

## ADMINISTRATION OF ESTATES: RESOLUTION OF DISPUTES IN ACHIEVING SUSTAINABILITY AMONG THE DECEASED'S FAMILY

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### ABSTRACT

The UN Sustainable Development Goals (SDG) provides for seventeen universal objectives in which three of which are related to the administration of estate namely no poverty, zero hunger and gender equality. Issues on sustainability in estate administration are commonly associated with problems that occur during the management of the deceased's estate. Issues such as disputes among family members and mismanagement of asset by the personal representative or senior family members often lead to delays in the estate administration. Over the years, inefficiency in the administration of the estate process has led to financial instability such as poverty and in an extreme situation, hunger of the deceased's family members as their entitlement over the asset was jeopardised by the mismanagement and unfair distribution of the estate. This paper addresses the sustainability issues in estate administration where the focus of the discussion is the issues of disputes among the family members. This paper also suggests a resolution of the dispute by way of mediation process, which is capable of maintaining sustainability in estate administration. Employing a qualitative approach, the paper adopts a research method through a library-based study by examining materials including statutory provisions, case laws, textbooks, journal

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articles, newspapers, conference proceedings and seminar papers. The research found that preserving a good relationship between the family members is one of the keys to ensure smoothness and consistency in estate administration, hence contributing to the sustainability of the deceased's family members as well as adhering to the SDG.

**Keywords:** Sustainable Development Goals, Administration of Estate, Family Dispute, Mediation, Distribution of Asset.<sup>1</sup>

## **PENTADBIRAN HARTA PUSAKA: PENYELESAIAN PERTIKAIAN DALAM MENCAPAI KELESTARIAN DI KALANGAN KELUARGA SI MATI**

### **ABSTRAK**

Matlamat Pembangunan Lestari PBB (SDG) memperuntukkan tujuh belas objektif sejagat di mana tiga daripadanya berkaitan dengan pentadbiran harta pusaka iaitu tiada kemiskinan, sifar kelaparan dan kesaksamaan jantina. Isu kelestarian dalam pentadbiran harta pusaka lazimnya dikaitkan dengan masalah yang berlaku semasa pengurusan harta pusaka si mati. Isu seperti pertikaian di kalangan ahli keluarga dan salah urus aset oleh wakil diri pusaka atau ahli keluarga sering menyebabkan kelewatan dalam pentadbiran harta pusaka. Selama bertahun-tahun, ketidakcekapan dalam pentadbiran proses harta pusaka menyebabkan ketidakstabilan kewangan termasuk kemiskinan dan dalam keadaan yang melampau, kelaparan kepada ahli keluarga si mati kerana hak mereka ke atas aset itu terancam oleh salah urus dan pengagihan yang tidak adil. Kertas kerja ini membincangkan isu kelestarian dalam pentadbiran harta pusaka di mana fokus perbincangan adalah isu pertikaian dalam kalangan ahli keluarga. Kertas kerja ini juga mencadangkan penyelesaian pertikaian melalui proses mediasi yang mampu mengekalkan kemampanan dalam pentadbiran harta pusaka. Menggunakan pendekatan kualitatif, kertas kerja ini menggunakan kaedah penyelidikan melalui kajian berasaskan perpustakaan dengan meneliti bahan termasuk peruntukan berkanun, kes perundangan, buku teks, artikel jurnal, akhbar, prosiding persidangan dan kertas seminar.

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Kajian mendapati bahawa memelihara hubungan baik antara ahli keluarga adalah salah satu kunci untuk memastikan kelancaran dan konsistensi dalam pentadbiran harta pusaka, seterusnya menyumbang kepada kelestarian ahli keluarga si mati serta mematuhi SDG.

**Kata Kunci:** Matlamat Pembangunan Lestari, Pentadbiran Harta Pusaka, Pertikaian Keluarga, Mediasi, Pembahagian Aset.

## INTRODUCTION

Over the years, there has been an upward increase<sup>2</sup> in the number of unclaimed inherited properties.<sup>3</sup> The growing tendency of frozen assets has become one of the major challenges confronting estate administration.<sup>4</sup> Unclaimed assets totalling RM40 billion in 2007<sup>5</sup> grew to RM42 billion in 2011<sup>6</sup>, and RM66.6 billion in 2013<sup>7</sup>, whereas in 2016 the amount of unclaimed assets was RM60 billion.<sup>8</sup> In 2020, about RM70 billion of the unclaimed property was reported, with Malays setting the highest record. According to the data, the RM70 billion were still unclaimed by heirs until today.<sup>9</sup> In addition, there are

<sup>2</sup> See the Economic and Social Research Council. Retrieved from <https://www.un.org/development/desa/dspd/2030agenda-sdgs.html>

<sup>3</sup> Mohd Khairy Kamarudin & Azwan Abdullah. (2016). Amalan Pembahagian Faraid di Malaysia. Page 13

<sup>4</sup> Ariffin Sabirin (2008). Pengurusan Harta Pusaka. Majalah Usahawan Sukses. Page number 5

<sup>5</sup> Patrick, S. (2010). RM40 Billion Waiting to be Given to Heirs, 21 January 2007, Raja Shahrir Abu Bakar, Pewaris Aset RM40b dicari. New Sunday Times: Utusan Malaysia..

<sup>6</sup> Hakimi Ismail. (2011). Harta Pusaka RM42b Dibeku. Utusan Malaysia.

<sup>7</sup> ZaaizZin. (2013). RM66 Bilion Tidak Dituntut. Utusan Malaysia. Retrieved from [http://ww1.utusan.com.my/utusan/Dalam\\_Negeri/20130911/dn\\_15/RM66-biliontidak-dituntut](http://ww1.utusan.com.my/utusan/Dalam_Negeri/20130911/dn_15/RM66-biliontidak-dituntut)

<sup>8</sup> Rusnadewi Abdul Rashid. and Noor Inayah Yaakub(2016). Masalah Kegagalan dan Kelewatan Pengagihan Harta Pusaka di Malaysia.Jurnal Intelek, 5(2). P. 2

<sup>9</sup> Ahmad Mustakim Zulkifli (2022). RM70 billion in frozen Muslim family assets, a casualty of Malaysia's complex inheritance laws? Retrieved from <https://www.malaysianow.com/news/2022/09/04/rm70-billion-in-frozen-muslim-family-assets-a-casualty-of-malaysias-complex-inheritance-laws>

many cases reported where the estates are still under the name of the deceased.<sup>10</sup> This statistic should be decreasing every year. But until today, the number is increasing. As for a recent update, the number of unclaimed estates reached RM90 billion this year.<sup>11</sup> This clearly shows that the trend of the number for each year is increasing and of course it causes losses to many parties.

