

A LEGAL AND PROCEDURAL GUIDE TO ESTATE ADMINISTRATION FOR PERSONAL REPRESENTATIVES

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ABSTRACT

The personal representative's lack of knowledge in how to properly administer the deceased's estate has been attributed as one of the factors of delay in distributing the deceased's assets to the rightful beneficiaries. Thus, this paper aims to provide the guidelines to the personal representatives and the knowledge they may need in order to prepare themselves to be able to carry out their duties and obligations as the agents of the deceased. Several fiduciary duties of personal representatives are highlighted which are owed to the estate as well as to the beneficiaries. The technical process of administering a deceased's estate, from the identification of the estate heirs and assets to the distribution of the estate, and the relevant governing laws are also

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discussed. This paper employs library-based research by referring to past literature including journal articles and books, recent case laws and news articles to further support its claims. The paper highlights the differences between the jurisdictions of each relevant administrative body in estate administration. Findings also show that among the essential fiduciary duties of the personal representative are the duty to avoid secret profits, the duty to render proper accounts and the duty to avoid self-dealing. In addition to further efforts to strengthen public awareness in understanding the estate administration process, the article recommends that a system be devised by the courts to determine the ability and capability of the individual applying to be the personal representative of the deceased's estate in adequately handling the administration process before granting the letter of representation.

Keywords: Estate Administration, Personal Representatives, Beneficiaries, Fiduciary Duties and Accountability.

PANDUAN UNDANG-UNDANG DAN TATACARA PENTADBIRAN HARTA PUSAKA BAGI PENTADBIR

ABSTRAK

Ketidakhahaman wakil peribadi mengenai cara mentadbir harta pusaka si mati dengan betul telah dikenal pasti sebagai salah satu faktor yang menyumbang kepada kelewatan dalam pengagihan aset si mati kepada benefisiari yang berhak. Oleh itu, makalah ini bertujuan untuk menyediakan garis panduan kepada wakil peribadi serta pengetahuan yang mungkin mereka perlukan bagi mempersiapkan diri supaya dapat melaksanakan tugas dan kewajipan mereka sebagai ejen kepada si mati. Beberapa kewajipan fidusiari wakil peribadi diketengahkan, yang terhutang kepada harta pusaka serta kepada benefisiari. Proses teknikal pentadbiran harta pusaka si mati, bermula daripada pengenalpastian waris dan aset harta pusaka sehingga kepada pengagihan harta pusaka, serta undang-undang berkaitan yang mengawalinya turut dibincangkan. Makalah ini menggunakan kaedah penyelidikan berasaskan kepustakaan dengan merujuk kepada literatur terdahulu termasuk artikel jurnal dan buku, kes-kes terkini serta artikel berita bagi menyokong hujahnya. Makalah ini turut menyoroti perbezaan bidang kuasa setiap badan pentadbiran yang berkaitan dalam pentadbiran harta pusaka. Dapatan kajian juga menunjukkan bahawa antara kewajipan fidusiari utama wakil peribadi termasuklah kewajipan untuk mengelakkan keuntungan rahsia, kewajipan untuk menyediakan akaun yang sewajarnya, dan kewajipan

untuk mengelakkan urus niaga sendiri (self-dealing). Selain usaha lanjut untuk memperkukuh kesedaran awam dalam memahami proses pentadbiran harta pusaka, makalah ini mencadangkan agar satu sistem diwujudkan oleh mahkamah untuk menentukan keupayaan dan kebolehan individu yang memohon untuk menjadi wakil peribadi harta pusaka si mati dalam mengendalikan proses pentadbiran dengan sewajarnya sebelum pemberian surat kuasa perwakilan diberikan.

Kata Kunci: Pentadbiran Harta Pusaka, Pentadbir/wasi, Penerima Manfaat, Tanggungjawab Fidusiari dan Kebertanggungjawapan.

INTRODUCTION

Estate administration is the process of transferring the deceased's assets to the beneficiaries in accordance with the law. The process comprises three main elements, which are the collection of the deceased's debts and assets, settlement of outstanding debts that the deceased owed and the distribution of the deceased's assets to the beneficiaries. These tasks fall to the personal representative, a person or a body who is entrusted to take care of the estate under the law. As such, the personal representative plays a key role throughout the entire process from the beginning until the end, making them the backbone of estate administration. Their appointment is meant to safeguard the deceased's estate and ensure that the rights and interests of the beneficiaries are not jeopardised.¹

The term 'personal representative' is a general term for individuals who are either appointed as an executor whose authority is derived from the deceased's will, or as an administrator who is granted authority via a letter of administration. Section 2 of the Probate and Administration Act 1959 (henceforth referred to as "PAA 1959") elaborates on the definition of 'personal representative' as "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 regard to liability for payment of death duties. There

¹Nor Azlina Mohd Noor and Ahmad Shamsul Abd Aziz, "Empowering Personal Representatives' Statutory Duties in Administration of Deceased's Estates," *Environment-Behaviour Proceedings Journal* 7, no. S111 (2022): 15, doi:10.21834/ebpj.v7isi11.4167.

is no distinction in the roles and duties of an individual appointed in either capacity, only the manner in which they are authorised to administer the deceased's estate.²

Failure of the personal representative to adequately carry out their role and obligations may result in the delay of distributing the deceased's assets to the rightful beneficiaries. A delay too long may result in the deceased's assets being categorised as unclaimed assets. For instance, the deceased's frozen money in their bank account which has been dormant for more than seven years, would be transferred to the Registrar of Unclaimed Money.³ This should be avoided as the process to withdraw the money is more tedious than it would be if the money remained in the deceased's frozen account.⁴

Previous literature has attributed a factor of delay in administering an estate to the beneficiaries' lack of knowledge on how to properly handle the administration process.⁵ As such, this lack of knowledge should be a cause for concern. Approximately RM78 billions of unclaimed assets have been reported since 2022,⁶ some of which are owed to beneficiaries of estates who have not been given

²Muhammad Amrullah Drs Nasrul et al. "The Roles of the Personal Representative in Estate Administration in Malaysia," in *International Conference on Law, Environment and Society 2018*, 249. <https://doi.org/10.15405/epsbs.2019.10.27>.

