise his powers and duties in the best interests of the beneficiaries.

The administration bon shall be in the prescribed form by grantee and two guarantors or sureties and the amount shall be based on the gross estate value of the deceased but the court may for sufficient reason increase or decrease the number of sureties or dispense with them and may reduce the amount of the bond. (Section 35(2) of the PAA) Nevertheless, according to Order 71 rule 34 (3) of Rules of Court 2012, a surety is not required if a trust corporation is appointed as the administrator (as per Section 35(3) b) of the PAA) or the gross value of the estate does not exceed RM50,000 (as per Section 35(1) (b) of the PAA). Furthermore, where the administrator is the sole beneficiary of the estate sureties in the bond may ordinarily be dispensed with by the Registrar. (Section 35(4) of the PAA) When all the requirements have been fulfilled, the Court will grant the Letter of Administration and the administrator shall have the authority to manage the deceased's estate and distribute the estate to the beneficiaries in accordance with faraid. In comparison with the administration under the Small Estate (Distribution) Act 1955, no administration bond is required for the land administrator or Collector. Under the Act, the land administrator has exclusive jurisdiction to deal with the distribution and administration of intestate small estates. Likewise as mentioned previously there is no security shall be given if Amanah Raya Berhad (ARB) or Trust Corporation registered under the Trust Companies Act 1949 is appointed as an administrator. On the other hand, Hamzah pointed out that after the grant of letter of administration the court has no jurisdiction to supervise or monitor the actions taken by the administrator in distribution of the estate particularly

movable property such as cash and funds. As regards to the immovable property, Section 60(4) of the PAA provides that.

**An administrator may not without the previous permission of the court:**

- Mortgage, charge or transfer by sale, gift, exchange or otherwise any immovable property situate in any State and for the time being vested in him
- Lease any such property for a term exceeding 5 year

Halim and Mohd (2014) states that although the act done by the administrator relating to the immovable property is subject to the leave from court, the restriction is not obligatory as the word 'may' is used rather than 'shall' or 'must'. Hence, there are great possibilities that the administrators may misuse their powers and misappropriate the deceased's property. As a consequence, the legal rights of the beneficiaries are violated and the distribution of the deceased's property could not be properly managed and resolved. For that reason, there must be specific rules and regulations or mechanisms in order to prevent the administrator from breaching his duties and obligations and to ensure the objective of appointing him as a trustee will not defeat the purpose (Hassan and Rashid, 2014). For instance, Halim (2012) opine that the law should introduce the on-going supervision approaches by certain bodies such as the judiciary or by independent regulator. In managing the estate, the administrator stands as a trustee who holds a fiduciary duty which means that he is regarded by law to be a person who has undertaken an obligation of loyalty to the beneficiaries and is bound to put that other person's interest before his or her own which gives rise to a relationship of trust and confidence (Halim and Mohd Noor, 2014). The administrator is required to protect the rights and interests of the beneficiaries and must act honestly and in good faith. Furthermore, before beginning his duties the administrator is also required to take an oath in Form 161 in accordance with Order 71 Rules 33 Rules of Court 2012 which constitutes as an acceptance that he or she will administer the deceased's estate by paying his debts and distributing the residue of the estate and effects according to law and will render a just and true account of the administration when lawfully required to do so. As a result, if he fails to administer the estate in an orderly and proper manner, he may be criminally liable for an offence under section 199 of the Malaysian Penal Code (Halim and Mohd, 2014). As well as, section 66 of the Probate and Administration Act 1959 provides that a personal representative will be liable if he wastes or converts to his own use any part of the deceased's estate. If he dies such liability shall extend to his personal

representative's personal estate. Where the administrator fails to administer the estate properly, he or she may be sued not only under civil action but could also be charged for criminal breach of trust under the Malaysian Penal Code (Halim and Mohd, 2014) and this should also be extended to the administration granted by the Land Administrator and Amanah Raya Berhad (ARB) as the personal representative in any case where he or she fails to discharge the office accordingly (Halim and Mohd, 2014). Moreover, the researcher claim that although the punishment under the present law may control the conducts of the personal representative but it is insufficient to remedy the estate beneficiaries. Additionally, the authors proposed that the punishment should be extended by depriving the personal representative of his own property through criminal forfeiture process in order to preserve the property rights of the beneficiaries.

For Muslims, although Islamic inheritance law or faraid is clearly stated in the Quran and Sunnah, there is no detailed elaboration on how the estate should be managed or administered (Awang, 1998; Mujani *et al.*, 1998). Nevertheless, the Quran has expressly mentioned on the concept of 'amanah' or trust which may be applicable to the administrator who is considered as a trustee in Islam and this can be supported by several verses in the Quran:

“Allah does command you to render back your trusts to those to whom they are due; and when you judge between man and man, that you judge with justice” And if one of you deposits a thing in trust a thing with another let the trustee (faithfully) discharge his trust and let him fear his Lord”. “O you, who believe, do not betray God and His Messenger and do not knowingly violate your trusts”

Therefore, the administrator is obliged with a great responsibility to manage the deceased property and protect the interest of the beneficiaries.

## CONCLUSION

Based on the above discussion, the rules and regulations governing administrators in Malaysia particularly Muslims involved a dual legal system and various administrative bodies and agencies. The existence of these entities has led to overlapping powers and duties and it may cause certain problems such as confusion on different roles and responsibilities of certain bodies and

agencies who involved in the distribution of deceased property. Moreover, due to the ineffectiveness and inefficiency of law and procedure some authors have proposed that there should a single body or organisation as administrator with single jurisdiction that is responsible to manage and distribute the deceased Muslims' estate in Malaysia (Dzafrun, 2009; Halim, 2012; Azmi and Mohammad, 2015). Thus, there should be an in-depth study in examining the effectiveness and adequacy of existing laws relating to administrators because they are considered as trustees of the deceased property and they play a crucial role in the administration and distribution of Muslims estate. Likewise, the administrator should play a greater role as competent and skilful person because they are manager of the deceased estate who are entrusted with certain legal duties and responsibilities.

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