These statistics are supported by the fact that it is estimated that more than one million owners of estates have died, but ownership of the property has not been settled by the heirs.<sup>12</sup> Immovable property such as houses, buildings and land are the most unmanaged assets even if the owner has died decades ago. Statistics also indicate that a total of RM460 million in deferred monies or 'money waiting to be claimed' (WMD) has been held by the Amanah Raya Berhad in year 2022.<sup>13</sup> These happen due to situations such as the heirs have moved to different locations, the address given was incorrect, the heirs cannot be traced, or the heirs indicated to have passed away.

To summarise, all frozen assets and unclaimed inheritance properties in Malaysia can be referred to in Table 1 below:

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<sup>10</sup> Ansari (2021). Tanah Pusaka Masih Nama Arwah-Cara nak Tukar Nama kepada Waris. Retrieved from <https://www.hibahharta.com/tanah-pusaka-tukar-nama-kepada-waris/>

<sup>11</sup> [Siti Shamsiah Md Supi](#) (2022). Rise in unclaimed property among Muslims a critical problem. Retrieved from <https://www.nst.com.my/opinion/columnists/2022/05/795994/rise-unclaimed-property-among-muslims-critical-problem>

<sup>12</sup> Ekhwan Haque Fazlul Haque (2020). RM70 bilion harta pusaka 'tergantung'. Retrieved from <https://www.hmetro.com.my/utama/2020/05/583552/rm70-bilion-harta-pusaka-tergantung>

<sup>13</sup> Hazwan Faisal Mohamad (2022). RM460 juta Wang Menunggu Dituntut di Amanah Raya. Retrieved from <https://www.bharian.com.my/bisnes/lain-lain/2022/10/1016350/rm460-juta-wang-menunggu-dituntut-di-amanahraya>

Table 1: Frozen Assets and Unclaimed Inheritance Properties in Malaysia by Value (Year 2006-2021).<sup>14</sup>

Year	Value (RM Billion)	Source
2006	RM 38	Rusnadewi & Noor Inayah <sup>15</sup>
2007-2009	RM40	Rusnadewi & Noor Inayah <sup>16</sup> ; Fazira et al., 2014 <sup>17</sup>
2010	RM41	Fazira et al.,
2011	RM42	Fazira et al.,
2012	RM52	Fazira et al.,
2013-2015	RM60	Fazira et al.,
2020	RM418	Harian Metro <sup>18</sup>
2020	RM70	Mstar <sup>19</sup>
2021	RM90	Utusan Malaysia <sup>20</sup>

The uprising number of unclaimed assets requires serious attention from the stakeholders. Frozen assets, for example, require additional procedures and take a long time to complete the estate

<sup>14</sup> Combination of variety of sources.

<sup>15</sup> Rusnadewi Abdul Rashid. and Noor Inayah Yaakub(2016). Masalah Kegagalan dan Kelewatan Pengagihan Harta Pusaka di Malaysia.Jurnal Intelek, 5(2). p. 2

<sup>16</sup> Rusnadewi Abdul Rashid. and Noor Inayah Yaakub(2016). Masalah Kegagalan dan Kelewatan Pengagihan Harta Pusaka di Malaysia.Jurnal Intelek, 5(2). P. 2

<sup>17</sup> Fazira Shafie, Yusoff, Wan Zahari Wan Yusoff, Abdullah, Syed Muhammad Dawilah Al-Edrus. (2014). Islamic real estate management: Review on issues and challenges in managing inheritance property in Malaysia. Paper presented at the 7th International Real Estate Research Symposium2014(7th IREERS). Retrieved from <http://www.inspen.gov.my/>

<sup>18</sup> Retrieved from <https://www.hmetro.com.my/utama/2020/05/583552/rm70-bilion-harta-pusaka-tergantung>

<sup>19</sup>Retrieved from <https://www.mstar.com.my/xpose/famili/2020/06/10/jangan-berlengah-rm70-bilion-harta-pusaka-tak-dituntut-uruslah-ketika-masih-hidup>

<sup>20</sup> Retrieved from <https://www.utusan.com.my/nasional/2021/09/rm90b-harta-beku-tidak-dituntut/>

administration.<sup>21</sup> Therefore, this study investigates problems and sustainability issues in estate administration, with an emphasis on family disputes, in order to provide alternative solutions to the problem. In keeping up with this theme, this article will provide its findings in three sections: i) Estate administration in Malaysia, ii) Sustainability issues in regard to disputes among family members, and iii) Recommendations for developing mediation to achieve sustainability in estate administration.

## ESTATE ADMINISTRATION IN MALAYSIA

In matters pertaining to estate administration, there are a few things that need to be considered. First is relating to the law that governs the process. According to the Ninth Schedule of the Federal Constitution, the administration of estates, specifically the issuance of probate and Letter of Administration is listed in para 4(e) of the Federal List which means that it is governed by federal law. Apart from that, the High Court is given exclusive authority without eliminating the limited jurisdiction of the Shariah courts which may encompass certain components of Islamic law as defined by Article 121(1A) of the Federal Constitution and in Section 24(f) of the Court of Judicature Act 1964.<sup>22</sup> The law is stated as follows:

“Without prejudice to the generality of Article 121 of the Constitution the High Court shall, in the exercise of its jurisdiction, have all the powers which were vested in it immediately prior to Malaysia Day and such other powers as may be vested in it by any written law in force within its local jurisdiction which includes jurisdiction to grant probates of wills and testaments and letters of administration of the estates of deceased persons leaving property within the territorial jurisdiction of the Court and to alter or revoke such grants.”

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<sup>21</sup> Muhammad Ridhwan Ab. Aziz & Nurul Izzati Nordin (2015). Perception Towards Planning to Waqf, Wasiyyah and Faraid in Islamic Wealth distribution: Malaysian Perspective. *Journal of Scientific Research and Development* 2(12) :13-18, 2015 Available online at [www.jsrad.org](http://www.jsrad.org)

<sup>22</sup> Act 91 is an act relating to the superior Courts of Judicature. This Act may be cited as the Courts of Judicature Act 1964.

With reference to the above section, the grant of probate involves the participation of an administrator who is a person appointed by the court to collect and distribute the estate of a deceased person to the beneficiaries. This situation only applies when the deceased died intestate, where the will did not name any executor, or the executor refused to perform. On the other hand, an executor is a person chosen by a will to administer the testator's property and carry out the will's stipulations

The only distinction is that an executor must acquire a Grant of Probate, whereas an administrator must receive Letters of Administration. A trustee is someone who receives assets from the settlor and is in charge of managing them for the benefit of the beneficiaries. As a result, the trustee becomes the legal owner of the assets, but the trustee is not allowed to utilise the assets for gain. The trustee is required to carry out particular responsibilities as outlined in the trust agreement or by the trust's rules, as well as in compliance with the law.

Estate administration is the most significant definition. It is the foundation or core of this study. The process of administering a deceased's property is referred to as "administration of estate". The deceased's property or estate is divided into two types: 1) testate estate, which a deceased person dies with a will, and 2) intestate estate, which a deceased person dies without a will.<sup>23</sup> In addition, there are two types of estates: small estates and non-small estates. Small estates can be defined as an estate of a deceased person consisting wholly or partly of immovable property situated in any State and not exceeding RM2 million in total value.<sup>24</sup>

In conclusion, when discussing about estate administration, consideration must be given to the administrative bodies as well as provisions of the law and definitions of the relevant terms. The next sub-heading examines administrative bodies in a greater detail.