³Halim, Akmal Hidayah, Rahmawati Mohd Yusoff, Azhani Arshad, Nor Azlina Mohd Noor, and Siti Khadijah Abdullah Sanek. "Unclaimed Estates in West Malaysia: A Legal Analysis and Reform Proposals on Non- Administered Estates." *IIUM Law Journal* 33, no. 2 (2025): 49.

⁴Muhammad Amrullah Drs Nasrul and Wan Noraini Mohd Salim, "Administration of Estates in Malaysia: Determinant of Factors Behind the Delay in the Distribution of the Deceased's Asset," *Journal of Nusantara Studies (JONUS)* 3, no. 1 (2018): 84, <https://doi.org/10.24200/jonus.vol3iss1pp75-86>.

⁵Rusnadewi Abdul Rashid and Noor Inayah Yaakub. "Masalah kegagalan dan kelewatan pengagihan harta pusaka di Malaysia." *Jurnal Intelek* 5, no. 2 (2010); Drs Nasrul and Mohd Salim, "Administration of Estates in Malaysia,"; Nik Rahim Nik Wajis et al. "Harta Tidak Dituntut: Punca Dan Kaedah Penyelesaiannya". *Malaysian Journal of Syariah and Law* 6 no. 1 (2018): 129-42. <https://doi.org/10.33102/mjsl.vol6no1.100>.

⁶Sivanisvarry Morhan, "RM78b in Unclaimed Inheritance," *The Sun*, last modified September 20, 2023, <https://thesun.my/malaysia-news/rm78b-in-unclaimed-inheritance-JE11511976>.

what they are due. In 2025, it was reported that RM65 billion in unclaimed assets were awaiting their rightful owners.⁷ To avoid such a fate befalling the estate of the deceased, the personal representative must have a proper understanding of how to administer the deceased's property in both its technical and legal aspects. Furthermore, the longer the deceased's estate is left undistributed, the more complex the process of succession will be, namely if there are deaths among the rightful beneficiaries. Simply put, a delay in administering the estate will inherently complicate the process of inheritance and succession and thus, the personal representative must take care to avoid such delay.

RESEARCH METHODOLOGY

This study employs a library-based research methodology by analysing published relevant journal articles and statutes governing the topic, primarily the PAA 1959 and the Trustee Act 1949. In discussing the various administrative bodies and their jurisdictions, specific statutes such as the Public Trust Corporation Act 1995, Small Estates (Distribution) Act 1955 and Courts of Judicature Act 1964 are referred to, among others. Case laws are also referred to and accessed through the legal database LexisNexis, with a heavy focus on cases between the years 2020 to 2025. Additionally, reference is also made to news articles citing the latest statistics of frozen assets in Malaysia.

LAWS GOVERNING THE ROLES AND DUTIES OF PERSONAL REPRESENTATIVES

In carrying out the process of estate administration, the personal representatives are bound by certain duties to perform. Certain powers are also conferred to allow them to perform their duties and obligations. There is no one specific and comprehensive statute providing these

⁷Sariha Mohd Ali and Mohd Nasruddin Parzi, "RM65 Billion in Unclaimed Assets, Cash Due to Lack of Inheritance Planning | New Straits Times," *NST Online*, last modified February 23, 2025, https://www.nst.com.my/news/nation/2025/02/1179219/rm65-billion-unclaimed-assets-cash-due-lack-inheritance-planning#google_vignette.

duties and powers.⁸ However, many of these duties and powers are found in the PAA 1959 and the Trustee Act 1949, in addition to case laws.

The PAA 1959 is an Act that governs the overall process of obtaining a letter of representation as well as the administration of the deceased's estate itself. However, several provisions in the statute outline certain duties and obligations of the personal representative. Section 68 provides some of the basic duties of the personal representative, namely to call in debts owed to the estate and to settle all of the estate's outstanding liabilities by utilising the property left in their trust.⁹ Additionally, the Act also confers powers to the personal representatives, such as the power to dispose of the property,¹⁰ power to appropriate the property as they may think fit to suit the purpose of the estate,¹¹ and the power to appoint trustees in charge of a minor's property.¹²

Further powers and duties of personal representatives may be found in the Trustee Act 1949. Some of the powers conferred by the Act include the power to sell the deceased's property,¹³ the power to employ agents,¹⁴ the power to concur with others,¹⁵ as well as the power to delegate trusts in the trustee's absence while abroad.¹⁶ Although the Act is primarily aimed at providing a regulatory framework for trustees in particular, the Act also provides an extension in the definition of trustees to include personal representatives.¹⁷ As such, the duties and obligations laid out in the Act are also applicable to and may also bind personal representatives.¹⁸ These duties and

⁸Siti Asishah Hassan and Rusnadewi Abdul Rashid, "The Legal Rights and Duties of Administrations and Executors of Deceased Muslims' Property in Malaysia," *The Social Sciences* 9, no. 2 (2014): 100.

⁹Mohd Noor and Abd Aziz, "Empowering Personal Representatives' Statutory Duties in Administration of Deceased's Estates," 17.

¹⁰Section 60 of the Probate and Administration Act 1959.

¹¹Section 74 of the Probate and Administration Act 1959.

¹²Section 75 of the Probate and Administration Act 1959.

¹³Section 16 and 17 of the Trustee Act 1949.

¹⁴Section 28 of the Trustee Act 1949.

¹⁵Section 29 of the Trustee Act 1949.

¹⁶Section 30 of the Trustee Act 1949.

¹⁷Section 3 of the Trustee Act 1949.

