

SMALL ESTATES (DISTRIBUTION) ACT 1955: ANALYSIS ON THE 2022 AMENDMENT AND ITS EFFECTS OVER THE INHERITANCE MANAGEMENT

Muhammad Amrullah Drs Nasrul*

Nurin Athirah Mohd Alam Shah**

Rahmawati Mohd Yusoff***

Muhamad Helmi Md Said****

ABSTRACT

This study aims to analyse the amendments to the Small Estates (Distribution) Act 1955 by looking at each amendment and identifying its impact on other relevant administrative bodies. This qualitative study involved library-based research in which the authors reviewed relevant literature for the purpose of data collection, namely newspapers, textbooks, conference proceedings, case laws, seminar papers, and journal articles. The amendment shows some overlap with the jurisdiction of other administrative bodies, specifically the Amanah Raya Berhad (ARB). The paper suggested that further amendments be made to other administrative bodies, namely the Civil High Court and ARB in order to prevent such overlapping.

Keywords: Estate Distribution Division, Jurisdiction, Inheritance, Administrative Bodies and Small Estate.

* Assistant Professor, Ahmad Ibrahim Kulliyyah of Laws, International Islamic University Malaysia. Email: amrullah@iiu.edu.my.

** Postgraduate Student, Ahmad Ibrahim Kulliyyah of Laws, International Islamic University Malaysia. Email: nurinathirahalamshah@gmail.com (corresponding author)

*** Senior Lecturer, Faculty of Law, Universiti Teknologi MARA. Email: rahmawatimy@uitm.edu.my.

**** Senior Lecturer, Faculty of Law, Universiti Kebangsaan Malaysia. Email: mhelmisaid@ukm.edu.my.

AKTA HARTA PUSAKA KECIL (PEMBAHAGIAN) 1955: ANALISIS KE ATAS PINDAAN 2022 DAN KESANNYA TERHADAP PENTADBIRAN HARTA PUSAKA

ABSTRAK

Kajian ini bertujuan untuk menganalisis pindaan Akta Harta Pusaka Kecil (Pembahagian) 1955 dengan melihat setiap pindaan secara menyeluruh dan mengenal pasti kesan pindaan tersebut ke atas badan pentadbiran lain yang berkaitan. Kajian kualitatif ini melibatkan kajian berasaskan perpustakaan di mana penulis menyemak literatur yang berkaitan bagi tujuan pengumpulan data iaitu surat khabar, buku teks, prosiding persidangan, undang-undang kes, kertas seminar dan artikel jurnal. Sebahagian pindaan tersebut didapati bertindih dengan bidang kuasa badan pentadbiran yang lain, khususnya ARB. Kertas ini mencadangkan agar pindaan lanjutan dibuat ke atas bidang kuasa badan pentadbiran yang lain iaitu Mahkamah Tinggi Sivil bagi mengelakkan berlakunya pertindihan sebegini.

Kata kunci: Bahagian Pembahagian Pusaka, Bidang Kuasa, Pusaka, Badan Pentadbiran dan Pusaka Kecil.

INTRODUCTION

As a result of death, valuable assets are left behind. Such assets known as estate can be defined as a group of exclusive rights¹ that has a strong connection to ownership by the deceased.² Estate in the inheritance context on the other hand refers to the collection of assets and liabilities owned by the deceased which is to be administered by an authorised person. There are two recognised types of estate, namely movable and immovable assets. Cash, stocks, the Employees Provident Fund (EPF) insurance premiums, cars, house furnishings, clothing, jewellery, and

¹ Mohd Kamil, *Al Hibah: The Principles and Operational Mechanism In The Contemporary Malaysian Reality*. Master of Science Thesis (Land Development and Administration. (Universiti Teknologi Malaysia, 2007),

² Kamil, "Al Hibah: Principles and Operational Mechanism"

branded goods are among the examples of movable assets.³ As for immovable assets, they can be exemplified as land, buildings,⁴ mines, fields, wells, and lakes.⁵ When someone possesses a property, he is free to utilise it as he deems fit, keep it for himself, or give it to someone else whom he chooses.⁶ Upon the death of the owner of the property, his or her respective heirs might have the right to inheritance of the property. However, not all properties belonging to the deceased are inheritable. The types of property that cannot be inherited include gifts made by visitors attending the funeral of the deceased, gifts made by the deceased during his lifetime, *waqf*⁷ pension,⁸ rewards⁹ and Social Security Organisation (SOCSO).¹⁰ For Muslims, even if the deceased died leaving a will, such will cannot override the right of *Baitulmal* to

³ Ainul Jaria Maidin, Azlinor Sufian, Bashiran Begum, Fauziah Md Noor, Nor Asiah Mohamad, Ratna Azah Rosli, and Sharifah Zubaidah Syed Abdul Kader, *Principles of Malaysian Land Law*, Kuala Lumpur; (Lexis-Nexis Sdn. Bhd, 2008)

⁴ Employees Provident Fund (EPF), also known as Kumpulan Wang Simpanan Pekerja (KWSP), is a social security institution that provides retirement benefits to its members through mandatory contributions from two sides: a portion of the employee's salary and the employer's contribution on behalf of their employees. Accessed June 23, 2023, <https://www.kwsp.gov.my/>.

⁵ Ibrahim. *Al-Ahkam Jilid 3 Undang-undang Harta Dalam Islam* (DBP, Kementerian Pendidikan Malaysia, 1991), 11.