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<sup>23</sup> Kuek Chee Ying & Tay Eng Siang (2013), Religious Conversions and the Conflicts Between Civil and Islamic Law of Inheritance in Malaysia. *Malayan Law Journal*. Page 5

<sup>24</sup> Section 3(2) Small Estates (Distribution) Act 1955

## ADMINISTRATIVE BODIES IN ESTATE ADMINISTRATION

In West Malaysia, there are three main administrative bodies for estate administration namely the Civil High Court, Estate Distribution Division and Public Trust Corporation or Amanah Raya Berhad (ARB). All of these three bodies have exclusive jurisdiction over estate administration and distribution.<sup>25</sup> Each body has its own system for handling applications that are either initiated by it or referred to it by another body. The role or power of each administrative body is determined by its jurisdiction, which affirms the extent of its authority. The rationale of the distinctive jurisdictions of the administrative bodies over the property's value is intended to facilitate the community in handling estate administration matters. Table 2 below shows the three administrative bodies of estate administration in Malaysia with their categories of estate, jurisdiction and type of statutes to comprehend society to understand better.

Table 2: The Three Main Agencies of Estate Administration in Malaysia.<sup>26</sup>

<b>Administrative bodies</b>	<b>Categories of Estate</b>	<b>Jurisdiction</b>	<b>Statute</b>
Estate Distribution Division	Small Estate	Movable and immovable asset less than RM2 million	Small Estates (Distribution) Act 1955
Amanah Raya Berhad (ARB)	Summary Administration of Estate	Moveable asset less than RM600,000	Public Trust Corporation Act 1995

<sup>25</sup> Abdullah Muhammad (2007). *Ke Arah Penyelesaian Harta Pusaka Kecil Yang Lebih Bersepadu Cekap Dan Cemerlang*, Konvensyen Pewarisan Harta Islam, Amanah Raya Berhad.

<sup>26</sup> Source: Website of Estate Distribution Division, Department of General of Lands and Mines, JKPTG (2016)



Civil High Court	Non-Small Estate	Movable and immovable asset more than RM2 million or only moveable asset of more than RM600,000	Rules of Court 2012 and Probate & Administration Act 1959
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The distinction between the administrative bodies lies in terms of their authorities. Some administrative bodies may have more power than others. The Civil High Court, for example, is utilised to resolve disputes through the legal system whereas the ARB can act as a personal representative of the deceased's estate in intestate cases. Each administrative body is responsible for carrying out its duties in accordance with its authority. In order to distinguish between the types and jurisdictions of administrative agencies, one must evaluate the value of the asset, the type of asset, and whether the deceased died testate or intestate.

As aforementioned, each body has its own jurisdiction, which means that the jurisdictions of some administrative bodies may overlap with those of other administrative bodies. Not only that, the fact that each body has its own jurisdiction has unintentionally created uncertainty among the public such as which administrative body is most relevant.<sup>27</sup> The application of estate administration will be delayed if the public becomes unclear about which is the suitable entity to handle their matters. This issue could result in a lengthy process that could span months or even years, with unforeseen consequences.<sup>28</sup>

<sup>27</sup> Resali Muda. (2016). Harta Pusaka Islam di Malaysia: Antara Perundangan dan Pentadbiran dalam Malaysia Journal of Syariah and Law. Malaysia Journal of Syariah and Law. Volume 4-2016.

<sup>28</sup> Nur Fadlin Roslan & Azlin Alisa Ahmad(2022). Pentadbiran Harta Pusaka dan Implikasi Negatif Harta Tidak Dituntut. Malaysian Journal of Social Sciences and Humanities (MJSSH), 7(4), 3

## Estate Distribution Division

The administration of small estates is governed by the Small Estates (Distribution) Act 1955 [Act 98].<sup>29</sup> The process for administering the small estates is provided under this Act. The relevant agency is the Estate Distribution Division under the Department of Director General of Land and Mines. Each of the Estate Distribution Division is represented by a Land Administrator which has an increasing number of branches in West Malaysia.<sup>30</sup>

The Estate Distribution Division is a government agency that deals exclusively with a deceased person's assets that fit under the small estate category. However, recent amendment has been made in 2021 in order to deal with the issues of estate administration and clear backlog cases in the administrative bodies.<sup>31</sup> These amendments will be further discussed after this. As for existing laws, according to Section 3(2) of the Small Estates (Distribution) Act 1955, a small estate is defined as an estate of a deceased person consisting entirely or partially of immovable property located in any State with a total worth of less than RM 2,000,000.<sup>32</sup>

The condition of the deceased is another aspect that influences the jurisdiction of this administrative body. Only intestate estates will be handled by the Estate Distribution Division or the Land Administrator, according to Section 8 of the Small Estate (Distribution)

<sup>29</sup> Small Estates (Distribution) Act 1955 [Act 98] is an Act relating to the distribution of small estates of deceased persons and matters incidental thereto.

<sup>30</sup> Retrieved from <https://www.jkptg.gov.my/en/korporat/profil-bahagian/bahagian-pembahagian-pusaka-bpp>

<sup>31</sup> Sharifah Mahsinah Abdullah (2022). Govt hopeful amendments to Small Estates (Distribution) Act 1955 will clear backlog of inheritance cases. Retrieved from <https://www.nst.com.my/news/nation/2022/09/834574/govt-hopeful-amendments-small-estates-distribution-act-1955-will-clear>

<sup>32</sup> Fazira Shafie, Yusoff, Wan Zahari Wan Yusoff, Abdullah, Syed Muhammad Dawilah Al-Edrus. (2014). Islamic real estate management: Review on issues and challenges in managing inheritance property in Malaysia. Paper presented at the 7th International Real Estate Research Symposium 2014 (7th IRERS). Retrieved from <http://www.inspen.gov.my/>

Act 1955.<sup>33</sup> "Land Administrator" is a term used to refer to a person who is appointed at the district level. Whereas "Assistant District Land Officer" is appointed for a district or part thereof for administrative purposes.<sup>34</sup> On the other hand, if the deceased died testate, the case must be referred to the Civil High Court, regardless of the estate value. This is specified in Section 5 of the above-mentioned Act.<sup>35</sup>

Once a petition has been lodged, or in the case of more than one petition, the Land Administrator shall have exclusive jurisdiction to deal with the distribution and administration of the entire estate wherever it is located, according to section 4(2) of the Act.<sup>36</sup> In circumstances when the deceased's asset is transferrable, the Land Administrator is entitled to issue the Distribution Order, abbreviated as Form E. The Distribution Order will only be granted if the asset does not have any concerns that would prevent it from being transferred or distributed to the beneficiaries. Otherwise, the Land Administrator will issue letters of administration, appointing a person as administrator to deal with any issues relating to the deceased's assets, as provided in section 13(4) of the Act.<sup>37</sup> If the individual title of the deceased's land has not yet been issued, Land Administrator will appoint an administrator to handle the situation by issuing letters of administration in Form F. Depending on the circumstances, both orders may be issued at the same time. For example, both Forms E and F may be issued at the same time to allow for the division of movable assets and the appointment of an administrator to address any unresolved issues.