¹⁸Akmal Hidayah Halim and Nor Azlina Mohd Noor. "Fiduciaries in The Administration of The Deceased's Estate: The Two Distinct Capacities of

obligations include fiduciary duties such as the duty to render proper accounts and information, as well as other duties such as the duty to invest the assets of the estate and duty to distribute the assets of the estate to the beneficiaries.¹⁹

It is worth noting that the Public Trust Corporation, commonly known as Amanah Raya Berhad (ARB), is also authorised to act as trustee or executor under the Public Trust Corporation Act 1995.²⁰ The ARB may also obtain letters of representation from the High Court, similar to those of an individual personal representative. Additionally, the ARB may also summarily administer the movable property of a deceased's estate of which the gross value of the estate does not exceed RM600,000.²¹

RELEVANT ADMINISTRATIVE BODIES

Estate administration in Malaysia consists of several different administrative bodies to make the process work. Among the main bodies are the Estate Distribution Division, ARB, Civil High Court and Shariah Court. Although the number of administrative bodies involved in the administration process may seem intimidating, an understanding of each of the bodies may shed light on determining which body to go to and seek assistance from.

Amanah Raya Berhad (ARB)

ARB is a government-owned private corporation established in 1921 and corporatised in 1995 pursuant to the Public Trust Corporation Act 1995. ARB has jurisdiction to grant letters of representation and also possesses the unique capacity to act as personal representative of the deceased's estate, regardless of whether the estate left is testate or intestate.²² This is observed in the case of *Brian Lim Yen Wei & Ors v*

Personal Representatives and Trustees." *Legal Network Series* 1, no. 37 (2016): 8.

¹⁹Mohd Noor and Abd Aziz, "Empowering Personal Representatives' Statutory Duties in Administration of Deceased's Estates," 17.

²⁰Section 12(1) of the Public Trust Corporation Act 1995.

²¹Section 17 of the Public Trust Corporation Act 1995.

²²Section 17(1) of the Public Trust Corporation Act 1995.

Ng Geock Sin & Anor [2025] MLJU 3300, in which ARB was appointed by the High Court to act as the sole administrator of the estate following a consent judgement recorded in the first defendant's counterclaim for the estate to be properly administered.

As mentioned above, ARB has the jurisdiction to summarily administer immovable property amounting to less than RM600,000 through declarations. Additionally, ARB may issue direction orders for properties valued at less than RM50,000.

Estate Distribution Division

The Estate Distribution Division, also referred to as the Small Estate Distribution Section under the Department of Director General Land and Mines (JKPTG), hears petitions over small estates and receives sixty-five percent of the total applications for the distribution of estates in Malaysia, making it the top receiver of estate distribution applications out of all the administrative bodies involved.²³ This is due to the fact that the Estate Distribution Division has the jurisdiction to hear petitions over any movable or immovable property valued at RM5,000,000. Prior to the 2022 amendment that came into force on 15 July 2024, the maximum threshold for the value of small estates was capped at RM2,500,000, which also comprised only immovable property. Thus, such an amendment has widened the jurisdiction of the Estate Distribution Division and it is hoped that this will ease the burden on the Civil High Court. Furthermore, with the amendment in 2022, applications can be made anywhere within state boundaries, where previously families of the deceased were confined to district boundaries.

Section 8 of the Small Estates (Distribution) Act 1955 provides that the Land Administrator may only hear petitions over small estates that were left intestate. However, this provision only applies to non-Muslims, and Muslims are still able to lodge petitions to the Estate Distribution Officer regardless of whether the property is testate or

²³Norhazlina Ibrahim et al., "Navigating the Implications for Heirs: An Analysis of The Amendment to The Small Estate Act (Distribution) 1955," *Ulum Islamiyyah* 36, no. 2 (2024): 120, doi:10.33102/uij. vol36 no02.590.

intestate.²⁴ The Estate Distribution Officer has the exclusive jurisdiction to administer and distribute the property that falls within the purview of the Estate Distribution Division. In hearing petitions, the Estate Distribution Officer may grant letters of representation as well as distribute the estate. For Muslim decedents, the estate would be distributed in accordance with the rules of *faraid*, i.e., the law of distribution for Muslims according to the fixed portions prescribed in the Qur'an. Meanwhile, for non-Muslims, the distribution of the estate is governed under the Distribution Act 1958. Under the 2022 amendment, if the value of the deceased's estate amounts to less than RM600,000, a petition for summary distribution of the estate may be lodged without the need to pursue a trial.²⁵

Civil High Court

The Civil High Court is the main body that has the jurisdiction of granting letters of representation, be it grants of probate or letters of administration, as provided under Section 24(f) of the Courts of Judicature Act 1964. The proceedings in the High Court are governed by the Rules of Court 2012 and PAA 1959. Both contentious and non-contentious probate proceedings are heard at the High Court. In intestate cases, applications for letters of administration over large estates which constitute properties that exceed the value of RM2,000,000 fall under the High Court's jurisdiction. However, it is still possible for applications for letters of administration to be made even if the value of estate does not exceed the amount.²⁶ Applications for grants of probate in cases involving estates amounting to less than RM2,000,000 are also under the High Court's purview.

In *Lim Heng Chai & Ors v Lim Tian Choy* [2025] MLJU 3356, the High Court dealt with a deadlock in the administration of the estate, whereby the Plaintiffs sought the removal of the Defendant as co-

²⁴Khairatun Hisan Idris Shazali et al., "The Roles and Functions of JKPTG: The Contribution of the Estate Distribution Section (BPP)," *International Journal of Academic Research in Economics and Management Sciences* 13, no. 3 (2024): 254, doi:10.6007/ijarems/v13-i3/22092.

²⁵Section 8B (1) of the Small Estates (Distribution) Amendment Act 2022.

²⁶Fatin Afiqah Md. Azmi and Mohammad Tahir Sabit Haji Mohammad, "A Proposal for A Single Tribunal of Estates Distribution in Malaysia," *Jurnal Teknologi* 75, no. 10 (2015): 3, doi:10.11113/jt. v75.5261.

administrator. The Court found that there was sufficient cause to remove the Defendant, as the Defendant was largely uncooperative with his fellow administrators, refused to take necessary action to preserve the estate as well as act in the best interest of all the beneficiaries. This was critical as the estate had been under administration for well over forty-six years. This case illustrates only one of many contentious probate proceedings heard before the civil High Court.