An application for the small estate administration can be heard and decided by the Land Administrator of other districts if it appears that it will benefit the parties in the hearing. This is expressly stated in the proviso to section 4(2) of the Act, which reads as follows:

"Provided, however, that the Director of Lands and Mines, where all of the property is located in one State, or the Director General of Lands and Mines, where the property is located partly in one State and partly in another, may, upon proper application, order that any

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<sup>33</sup> Section 8 of the Small Estate (Distribution) Act 1955

<sup>34</sup> Section 2 Small Estates (Distribution) Act 1955

<sup>35</sup> Section 5 Small Estates (Distribution) Act 1955

<sup>36</sup> Section 4(2) of the Small Estates (Distribution) Act 1955

<sup>37</sup> Section 13(4) of the Small Estates (Distribution) Act 1955

petition under this Act be heard and decided by the Land Administrator of any other district, notwithstanding that the property in that district consists solely of movable property, whenever it relates to the property in that district”.

Once the above order is issued, it shall be final and is not subject to any appeal. The Land Administrator shall have the sole authority to order the division of such estate, regardless of its worth or whether it consists solely of movable goods. The order will be finalised and will not be appealed.<sup>38</sup>

Based on section 5(1) of the Act, the Land Administrator's jurisdiction does not affect the exclusive jurisdiction of the High Court to grant probate or letters of administration with will annexed in respect of a small estate. The section provides as follows:

“Except as provided in this section, nothing in this Act affects the High Court's exclusive jurisdiction to grant probate of any will or testamentary disposition or letters of administration in any case where the deceased has left a valid will or other valid testamentary disposition in respect of a small estate or part thereof, and the grant, once made, has the same effect as if the estate had not been a small estate.”

By virtue of this section, it is perspicuous that the Small Estates Distribution Act 1955 does not apply to a testate estate with a total worth of less than RM2 million. It is also worth noting that the role of a Land Administrator in the administration of a small estate differs from that of a Registrar in a High Court administration. Once a petition for distribution of a small estate is filed, the Land Administrator is responsible to see the process from the beginning to the last by overseeing the estate's administration and distribution. The grant of letters of administration may be included in a Distribution Order issued by the Land Administrator in the administration of a small estate. The impact of the Land Administrator's grant of administration differs from the court's award in which Land Administrator's grant is not included in the term of "administration" under the Probate and Administration Act 1959. The latter is confined to the collection and preservation of

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<sup>38</sup> Section 4 (3) Small Estates (Distribution) Act 1955

the deceased's property, as well as the payment of obligations owing to the estate, according to the Land Administrator's instructions.<sup>39</sup>

As a government agency, the goal of Estate Distribution Division is to help the public, particularly the low and middle-income society. As an administrative body that has a vision "Towards Leading a First-Class Land Management and Administration"<sup>40</sup>, the Small Estates (Distribution) (Amendment) Act 2022 was passed in accordance with the current property increase claim to meet the needs of the society in the matter of division of the estate of the deceased.<sup>41</sup>

Many amendments can be seen in the Small Estates (Distribution) (Amendment) Act 2022. For instance, under section 2A, the Minister shall appoint the President of Estate Distribution among Estate Distribution Officers. The President shall act reasonably including having the power to determine the territorial jurisdiction and to deal with the distribution and administration of any estate. The President also has direct control and supervision over all the Estate Distribution Officers appointed under this Act.<sup>42</sup> Previously, the power depended on the location of the immovable property.<sup>43</sup>

Next, under section 3(2) of the Act, the words "wholly or partly of immovable" are amended with the words "of any". The words "RM2 million" of jurisdiction are substituted with the words "RM5 million". The ARB and Majlis Agama Islam have also been given the authority to select which estates are not to be administered, as well as the option to file a petition.<sup>44</sup> Under section 8, "the Corporation shall deliver" is replaced with "the Estate Distribution Officer" shall notify the Corporation or petitioner of such case, and it shall be the duty of the Corporation or petitioner to deliver.<sup>45</sup>

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<sup>39</sup> Form F, Regulation 7(2), Small Estate (Distribution) Regulations 1955

<sup>40</sup> Retrieved from <https://www.jkptg.gov.my/en/korporat/visi-misi-objektif>

<sup>41</sup> Rohaniza Idris. (2021). RUU Harta Pusaka Kecil diluluskan Dewan Rakyat. Retrieved from <https://www.bharian.com.my/berita/nasional/2021/10/880389/ruu-harta-pusaka-kecil-diluluskan-dewan-rakyat>

<sup>42</sup> Section 2A Small Estates (Distribution) (Amendment) Act 2021

<sup>43</sup> Section 3 Small Estates (Distribution) Act 1955

<sup>44</sup> Section 3(2) Small Estates (Distribution) (Amendment) Act 2021

<sup>45</sup> Section 8 Small Estates (Distribution) (Amendment) Act 2021

Under section 8(b) of this Act, the petitioner or applicant may apply to the Estate Distribution Officer for a ‘summary distribution order’ if the application consists only of movable property and does not exceed the total value of RM600,000. Once the Estate Distribution Officer makes an order under this section, the petition or subsequent application shall not be heard. A copy of an order under the subsection shall be served on a petitioner or applicant who shall cause a such copy of the order to be served on the beneficiaries.<sup>46</sup>

Under section 9, the petitioner shall serve a copy of the notice on all persons who are named in the petition as beneficiaries or claimants to the estate or any interest in the estate.<sup>47</sup> Under section 10, there is the insertion of words such as “to be a minor or a person of unsound mind” and the words “or a patient”. In relation to the appointment of a guardian, the Estate Distribution Officer shall have the power over a minor or person of unsound mind. In relation to the appointment of a next friend, the Estate Distribution Officer shall have regard to any personal law or custom, and any circumstances or medical reason rendering a patient unable to represent himself.<sup>48</sup>

Section 11 deleted the word “in his district” where the Estate Distribution Officer shall have the power to restrict public access to the hearing of any petition or any part of the petition if he is satisfied that it is expedient in the interests of public safety, public security or propriety, or for other sufficient reason to do so.<sup>49</sup> Under section 18 (1), if the deceased has died and no estate proceeding is taken, the ARB or Majlis Agama Islam shall have six months from the date of death to obtain a Grant of Probate or Letters of Administration for distribution order. The ARB or Majlis Agama Islam may report to the Estate Distribution Officer, and the Estate Distribution Officer will request the ARB or Majlis Agama Islam to lodge a petition for the distribution of the estate (subject to consent from a beneficiary). Any fee payable may be prescribed and may be paid out of the estate. The Minister can appoint a date for the coming into operation of this section in relation to the Majlis.<sup>50</sup> Under section 29, an appeal can be made to the High

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<sup>46</sup> Section 8(b) Small Estates (Distribution) (Amendment) Act 2021

<sup>47</sup> Section 9 Small Estates (Distribution) (Amendment) Act 2021

<sup>48</sup> Section 10 Small Estates (Distribution) (Amendment) Act 2021

<sup>49</sup> Section 11 Small Estates (Distribution) (Amendment) Act 2021

<sup>50</sup> Section 18 (1) Small Estates (Distribution) (Amendment) Act 2021

Court within thirty days from the date the order, decision or act is made or done. The procedure in relation to such appeal shall be subject to the rules of court applicable in the High Court.<sup>51</sup>

There are many benefits that the public can gain from this amendment. Firstly, it will provide convenience to those who do not own immovable property such as houses or lands. If the deceased only has a vehicle and savings, the beneficiaries can obtain estate administration from the Small Estate Distribution Division. Not only that, the amendment can widen the authority that this agency currently has.<sup>52</sup> This makes the governance of estate administration by the Estate Distribution Division to be more efficient and effective. Apart from that, there will be new interpretations and rules relating to the increasing small estate jurisdiction as well as the provision of numerous alternatives to assist persons in managing the small estate. This includes provision for improving the governance structure of the small estate through legal means in order to improve the effectiveness of the optimal service delivery system.

On the other hand, while this amendment provides several advantages, it also causes stumbling blocks to other administrative bodies, particularly the ARB. Since the proposed amendment also covers partly the current jurisdiction of the ARB, such amendment may affect the company's jurisdiction as it is no longer regarded as the body which possesses the sole jurisdiction over this matter. The public is likely to favour the Estate Distribution Division over ARB due to its lower fees. This situation may result in a conflict of interest between the two agencies.

### **Amanah Raya Berhad (ARB)**

Another administrative entity which is actively involved in estate administration is the ARB. The ARB, sometimes known as the Corporation, is a former government agency that is now a government-

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<sup>51</sup> Section 29 Small Estates (Distribution) (Amendment) Act 2021

<sup>52</sup> Act 98 Amendment gives people more options in estate management. (2021). Retrieved from <https://www.thesundaily.my/local/act-98-amendment-gives-people-more-options-in-estate-management-YD8498661>

owned corporation that was privatised under the Public Trusts Corporation Act 1995. This Act governs the Corporation's authority on estate administration. The offices of Public Trustee and Official Administrator were abolished once the Public Trusts Corporation Act 1995 was enacted. This Act includes matters relating to Public Trustee and Official Administrator's property, rights, and obligations vested in the ARB.

This Corporation aspires to be as efficient and profitable as private trust businesses precisely in its role in estate administration.<sup>53</sup> In both testate and intestate circumstances, the Corporation has the authority to serve as the personal representative. The ability to govern a deceased person's estate is a one-of-a-kind feature available exclusively to the ARB and not to other administrative bodies. The ARB is tasked with overseeing the administration of the deceased's estate from start to finish.<sup>54</sup> It is the same technique used by solicitors and other trust firms that provide services to the public, resulting in fees being paid for the services provided.

In situations involving moveable assets worth less than RM600,000, the ARB has the authority to make two administrative orders namely the Letter of Declaration under Section 17(1) and the Letter of Direction under Section 17(2) of the Public Trusts Corporation Act 1995. The Letter of Direction is issued when the asset value is less than RM50,000, whereas the former Letter of Declaration is issued when the asset value is greater than RM50,000 but less than RM600,000.<sup>55</sup> Section 17 of the Public Trust Corporation Act of 1995 enhances the Corporation's summary administration of movable property thoroughly. Section 17(1) of the Act which deals with any person who died testate or intestate, leaving only movable property and the total worth of the property does not exceed RM600,000. The first paragraph of subsection (1) reads as follows:

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<sup>53</sup> Section 10 Public Trust Corporation Act 1995

<sup>54</sup> Section 12 (1) Public Trust Corporation Act 1995

<sup>55</sup> Suhaili Alma'amun (2010). Islamic estate planning: Malaysian experience. *Kyoto Bulletin of Islamic Area Studies*, 3(2), 165-185. from <http://hdl.handle.net/2433/123275>



“Whenever a person dies, whether testate or intestate, leaving movable property in Malaysia, and the Corporation is satisfied –

(a) that the total value of the property, after deducting debts, but excluding the value of any property which the deceased possessed or was entitled to as trustee and not beneficially, does not exceed RM600,000-00; and

(b) that no person is entitled to apply to the Court.”

The Corporation shall, upon the application of a person making a claim on the property and if it considers it appropriate, declare in writing that it undertakes to administer the property, and the Corporation shall be empowered to administer the property as if letters of administration of the deceased person's estate had been granted to the Corporation, and the Corporation's receipt shall be a sufficient discharge to any person who pays any money or delivers any property to the Corporation.

Following the court's issuance of an order for a grant of administration, the estate will be passed to the administrator. The Corporation's vesting is solely a technical and administrative feature that allows society who need to deliver notices to a deceased person's estate to do so through the Corporation.<sup>56</sup> However, it does not provide the Corporation with the authority to manage the estate.

The Corporation may, as soon as it receives adequate evidence that a person has died intestate and left the property in Malaysia, take control of that property and keep it secure until letters of administration are awarded by the court. Any person who removes or attempts to remove any portion of the property without lawful authority or excuse, or destroys, conceals, or refuses to surrender the same to the Corporation on demand, is guilty of an offence and, upon conviction, is liable to a fine not exceeding RM5,000 or to imprisonment for a term not exceeding six months, or to both.<sup>57</sup>

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<sup>56</sup> G Raman (2005). *Probate and Administration in Singapore and Malaysia*, 2<sup>nd</sup> edn (Petaling Jaya: Lexis Nexis, 2005), p12

<sup>57</sup> Section 16 Public Trust Corporation Act 1995

### Civil High Court

The Civil High Court is authorised to issue two different forms of letters of representation, namely Grant of Probate for testate cases and the letters of administration for intestate cases.<sup>58</sup> The administration of estate by the Civil High Court is governed by the Probate and Administration Act 1959<sup>59</sup> as well as the Rules of Courts 2012. These laws regulate both, the Grant of Probate, and the issuance of Letters of Administration. Therefore, both statutes must be read together in order to get a comprehensive understanding on procedural and substantive law with regard to the issuance of letters of representation. Apart from the two statutes, reference to the Federal Constitution is also required. This can be seen in Article 74<sup>60</sup> and the Ninth Schedule<sup>61</sup> where both provisions emphasise that civil courts have exclusive jurisdiction over proceedings concerning succession, testate and intestate succession, probate, and letters of administration. The word "exclusive jurisdiction" in these provisions suggests that the Civil High Court has the jurisdiction over both Muslim and non-Muslim estate administration.