Shariah High Court

Article 121(1A) of the Federal Constitution empowers the Shariah Court to decide over matters falling under the religion of Islam. The Shariah Court derives its jurisdiction to preside over matters relating to Muslim inheritance by virtue of the Ninth Schedule of the State List. For Muslim estates, before a grant of probate or letter of representation may be obtained at the Civil High Court, the family of the deceased must first apply for a *faraid* certificate in the Shariah Court. The jurisdiction of the court varies with the value of the property that is to be distributed - if the total value of the property amounts to more than RM300,000, then the Certificate must be applied at the Shariah High Court. However, if the total value of the property amounts to less than RM300,000, the family of the deceased must go to the Shariah Subordinate Court. A *Faraid* Certificate is essentially a document that details the estate of the deceased, the legal heirs entitled to the deceased's estate as well as the apportionment of the estate each heir is entitled to, as seen in *Re Halimah bt Daud (the applicant; in the matter of application for faraid certificate to determine the beneficiaries and their entitlement)* [2014] 2 SHLR 63. This is an important piece of document that is often overlooked by the general public due to the lack of understanding of its significance. As per the Shariah High Court in the aforementioned case, a *Faraid* Certificate may only be issued once all the deceased's legal heirs and their rightful portions are determined.

Besides the issuance of such Certificates, the Shariah Court is also a highly important body for claims of jointly acquired property (*harta sepencarian*) and the validity of estate planning instruments. This is crucial as these claims must be settled before the Muslim estate can be distributed. The case of *BM v LBT & Anor* [2023] 4 SHLR 1 illustrates the Shariah Court's jurisdiction in deciding issues of Muslim estates. In this case, a *Faraid* order was granted by the Shariah

Subordinate Court. The respondents, the deceased's children, contested the *hibah*, i.e., *inter vivos* gift, made in favour of Baitulmal's Majlis Agama Islam Selangor (MAIS). However, the *hibah*, more specifically of the Hibah Amanah variant,²⁷ was found by the Shariah Appeal Court to be valid and thus there was no reason to intervene with the trial court's decision.

ESTATE ADMINISTRATION AND DISTRIBUTION PROCESS

Estate administration is a process that necessitates compliance to legal and technical requirements in ensuring that only the deceased's assets are able to be identified but also ensuring that the debts are settled and the remaining estate is distributed according to the law. This process involves several stages where it is governed by several legal provisions outlined in the PAA 1959, Trustee Act 1949 and Distribution Act 1958, as well as shariah law enactments for Muslim estates. The key component in managing the estate lies with the personal representative, whether he is appointed as an executor who is named in the will intestate cases or an administrator appointed by the court, in intestate cases. Both play a critical role in managing this process, which includes tasks ranging from identifying the estate and liabilities to the final distribution of assets.

Identification of Estate and Liabilities

The initial step in estate administration involves identifying the deceased's estate. This process includes compiling all of the deceased's assets, such as bank accounts, real estate, shares and personal belongings. Similarly, the personal representative must identify any outstanding liabilities, such as debts, loans, and taxes that the deceased owed. This is crucial, as the estate cannot be distributed until all liabilities are settled. Settlement of debts is also part of religious and social requirements in ensuring that the deceased is free from any attachment which requires his financial commitment. The process of identifying and valuing assets and liabilities is essential to ensuring that

²⁷Hibah Amanah (Trust Hibah) is a variation of hibah whereby the donor gifts the asset to a trustee, who may or may not be the donor himself, who holds it on trust for the rightful beneficiary. The beneficiary will only receive the asset after the donor passes away.

no debts are left unpaid and that the estate is not compromised in any way.²⁸ In testate cases, the existence of a will provides huge assistance to the executor as the will usually consists of the list of assets and liabilities, albeit not recent ones.

Identification of Legal Heirs and Beneficiaries

Once the estate and liabilities are identified, the next step is to ascertain the legal heirs and beneficiaries. Similar to the previous situation, if the deceased passed away leaving a valid will, the beneficiaries are usually documented since the estate will be distributed according to the deceased's wishes. This process is easier to handle as the will has already stated what, how and to whom the estate needs to be distributed. This is predominantly relevant in cases involving non-Muslim subjects as there is no limitation as to how and to what amount the testator's estate could be distributed.²⁹ However, if there is no will (intestacy), the estate will be distributed according to the Distribution Act 1958 for non-Muslims, or *faraid* laws for Muslims. For Muslims, the personal representative must first apply for a *Faraid* Certificate from the Shariah Court, which details the legal heirs and the proportion of the estate each heir is entitled to. This process is necessary to ensure that the estate is divided according to the proper legal framework, and the personal representative is expected to carefully review any potential claims from individuals asserting their rights to the estate.

Appointment of Personal Representative

The personal representative can either be an executor named in the will or an administrator appointed by the court. If the deceased left a will, the executor is typically named in the document.³⁰ However, if the

²⁸ Jannatul Aliesya Mohd Yusof and Muhamad Zuhaili Saiman, "The Level of Understanding on the Importance of Estate Management Among the Muslim Community in Selangor," *Journal of Contemporary Islamic Studies* 10, no. 2 (2024): 11, doi:10.24191/jcis. v10i2.9.

²⁹ Cassandra Lee, *A Comprehensive Guide to Wills, Probate and Letters of Administration in Malaysia* (CLJ Malaysia Sdn. Bhd., 2024), 30-33.