In addition, section 24(f) Courts of Judicature Act 1964<sup>62</sup> clearly provides that the Civil High Court has the power to deal with a testate estate regardless of its worth. This section lays down the principle with regard to the exclusive jurisdiction of the Civil High Court to grant probates of wills and testaments of estates within the court's territorial jurisdiction. Value and categories of assets play important role in determining Civil High Court's jurisdiction.<sup>63</sup> This

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<sup>58</sup> Muhammad Ridhwan Ab Aziz, Mohammad Noorizzuddin Nooh, Khairil Faizal Khairi, Fuadah Johari, Azrul Azlan Iskandar Mirza, Nurul Izzati Nordin (2014). A Review On Literatures In Planning And Managing Of Islamic Wealth Distribution (2001-2013). Library Philosophy and Practice (e-journal). 1144.  
<http://digitalcommons.unl.edu/libphilprac/1144>

<sup>59</sup> Probate and Administration Act 1959

<sup>60</sup> Article 74 Federal Constitution

<sup>61</sup> Ninth Schedule of the Federal Constitution

<sup>62</sup> Section 24(f) Courts of Judicature Act 1964

<sup>63</sup> Muhammad Amrullah Drs Nasrul, Wan Noraini Mohd Salim, Muhamad Helmi Md Said, Siti Nuramani Abdul Manap (2017). Administration Of Estates In Malaysia: Jurisdiction And Misconception UUMJLS 8, 183-196 (2017)

court has jurisdiction for testate estates where the court will issue letters of representation namely the Grant of Probate or letters of administration. On the other hand, in intestate cases, the Civil High Court's jurisdiction is limited by the value and nature of the deceased's estate. There are two types of probate proceedings namely contentious probate proceedings and non-contentious probate proceedings. According to Order 72, Rule 1(2) Rules of Court 2012, contentious probate proceedings can be defined as an action for the Grant of Probate or letters of administration of the estate or for the revocation of grant or for a decree pronouncing for or against the validity of an alleged will, not being an action, which is non-contentious.<sup>64</sup>

Generally, to differentiate between these two proceedings, a non-contentious probate proceeding is a simple proceeding while a contentious probate proceeding is a complicated proceeding where it takes a long time to complete. The terms are also used to describe uncontested and contested cases, respectively. Contentious probate proceeding consumes a long time because it entails court hearing sessions where the proceeding usually involves allegations of fraud, dishonesty, forgery, and mala fides elements.<sup>65</sup> This type of probate proceeding always happens in situations when the deceased's will is contested, wrongful interpretation of the deceased's will, disputes over the laws applicable, disputes over the deceased's domicile, and the removal of an executor or administrator.<sup>66</sup> For these reasons, the probate proceeding is stringent to ensure that no surprises are introduced during the trial.

As for the procedure to apply letters of administration, an affidavit in Form 159 (b) Probate and Administration Act 1959<sup>67</sup> is required. The value is consistent with Rule 50(1)(a) of Order 71 of Rules of Court 2012<sup>68</sup>, which states:

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<sup>64</sup> Order 72, Rule 1(2) Rules of Court 2012

<sup>65</sup> Retrieved from <https://www.linkedin.com/pulse/contentious-probate-proceedings-o-72-roc-2012-gavin-jay-anand-jayapal>

<sup>66</sup> Retrieved from <https://www.thomasphilip.com.my/practice/estate-and-probate-claims/>

<sup>67</sup> Form 159(b) Probate and Administration Act 1959

<sup>68</sup> Rule 50(1)(a) of Order 71 of Rules of Court 2012

“If the originating summons discloses that the assets of the estate include immovable property in any State, the Registrar shall before fixing a date for the hearing of the originating summons require the applicant to satisfy him that the estate is not a small estate as defined under the Small Estates (Distribution) Act 1955, and may make such further and other inquiries regarding the value of the estate as he deems proper and unless so satisfied he shall transfer the originating summons to a Land Administrator having jurisdiction under the Small Estates (Distribution) Act 1955”

In cases where an intestate estate contains immovable property, the Registrar must be satisfied that the estate does not fall under the jurisdiction of the Estate Distribution Division. If the estates fall under the definition of a small estate, the application shall be transferred to the Land Administrator who is in charge of distributing small estates under the Small Estates (Distribution) Act 1955. The uniqueness of the Civil High Court is that it has the appellate jurisdiction and can set aside the distribution order issued by the Land Administrator as provided by section 29 of the Small Estates (Distribution) Act 1955.<sup>69</sup> It is to be noted that an appeal against the Land Administrator's decision can only be made under section 29 of the Small Estates (Distribution) Act 1955. This provision can be proven in the case of *Fathimah bt Mat Akhir & Anor v Sharifah bt Hj Ahmad & Ors*<sup>70</sup> in which the position was reaffirmed.

In this case, a settlement officer issued a distribution order for the estate of Akil bin Lebai Mat, who had a quarter stake in a piece of land, under the Small Estates (Distribution) Ordinance 1955 (as the Act was known before its 1972's revision). According to the settlement, all of the estate's beneficiaries were present and consented to the distribution. However, it was claimed that one of the widows was mentally ill. Her daughters went to the High Court to have the settlement officer's ruling overturned or varied, and to have a

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<sup>69</sup> Section 29 of the Small Estates (Distribution) Act 1955

<sup>70</sup> [1977] 1 MLJ 106

declaration that a half-share of the deceased's stake in the land be transferred to this widow as "*sharikat*" (jointly acquired) property.

The application was dismissed, and the parties appealed. On appeal, it was determined that the case involved small estate, and the legislature had expressly stated in section 4(1) of the Small Estates (Distribution) Ordinance 1955<sup>71</sup> that the Land Administrator has exclusive original jurisdiction over the distribution and administration of small estates. Despite the fact that the High Court had jurisdiction to hear the case because of the suspected fraud, the reasoning was found to be false. Allowing such an argument to be made and evidence to be collected on the issue of fraud would involve hearing the case and assuming original jurisdiction when the court's jurisdiction was clearly legislated to be solely appellate. The only legitimate way to bring the matter of fraud to the attention of the court was to file an appeal against the Land Administrator's ruling, as allowed for under section 29(1) of the Small Estates (Distribution) Act 1955.<sup>72</sup>

## **SUSTAINABILITY ISSUES IN REGARD TO FAMILY DISPUTES IN ESTATE ADMINISTRATION**

The majority of prior studies focused on the causes of estate administration problems and estate administration solutions that benefited the heirs. There has been minimal research in Malaysia on the sustainability issues in regard to family disputes in estate administration. This study aimed to contribute to the discussion on sustainability issues relating to estate administration disputes between heirs and family members.

Based on the study by Fatin Afiqah<sup>73</sup> relating to the causes of unclaimed estate among the decedents, it was discovered that a number

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<sup>71</sup> Section 4(1) of the Small Estates (Distribution) Ordinance 1955

<sup>72</sup> See also Lokmanaal Hakim Ramli & Ors v Hj Ismail Ishak & Ors [1992] 2 CLJ 1031; Ahmad bin Abdul Majeed o Habibah bt Abdul Majid & Yg Ln [2001] 2 AMR 1521; Lokmanaal Hakim v Mamat bin Hassan [1996] 5 MLJ 529.

<sup>73</sup> Fatin Afiqah binti Md Azmi & Mohammad Tahir Sabit Mohammad (2011). The Causes of Unclaimed, Late Claimed or Distributed Estates of Deceased Muslims in Malaysia. International Conference on Sociality and

of factors contributed to the problem, including the complexity of the law, lack of knowledge,<sup>74</sup> lengthy process, lack of cooperation between various parties, lack of cohesive mechanism, and attitude of the deceased. Furthermore, there can be negative consequences for individuals who did not make a proper plan to manage and distribute their possessions when they pass away. Unfortunately, the main issue relates to prudent action that needs to be taken in estate planning and administration. Because of the lack of succession planning and a failure to act fast in initiating the estate administration process, the asset might be frozen and may eventually lead to it becoming an unclaimed property. Such occurrence will cause difficulty to the related parties particularly the beneficiaries. This shows seriousness of the problems and the need to find a suitable solution. There are several elements that contribute to the delay in the distribution of the estate.

Beneficiaries' attitudes and ignorance are among the factors that contribute to the delay in managing the deceased's estate. Efforts to expedite the estate's administration are dependent on the beneficiaries themselves.<sup>75</sup> There are instances where the heirs transfer the responsibilities to the eldest son, who is thought to have a more legitimate obligation to submit the application.<sup>76</sup> Procrastination and the mindset of taking things for granted on the application of the division of assets of the deceased's estate have become a custom among the society that consider the division of inheritance as a matter not be

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Economic Development. IPEDR vol. 10 (2011), Press in Singapore. Page 5

<sup>74</sup> Wan Suraya Wan Hassin. (2016). Faktor-faktor yang mempengaruhi Harta Pusaka Beku di Malaysia. Proceeding of the 3rd International Conference on Management & Muamalah 2016 (3<sup>rd</sup> ICOMM) 2016.

<sup>75</sup> Fazira Bt. Shafie, Wan Zahar Wan Yusoff & Syed Muhammad Dawilah Al-Edrus. (2014). Pengurusan Harta Tanah di Malaysia menurut perspektif Islam: Isu dan Cabaran bagi Perwarisan Hartadalam Konteks Pembangunan Modal Insan; Prosiding Seminar Antarabangsa Kelestarian Insan 2004 (INSAN 2014), Batu Pahat, Johor, 9-10 April 2014.

<sup>76</sup> Muhammad Amrullah Drs Nasrul & Wan Noraini Mohd Salim (2018). Administration of estate in Malaysia: Determinant of factors behind the delay in the distribution of the deceased's asset. Journal of Nusantara Studies (JONUS), V3(1), 75 – 86.

expedited<sup>77</sup> for otherwise it would constitute greediness. This topic is taboo, and heirs who ask to handle the estate administration are accused of being greedy and obsessed with the deceased's property.<sup>78</sup> Furthermore, it has become tradition for the heirs, particularly in the rural areas, not to seek the inheritance right away if the deceased's legacy is just land, as the heirs can still cultivate the land even though they have not yet inherited it, and this is done by mutual consent.<sup>79</sup>

Issues relating to inheritance and distribution of deceased estates can be described as a never-ending problem created by distribution delays that would affect future generations.<sup>80</sup> The amount of unclaimed inheritances or assets that have been frozen is on the rise, and it has long been a problem within the society. The discovery of this situation has truly demonstrated that there are too many properties, particularly lands, whose owners died many years ago and left no action to transfer the title to legitimate heirs. Unfortunately, some recipients were unaware of the existence of the property in question. The majority of the concerns relate to the heirs' attitudes.<sup>81</sup> It is the primary reason why many estates are not transferred to their heirs despite the fact that the deceased passed away many years ago. The heirs do not see estate administration as a priority.<sup>82</sup> The majority of them are unprepared in terms of estate administration by not planning and thinking about what happens in the future.<sup>83</sup> Everyone is hoping

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<sup>77</sup> Bibi Nur Adila Zulkafli & Md Yazid Ahmad. (2016). Kekangan dan Penyelesaian Kelewatan Pengurusan Aset Pusaka Tak Alih Orang Islam di Malaysia. *Islamiyyat* 38(1). Page 57

<sup>78</sup> Mohamad Ali Roshidi Ahmad, Hartini Jaafar & Azam Abdelhakeem Khalid (2021). The role of Penghulu on small estate distribution. *Turkish Journal of Computer and Mathematics Education*, V12(3), 1122 – 1128.

<sup>79</sup> Muhammad A. (2006). Isu-isu dan Masalah-masalah dalam Pengurusan Pembahagian Harta Kecil. Prosiding Seminar Kebangsaan Pengurusan Harta dalam Islam.

<sup>80</sup> Ariffin Sabirin (2008). Pengurusan Harta Pusaka. *Majalah Usahawan Sukses*.

<sup>81</sup> Mohamad Ali Roshidi Ahmad (2021). The Role Of Legal Heirs To Resolve Unclaimed Properties In Malaysia. *Proceeding of the 8th International Conference on Management and Muamalah 2021* 8

<sup>82</sup> Syaihan Sirotin (2016). *Urus Harta Pusaka, Usah Bebas Waris*. Sinar Harian

<sup>83</sup> Latifah Arifin (2019). *Uruskan wasiat, pembahagian harta elak waris berkonflik*. Retrieved from

that other heirs will start the application process.<sup>84</sup> Along with a lack of community awareness, there are still a few barriers preventing people from pursuing estate administration.<sup>85</sup> The heirs who have less awareness do not wish to pursue the estates because they believe it is not worthwhile to make the effort. The asset's value might not sufficient to pay off the deceased person's debt or quit rent.