³⁰ Nor Azlina Mohd Noor and Ahmad Shamsul Abd Aziz, "'Standing' Room Only: A Vintage Issue In Estate Administration Claims," *UUM Journal of Legal Studies* 10, no. 2 (2019): 6, <https://doi.org/10.32890/uujls.10.2.2019.4988>.

deceased died intestate, the court will appoint an administrator to manage the estate. The personal representative is granted legal authority to handle the deceased's estate through the issuance of the grant of representation,³¹ and they are expected to act in the best interests of the beneficiaries. If there are any disputes regarding the appointment of the personal representative, the parties involved may need to seek a resolution through the court system.³² The appointment of a personal representative ensures that there is a legal entity responsible for the estate's administration, providing clarity and oversight to the process.

Application for Letters of Representation

The next step is the application for letters of representation, which can either be a grant of probate or letters of administration. A grant of probate is issued when the deceased left a valid will, and the named executor applies for it.³³ In cases where the deceased died intestate, the personal representative applies for letters of administration. This application must be made to the Civil High Court or the Estate Distribution Division, depending on the estate's value.³⁴ For Muslim estates, the personal representative must first obtain a *Faraid* Certificate from the Shariah Court. The letters of representation are crucial as they provide the personal representative with the legal authority to collect assets, settle debts, and ultimately distribute the estate. The High Court's jurisdiction and procedures for granting these letters are outlined under Section 24(f) of the Courts of Judicature Act 1964.

Collection of Assets

Once the personal representative has obtained the necessary legal authority, they can begin collecting the estate's assets. This process involves retrieving funds from bank accounts, securing real estate, and ensuring that all tangible and intangible assets are accounted for. The personal representative must exercise due diligence to ensure that all

³¹*Jigarlal Kantilal Doshi v Amanah Raya Berhad* [2011] 9 CLJ 361 (FC)

³²Section 34 of the Probate and Administration Act 1959.

³³Section 3 of the Probate and Administration Act 1959.

³⁴Md. Azmi and Haji Mohammad, "A Proposal for A Single Tribunal of Estates Distribution in Malaysia."

assets are protected and properly managed during this stage. This process often involves working with financial institutions, land authorities, and other entities to secure the estate's assets.

Payment of Liabilities

After collecting the assets, the personal representative is tasked with settling any outstanding liabilities of the deceased. This includes paying debts, loans, taxes, and any other financial obligations. The personal representative must ensure that the debts are paid before distributing any assets to the beneficiaries.³⁵ If the estate does not have sufficient funds to cover these liabilities, the personal representative may need to sell some of the assets to settle the debts.³⁶ The estate's debts must be prioritized according to the legal framework, and any failure to properly manage these obligations can lead to legal consequences. The PAA 1959 provides guidelines on how the liabilities should be paid, ensuring that creditors are treated fairly and that the estate is not subjected to unnecessary financial burden.

Transmission and Transfer of Assets

Once the debts have been settled, the next step is the transmission and transfer of assets to the legal heirs or beneficiaries. This involves transferring ownership of immovable property, such as land or houses, as well as other movable assets like bank accounts and personal property. The transfer must be conducted according to the relevant legal requirements.³⁷ For example, in the case of land or real estate, the land must first be transmitted to the personal representative, and such transfer must be registered with the land office.³⁸ Similarly, for bank accounts or other financial assets, the personal representative must ensure that all necessary documents are filed with the relevant institutions to effect the transfer of ownership.³⁹

³⁵Section 69 of the Probate and Administration Act 1959.

³⁶Section 67(1)(a) of the Probate and Administration Act 1959.

³⁷Nur Syaedah Kamis and Norazlina Abd. Wahab, "Analysing the Loopholes on Estate Administration of Cryptocurrency in Malaysia: Shariah and Law Perspectives," *International Journal of Islamic Business* 7, no. 2 (2022): 69, <https://doi.org/10.32890/ijib2022.7.2.5>.

³⁸*Tebin Mostapa v. Hulba-Danyal Balia & Anor* [2020] 4 MLRA.

³⁹Nur Syaedah Kamis, Norazlina Abd Wahab, and Mohammad Azam Hussain, "A Call for Regulation of Estate Administration of

Distribution of Residual Assets

Finally, after all debts have been settled and assets have been transferred, the remaining assets, known as the residue, are distributed to the beneficiaries.⁴⁰ If the deceased left a will, the assets are distributed according to the instructions in the will. In the case of intestacy, the assets are distributed according to the Distribution Act 1958 (for non-Muslims) or *faraid* (for Muslims). The personal representative must ensure that the distribution is fair and in compliance with the law, and they must carefully account for the distribution of each asset.⁴¹ This is the final step in the estate administration process, and it marks the completion of the representative's duties.

FINDINGS

As briefly discussed earlier, the personal representative has three main duties that they are tasked to carry out, i.e., calling and collecting the debts owed to the estate, settlement of debts of the estate and distributing the assets of the estate to the beneficiaries. Other duties include duty to render proper accounts, which is a crucial and constituent element inherent to the duty of a personal representative.⁴²

Fiduciary Duties of Personal Representatives in Estate Administration

Personal representatives hold the estate of the deceased on constructive trust. Section 3 of the Trustee Act 1949 includes the office of personal representative as trustee. As such, personal representatives also owe fiduciary duties to the beneficiaries as well as the estate. A fiduciary relationship may only arise out of mutual trust and confidence, after which the fiduciary is obligated to act solely in the beneficiary's best

Cryptocurrency in Malaysia," *UUM Journal of Legal Studies* 14, no. 2 (2023): 749, doi:10.32890/uumjls2023.14.2.13.

⁴⁰Halim and Mohd Noor. "Fiduciaries In the Administration of the Deceased's Estate," 1–17.

⁴¹Mohd Noor and Abd Aziz, "Empowering Personal Representatives' Statutory Duties in Administration of Deceased's Estates," 17.

⁴²*Lee Hiong Kiat & Ors v Lee Tin Hui & Anor* [2024] MLJU 2627

interest above their own personal interests.⁴³ As such, the most crucial fiduciary obligation of the personal representative is to act in the best interest of the estate and the beneficiaries.

These fiduciary obligations may arise on several occasions when administering the deceased's estate, such as in selling a property of the estate. The case of *Visaladchumy Narayanan & Ors v Wakil Diri Kepada Haridas a/l Narayanan, Si Mati & Ors* [2020] MLJU 907 illustrates such an occasion perfectly, in which the Court of Appeal listed several fiduciary duties that the first defendant, as the administrator of the estate, owed the beneficiaries when selling the property. These duties are:

- i. *A duty to protect the rights and interests of the beneficiaries at all material times;*
- ii. *A duty to act with proper prudence when dealing with the estate property;*
- iii. *A duty to obtain best possible price for the assets of the estate that are being sold; and*
- iv. *A duty to distribute the proceeds of the sale of the estate property among the beneficiaries.*

In this case, the first defendant had sold two plots of land of the estate to the second and third defendants at a lower price than the plaintiffs had intended to sell the plots of land for, and without the consent of the plaintiffs. The Court found the defendant to be in breach of his fiduciary duties as an administrator of the estate and rendered the sale voidable.

In the recent case of *Yap Pet v Yap Seu* [2025] MLJU 568, the applicant's application for letters of administration was opposed by the respondents, *inter alia*, on the ground of conflict of interest, which would arise if the applicant's personal interests as a beneficiary to the deceased's estate were in conflict with his fiduciary duties as the administrator of the estate. The allegation concerned the act of the applicant in transferring a property which was allegedly owned by the deceased at the time of the transfer to the applicant's son. However, the High Court found that the allegation had no merit and the respondent had failed to establish that such a conflict existed. Thus, the applicant was not disqualified from being appointed as administrator.

⁴³*Tun Dr Mahathir bin Mohamad & Ors v Datuk Seri Mohd Najib bin Tun Hj Abdul Razak* [2018] 3 MLJ 466 (CA)

Rights and Liabilities of Personal Representatives

If a personal representative is faced with conflicting demands by beneficiaries or uncertain on how to proceed, a lifeline can be found in an action brought under Order 80 Rule 2(2) of the Rules of Court 2012.⁴⁴ It provides for action to be brought in order to determine any question that may arise in regards to the administration of the estate, the composition of any class of persons having a claim against the estate or the rights or interests of an alleged creditor, person claiming to be entitled under a will or person claiming to be a beneficiary under trust. The invocation of this provision is observed in the case of *Kiranjit Kaur a/p Dr Jagjit Singh (menyaman dalam keupayaan sebagai pentadbir bersama harta pusaka Suresh a/l Thanabalasingam, si mati) v Thamabalasingam @ Thanabalasingam (disaman dalam keupayaan sebagai pentadbir bersama harta pusaka Suresh a/l Thanabalasingam, si mati)* [2022] MLJU 829 wherein the joint administrators reached an impasse on how to distribute the deceased's assets to the beneficiaries. As such, the Court, pursuant to its powers under Order 80 Rule 2, set out the manner in which the assets shall be distributed. Therefore, a personal representative should not claim ignorance when there is an avenue for them to seek guidance on what actions they should take during the administration of the estate.

Generally, a personal representative would not be held liable for losses that the estate has suffered, unless it is proven that they have been negligent in carrying out their obligations or have breached their fiduciary duties as executor or administrator of the estate.⁴⁵ If legal action is initiated and proven against the personal representative, aside from being liable for the losses incurred, the beneficiaries of the estate may also seek to remove the personal representative from their office. The learned judge in the case of *Yvonne Wong Yee Woon v Wong Yee Mei @ Cynthia (as administrator for the estate of Wong Poi Fong @ Wong Swee Fong, deceased) & Anor* [2022] 12 MLJ 309 exercised his power under Section 34 of the PAA 1959 to remove the administrator from her office after the objective test of 'sufficient cause' was proven

⁴⁴G. Raman, *Probate and Administration in Malaysia and Singapore* (LexisNexis, 2012), 165.

⁴⁵Akmal Hidayah Halim and Nor Azlina Mohd Noor. "Managing and Preserving the Estates of a Deceased Person: The Extent of Personal Representatives' Powers and Liabilities in Malaysia." *Australian Journal of Basic and Applied Sciences* 8, no. 13 (2014): 668.

as the administrator had treated the assets of the estate as her own personal property and had caused the estate's assets to be utilised without legal justification, had ignored the rights of beneficiaries as well as court orders. The objective test puts paramount consideration in the interest and welfare of the beneficiaries that the court has sufficient interest in interfering with the administration of the estate.

Another application of the 'sufficient cause' test is seen in *Mohamed Ramlee bin Mustafa lwn Muhammad Zubir bin Mustapha* [2023] MLJU 1906. In contrast to the previously cited case, the intervener in this case had failed to prove that the administrator in question was not fit or qualified to act as an administrator. It was not sufficiently proven that the administrator was mentally unfit, nor that the administrator had denied the rights of the intervener. As such, the Court did not find that there was a sufficient cause for the Court to interfere with the administration of the deceased's estate.

That being said, should the beneficiaries agree to retain the personal representative despite their wrongdoings in handling the estate, the personal representative may be absolved of all their liability with the beneficiaries' consent.

The personal representative may also be charged for criminal breach of trust under Section 406 of the Penal Code, which carries the punishment of imprisonment for a term not exceeding ten years, whipping and a fine. This is supplemented by Illustration (a) of Section 405 which frames an example of a situation in which a personal representative may commit the offence of criminal breach of trust:

A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

Hence, although Section 64 of the PAA 1959 provides indemnity for an executor or administrator, this only applies if the actions and decisions taken by the personal representative in regards to the welfare of the estate are made *bona fide*. Otherwise, the beneficiaries of the estate may initiate a civil suit, pursue criminal charges or seek to remove the personal representative from their position. The liability falls to the estate of the personal representative should they die before

they are held liable or charged for their wrongful actions.⁴⁶ As such, anyone who finds themselves appointed as executor or administrator must take care to avoid incurring unnecessary losses to the estate they hold on trust for the beneficiaries.