Delay in estate administration and distribution is regarded as a negative notion because it could lead to complicated issues. For instance, the estates cannot be administered, developed or transacted which can affect the economy<sup>86</sup>. This situation happens because the title is still registered under the name of the deceased. Therefore, the land cannot be mortgaged or pledged. Other than that, long term development cannot be done since there is no validity in land ownership. Other than that, due to this problem, family disputes may also arise. Therefore, it is critical to be aware of the need of preparing ahead for wealth distribution before death so that the beneficiary does not have any difficulty in managing the distribution of inherited properties.<sup>87</sup>

While it is undeniable that *faraid* provides for a clear method of distributing the estates, in practise, the application of this ruling is not as simple as it appears. This is because the process of estate administration normally takes time<sup>88</sup> because it entails multiple stages in particular and necessitates a significant level of dedication on the

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<https://www.bharian.com.my/rencana/agama/2019/10/615667/uruskan-wasiat-pembahagian-harta-elak-waris-berkonflik>

- <sup>84</sup> Md Yazid Ahmad & Laludin H. (2010). Pengurusan Harta Pusaka: Permasalahan Sikap Masyarakat Islam Di Malaysia Dan Penyelesaiannya Menurut Perspektif Islam. Syariah Law Report Anon. 30 September (2005). RM471 Juta Harta Pusaka Masih Gagal Diagih. Utusan Malaysia.
- <sup>85</sup> Azizi Abu Bakar, Muhammad Ashraf Aliff Mohamad Rapi & Mohd Rashdan Sallehudin (2020). Property inheritance management: Issues unclaimed property. Webology, V17(2).
- <sup>86</sup> Nur Fadlin Binti Roslan & Azlin Alisa Ahmad (2022). Pentadbiran Harta Pusaka dan Implikasi Negatif Harta Tidak Dituntut. Malaysian Journal of Social Sciences and Humanities (MJSSH) (e-ISSN : 2504-8562) 2022, Volume 7, Issue 4, 3
- <sup>87</sup> Rejal Arbee. (2007). Mengapakah RM40 bilion Harta Pusaka Tidak Diwasiatkan? Dewan Masyarakat, Julai: 36.
- <sup>88</sup> Malaysia. (2006). Perbahasan Dewan Rakyat Kesebelas, Penggal Ketiga, Mesyuarat Pertama, 19 April 2006. (Ismail b. Mohamed Said).



part of the recipients to handle it. As a result, the management of inheritance properties frequently encounters challenges in distributing them among beneficiaries. This demonstrates the importance of the concerns, and a remedy for administration and management issues in the distribution of estate is required. Society's erroneous belief that there is no need to expedite the distribution of property in order to avoid misinterpretation and out of respect for the deceased also prevents the inheritance from being distributed immediately.<sup>89</sup> Some segments of society, particularly the Malays, would regard estate administration as a very sensitive topic to be discussed. Such a scenario obstructs the heroic effort of the heirs who comprehend and are aware of the situation from carrying out their responsibilities. According to a previous research, many applications for estate administration and distribution have not been filed and have been long overdue.<sup>90</sup>

Another element that contributes to the delay in the distribution of the estate is prejudices toward the heirs who desire to commence the estate administration process.<sup>91</sup> Such prejudices have the potential to adversely affect the estate administration process. As a result, the heirs might not be able to fully participate in the estate management process.

Due to the various factors that could cause the delay or neglect in estate distribution, it is necessary that an efficient procedure for conflict resolution in estate administration should be designed to ensure that these causes can be eliminated. One of which is mediation which can be applied as a tool to resolve the issues. The effectiveness of mediation in conflict resolution of estate administration is examined below.

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<sup>89</sup> Shanika Abdullatib (2020). *Uruslah pembahagian harta ketika masih hidup*. Retrieved from <https://selangorkini.my/2020/06/uruslah-pembahagian-harta-ketika-masih-hidup/>

<sup>90</sup> Wan Kamal Mujani, et al. (2011). *Construction of Failure and Delay Under Islamic Estate Management*. *International Journal of Business Management*. ISSN 1993-5250.

<sup>91</sup> Roslina Sabiyah (2021). *Pembahagian harta pusaka tidak boleh sesuka hati. Peguam syarie kongsi 3 situasi*. Retrieved from <https://www.astroawani.com/gaya-hidup/pembahagian-harta-pusaka-tidak-boleh-sesuka-hati-peguam-syarie-kongsi-3-situasi-321278>

## **MEDIATION AS A MODE OF RESOLUTION IN MAINTAINING SUSTAINABILITY IN ESTATE ADMINISTRATION**

Generally, there is no special technique or approach to dealing with family conflicts in maintaining sustainability in estate administration. Some family disputes may have previously occurred in the past and have not been resolved as of yet. This is the reason why in certain families, the parties in dispute will file a lawsuit in court. Due to the fact that the legal process actually costs a lot of money, only those with financial capacity would be able to bring the case to court.

However, lawsuit in court is not the only solution to the dispute. Mediation is an alternative method of settling a public disagreement in which the parties enlist the help of a neutral, impartial, and independent mediator who guides them to a mutually optimal conflict resolution. Mediation can make the administrative bodies closer to society by reducing animosity between the parties to the dispute and so delivering more appropriate solutions in some types of disputes, which can also be linked to procedural aspects.<sup>92</sup> According to Raihanah Azahari<sup>93</sup>, mediation is not a new concept in Malaysia. In fact, it was used in our country even before the civil court system was established. For instance, there was the Melaka Code of Laws which contain provisions for mediation. However, there is no clear explanation on how the mediation is carried out at the time. During the colonial era, mediation was used to settle family conflicts. In the years after independence, mediation was integrated into the legal system where it is sought to settle marital disputes in order to avoid divorce. The Mediation Act 2012 governs the mediation process, such as under Section 2(a). However, this Act does not apply to disputes relating to the administration of estates. Once the parties have established an agreement through mediation, the agreement must be reduced to paper and signed by both sides. Both parties will be bound by the said agreement.<sup>94</sup>

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<sup>92</sup> P. P. Shevchuk (2011, p. 234)

<sup>93</sup> Raihana Azahari. (2010). The Development of Family Mediation in Malaysian Muslim Society. *European Journal of Social Sciences* 18(2): 220-230.

<sup>94</sup> Nora Abdul Hak. (2012). Family mediation In Asia: A Special Reference

In any family dispute relating to the administration of estate, it is best to involve a third party to carry out the mediation process for the family. Through mediation, the administrative bodies can take into account the feelings and emotions of all parties. Because mediation has been shown to be an effective method of resolving family disputes, the idea of incorporating mediation into the practise of administrative bodies was developed.<sup>95</sup> This approach has been used in many family court cases because it actually benefits both parties in addition to mending relations within the family. In a nutshell, a mediation process can make the dispute to be resolved more quickly and settle family disputes more efficiently.

## CONCLUSION

The purpose of establishing the three administrative entities namely Civil High Court, Estates Distribution Division/Units and ARB is to make it easier for the public to apply for letters of representation in asset administration. It is observed that one of the mechanisms that can be applied to resolve disputes and achieve sustainability among the deceased's family is through mediation. It is a suitable time for the government to consider developing mechanisms including to introduce a mediation model on asset management disputes to be applied by the administrative bodies in order to meet current and future needs. The article has established that sustainability issues which are caused primarily by family disputes could be resolved by mediation through one of its unique traits, that is the ability to address those who are experiencing emotional distress, which is a common occurrence in matters relating to estate administration. The application of mediation to resolve the said dispute could greatly benefit both the relevant authorities and the community.

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to the Law and Practice in Malaysia. IIUM Law Journal, 15 (1)  
<sup>95</sup> M. Kamenicka-Usova (2016). Mediation for resolving family disputes. SHS Web of Conferences 30, 00018 (2016)