It is worth mentioning the personal representative's entitlement to remuneration. Part of the intrinsic nature of fiduciary duty is to avoid unfairly consuming and utilising the property the personal representative is entrusted with in order to satisfy their own personal wants and needs. However, in the current legal framework, a personal representative is entitled to a commission of up to five per cent of the value of the estate assets.⁴⁷ However, this is subject to the personal representative's conduct during the course of the estate administration. Additionally, as a trustee, the Court is empowered with authorising such remuneration as the Court may think befitting.⁴⁸ This is, of course, subject to the agreement by the beneficiaries to the deceased's estate.

Implications of Adverse Estate Administration

Adverse or improper administration of the deceased's estate may give rise to several negative implications, such as family disputes. Family disputes are a common occurrence in estate administration. This is due to several considerations, such as the highly vulnerable state the family is in in the wake of the deceased's death. This emotional vulnerability may spark misunderstandings and disputes between family members. The burden placed on family members by third parties to repay the debts owed by the deceased may also be a contributing factor.⁴⁹ Thus, when the estate is administered in a wrongful manner, it may inflame the already-present tension and lead the disputing family members to take more significant action, such as initiating civil litigation in the courts.⁵⁰ Litigation is acknowledged to be time-consuming and adds to

⁴⁶Section 66 of the Probate and Administration Act 1959

⁴⁷Section 43(1) of the Probate and Administration Act 1959.

⁴⁸Section 46 of the Trustee Act 1949.

⁴⁹Mohd Ali and Parzi, "RM65 Billion in Unclaimed Assets, Cash Due to Lack of Inheritance Planning."

⁵⁰Nurul Athirah Badrul Hisham et al., "Mitigation of Estate Distribution Disputes through Mediation-Based ADR Approach," *Asian Journal of Environment-Behaviour Studies* 10, no. 30 (2025): 31–44, <https://doi.org/10.21834/aje-bs.v10i30.461>.

the ever-present backlog of cases in the courts. Hence, not only would family relations suffer, but the administration of the estate would also be delayed.⁵¹

Delay or lack of urgency in estate administration may lead to unclaimed estate assets.⁵² Delay is not caused solely by family infighting, but may be caused by several different reasons, including lack of knowledge and understanding of the distribution process on the part of the beneficiaries⁵³ and the lackadaisical attitude that some of them may have.⁵⁴ Additionally, the general legal complexity in the process of estate administration may also be a cause for delay, such as the involvement of multiple jurisdictions and the location of lands in different districts.⁵⁵

As mentioned earlier, the number of unclaimed estates remains at a high, even if it seems to be on a downward trend since the year 2022.⁵⁶ The percentage reported in 2025 consists of assets from multiple administrative bodies: RM500 million worth of cash in the Public Trust Corporation, RM60 billions of real estate under the purview of the Estate Distribution Division and RM4.5 billion of

⁵¹Hisham et al., "Mitigation of Estate Distribution," 40.

⁵²Fazira Shafie, Wan Zahari Wan Yusoff and Syed Muhammad Dawilah el-Edrus. "Factors of Failure and Delay in Islamic Inheritance Distribution in Malaysia." *Jurnal Teknologi* (2016): 2.

⁵³Siti Fadhilah Ghazali, Naimah Abu Kasim, and Nabilah Wafa' Mohd Najib, "Faktor-Faktor Peningkatan Kadar Harta Pusaka Tidak Dituntut Dan Implikasi Terhadap Masyarakat Islam Di Malaysia," *International Journal of Law, Government and Communication* 8, no. 34 (2023): 85, doi:10.35631/ijlge.834006.

⁵⁴Nur Fadlin binti Roslan and Azlin Alisa Ahmad, "Pentadbiran Harta Pusaka dan Implikasi Negatif Harta Tidak Dituntut," *Malaysian Journal of Social Sciences and Humanities (MJSSH)* 7, no. 4 (2022): 12, doi:10.47405/mjssh.v7i4.1453.

⁵⁵Mohammad Tahir Sabit Haji Mohammada and Robiah Suratman, "Complexity of Intestate Estates Distribution and Escheat Law," *International Journal of Law, Government and Communication* 2, no. 4 (2017): 2.

⁵⁶In 2022, it was reported that the unclaimed estate was valued at RM90 billion nationally. Yasmin Hanani Mohd. Safian, "RM90 Bilion Harta Faraid Tak Dituntut," *Utusan Malaysia*, last modified September 5, 2023, https://www.utusan.com.my/gaya/2023/09/rm90-bilion-harta-faraid-tak-dituntut/#google_vignette.

unclaimed money in the Account-General's Department.⁵⁷

It is prudent to reiterate warnings against such a high number of unclaimed assets as this would negatively affect not just the beneficiaries of the deceased, who are deprived of their rightful portions to the estate, but also the nation as a whole. Since the land left by the deceased is still registered under his name, the land cannot be cultivated to contribute to the nation's economy, nor to the deceased's family's own livelihood and welfare.⁵⁸

RECOMMENDATIONS

The administration of estates can often give rise to disputes and delays, particularly when the personal representative is not adequately equipped with the knowledge or skills necessary to fulfill their duties. This lack of understanding can complicate the entire process, potentially resulting in tensions among beneficiaries and could even lead to legal action among the disputing family members. To address such issues and promote a smoother administration process, this paper presents several recommendations.

One of the most effective ways to prevent prolonged disputes is by incorporating mediation to resolve conflicts between beneficiaries.⁵⁹ Beneficiaries tend to have different interpretations of the deceased's wishes which sometimes may lead to disagreements that could delay the distribution of the estate. Mediation offers a suitable forum where beneficiaries can express their concerns without any outside pressure,⁶⁰ ensuring that all parties are heard and that any

⁵⁷Mohd Ali and Parzi, "RM65 Billion in Unclaimed Assets, Cash Due to Lack of Inheritance Planning | New Straits Times."

⁵⁸Rahmawati Mohd Yusoff et al., "A Comparative Analysis of Frozen Estates in Malaysia and Indonesia," *International Journal of Social Science Research* 12, no. 1 (2023): 139, doi:10.5296/ijssr.v12i1.21544.

⁵⁹Nurul Athirah Badrul Hisham, Afika Syamrina Benamri, Fatin Afiqah Md Azmi and Zurairatul Zakiah Dss Haji Rajid. "Alternative Dispute Resolution Method for Resolving Estate Distribution Conflicts." *Environment-Behaviour Proceedings Journal* 10, no. 31 (2025): 259. <https://doi.org/10.21834/e-bpj.v10i31.6419>.

⁶⁰Mohd Ab Malek Md Shah, Sulaiman bin Mahzan, Siti Fairuz Nurr binti Sadikan, and Mohd Harun bin Shahudin. "Mediation as an alternative

emotional issues including misunderstandings can be addressed.⁶¹ This approach reduces the likelihood of conflicts escalating into court cases and helps maintain the harmony among the family members.⁶² By emphasising clear communication, mediation provides a way to balance the interests of all beneficiaries while respecting the deceased's intentions.

In addition to resolving disputes among beneficiaries, mediation may also be effective in addressing conflicts between the personal representative and beneficiaries. Mediation allows for a discussion of any concerns, including potential breaches of fiduciary duty or perceived conflicts of interest. This is particularly important when the beneficiaries question the personal representative's conduct or when there is a lack of trust between the two parties. Through mediation, the personal representative can prove his commitment to his official tasks while the beneficiaries can get a better understanding of the personal representative's actions. This process can lead to a mutual resolution without the need to undergo legal proceedings, including criminal legal actions, which could adversely affect the process should the family members opt for such actions.

Another recommendation is the establishment of a system to assess the competence of personal representatives before they are granted the authority to administer an estate. As mentioned earlier, delays in estate administration can arise from the beneficiaries' lack of experience or understanding of their legal obligations. This is heavily attributed to them being laypersons, of which personal representatives ordinarily are too.⁶³ Currently, for applications for grants of representation at the High Court, the prospective personal representative need only appear before the judge or assistant registrar in chambers and would only be subject to minimal and basic questions

solution of resolving conflicts in Malaysia: A whither." *Journal of Global Business and Social Entrepreneurship (GBSE)* 5, no. 16 (2019): 82.

⁶¹Badrul Hisham et al., "Mitigation of Estate Distribution Disputes through Mediation-Based ADR Approach," 37,

⁶²Nurin Athirah Mohd Alam Shah et al., "Administration of Estates: Resolution of Disputes in Achieving Sustainability Among the Deceased's Family," *IIUM Law Journal* 30, no. 2 (2022): 279, <https://doi.org/10.31436/iiumlj.v30i2.711>.

⁶³Mohd Noor and Abd Aziz, "Empowering Personal Representatives' Statutory Duties in Administration of Deceased's Estates," 18.

such as the number of heirs left by the deceased, among others, which can also be answered by the applicant's lawyer. No inquiry is made by the judge or assistant registrar on whether the applicant understands the scope and nature of the responsibilities and obligations that would be bestowed on them once they are appointed personal representative. Therefore, it is crucial that a formal process is to be conducted to assess the competency of individuals applying for the role of personal representative. This could involve training or certification in estate administration, which would provide personal representatives with the necessary knowledge to handle the estate's legal and technical aspects efficiently. By ensuring that personal representatives are adequately prepared, it will reduce the chances of errors, breach of duties and delays in the process of estate administration and distribution.

It is equally essential to address the factors behind the delay in the distribution of assets where unresolved disputes or confusion regarding the administration process often lead to significant delays. Such delays eventually leave the beneficiaries frustrated and could render the estate unclaimed. It is therefore recommended under this writing that the court system focus on streamlining the procedures for resolving conflicts and expediting the distribution of assets. For example, the judiciary may mandate that contentious probate cases be referred to mediation to attempt a settlement before the dispute is litigated in court. In the current legal framework, only road traffic accident cases are mandated to be referred to mediation and other civil matters may be referred to mediation if the judge is of the opinion that a settlement could be reached, or the parties themselves apply for mediation.⁶⁴ By providing clear guidelines on when and how to seek professional advice or court intervention, personal representatives will be better equipped to navigate the complexities of estate administration. At present, once a personal representative is granted legal authority to administer the deceased's estate, there is no fixed timeframe to complete the administration of the estate that they must abide by. Thus, by implementing clear timelines and accountability standards for the personal representative, this will ensure that the estate is administered efficiently and that beneficiaries receive their rightful inheritance in a reasonable time.

⁶⁴Practice Direction of the Chief Justice No. 2 Year 2022.

CONCLUSION

The administration of a deceased's estate is a complex process that requires both legal and technical competency. Personal representatives play a crucial role in ensuring that the deceased's wishes are honoured and that the estate is distributed according to the law. However, the lack of necessary knowledge can lead to delays, mismanagement and in some cases, unclaimed assets. Mismanagement of the estate may attract legal action from the disgruntled beneficiaries who are entitled to the deceased's legacy.

The key highlights in this paper are the need for personal representatives to be adequately equipped with the knowledge to fulfill their responsibilities effectively. The differences in the jurisdiction of each relevant estate administration body have been discussed at length in hopes of providing greater clarity to personal representatives. Equipping the personal representatives with mediation skills could be beneficial in the estate administration as mediation has proven to be an effective method to resolve conflicts, both among beneficiaries and even between beneficiaries and the personal representative. In addition, having a formal system to assess the competence of individuals applying for the role of personal representative is important to ensure that only those capable of handling the estate administration are entrusted with such responsibility, as laypersons are primarily the applicants for such a role.

Personal representatives must ensure that they fulfill their fiduciary duties towards the deceased's estate and beneficiaries in good faith and to the best of their abilities. Furthermore, the administrative bodies must continue to improve their processes and give support to those involved in estate administration, particularly the personal representatives. By ensuring that each stakeholder plays their part, the estate administration process can be made more efficient, equitable and fair for all.

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