⁶ Adlina Azizul, "Soalan Lazim – Wasiat Bagi Orang Bukan Islam," 24 September 2021, accessed April 14, 2023, <https://monco.my/soalan-lazim-wasiat-bagi-orang-bukan-islam/>.

⁷ Fatim Afiqah Md. Azmi. *Enhancements of Muslim Estate Distribution Process towards Reducing the Delay and Lack of its Distribution*" PhD thesis, Faculty of Geoinformation and Real Estate. (Universiti Teknologi Malaysia, 2016), 15.

⁸ *Waqf* can be characterised as a type of worship for Muslims that takes the form of a person donating their property for usage by Muslims with the goal of worshipping to get closer to Allah SWT, accessed September 3, 2023, <https://wakaf.uthm.edu.my/wakaf/apa-itu-wakaf>.

⁹ A pension is a regular monthly payment paid to retired former employees by the government or their company, accessed September 3, 2023, <https://prpm.dbp.gov.my/cari1?keyword=pencen>.

¹⁰ Reward is a gift or reward that someone receives in exchange for their services, accessed September 3, 2023, <http://mykamus.com/free/2010/09/reward-2/>.

inherit since a will or *wasiyyah* is subject to the limitation of one-third rule after being distributed to the respective heirs under the rule of *faraid*. *Baitulmal* only plays a role in estate administration when the deceased dies without having an heir or leaves an heir who is a non-Muslim. As for the cases involving non-Muslims who die and leave no valid will, the Distribution Act 1958 will be used to guide the distribution of the property where the Act specifies a group of people who are legally entitled to the deceased's estate.

Apart from that, estate administration is defined as a process to manage and distribute the deceased's assets to the respective beneficiaries or heirs.¹¹ There are a few procedures that should be considered before proceeding with the distribution of the deceased's estate, namely deducting funeral costs, paying off debts, and executing the will of the deceased. The heirs must complete all these procedures before the estate of the deceased can be divided. As for the first procedure which is funeral arrangement, the heirs are in charge of handling the funeral costs and all the arrangements.¹² This funeral must be carried out according to the religion of the deceased. This part of the process often involves the converted person or *Muallaf*¹³ as some of them tend to hide their religious conversion and identity from the knowledge of their family members.¹⁴ Therefore, it is important to ascertain the religion of the deceased first so that no issues arise in the future.

¹¹ Social Security Organisation (SOCSO) was founded as a government department under the Ministry of Human Resources to provide employees and their dependents with social security protection through the newly adopted protection programs, accessed September 3, 2023, <https://www.perkeso.gov.my/mengenai-kami/maklumat-korporat/profil.html>.

¹² True Tamplin "Estate administration" (2023), accessed September 3, 2023, <https://www.financestrategists.com/estate-planning-lawyer/estate-administration/>.

¹³ "Irsyad Al-Fatwa Siri Ke-339: Hukum Membiayai Kos Pengurusan Jenazah Menggunakan Wang Khairat Kematian" accessed September 3, 2023, <https://muftiwp.gov.my/artikel/irsyad-fatwa/irsyad-fatwa-umum/3840-irsyad-al-fatwa-siri-ke-339-hukum-membiayai-kos-pengurusan-jenazah-menggunakan-wang-khairat-kematian>.

¹⁴ The term *Muallaf* within the articles' context of decision is defined as someone who has just converted to Islam or someone whose heart has been tamed among those who have not converted to Islam or who need to

As for the debts, if a person passes away without paying off their debt, the heirs are required and obligated to settle the debts. In order to prevent anyone from claiming from the heirs, the debt should be settled by the heirs. Irrespective of the amount of debt, it is still the responsibility of the heirs or beneficiaries to settle it. Last but not least, the execution of the deceased's will depend on who the recipient is and how much money is left in the will.¹⁵ If the deceased's will is unfair, unclear, or likely to cause disputes among the parties, it cannot be carried out. As for non-Muslims, the Wills Act 1959 will be the main reference and guideline in writing a will. Section 2 of the Wills Act 1959 only provides that the Act does not apply to Muslims.¹⁶ As for Muslims, the will must be according to the proportion of the property, which is 1/3 of the remaining property after deducting all outstanding debts. The heirs have the right to share 2/3 of the testator's property through *faraid*. In order to guarantee that the deceased's estate is managed by a responsible heir or executor who is able to pay obligations and carry out wills, it is evident that estate administration-related matters must be addressed correctly. The most crucial element is that meticulous measures must be taken to guarantee that all surviving heirs can obtain their rights.¹⁷

Once these three processes are completed, then the division of the deceased's estate can proceed. To begin the distribution process, the beneficiaries must first ascertain whether the deceased died intestate or testate. Intestate cases occur when someone passes away in the absence of a valid will, whereas when someone dies leaving a will, it is consid-

be drawn to Islam or is expected to defend Muslims or who need to be secured for their crimes against Muslims. "Fatwa Zakat Negeri Selangor," accessed May 29, 2023, <https://www.zakatselangor.com.my/fatwa-zakat-negeri-selangor/>

¹⁵ Nurul Fatiha Muah, "Akibat Tukar Agama Tanpa Pengetahuan Waris," 5 July 2019, accessed August 31, 2023, <https://www.sinarharian.com.my/article/36031/sinar-islam/akibat-tukar-agama-tanpa-pengetahuan-waris>.

¹⁶ Majlis Agama Islam Selangor "Wasiat," accessed September 3, 2023, <https://efaraid.mais.gov.my/wasiat/>.

¹⁷ Section 2, Wills Act 1959.

ered a testate case. Having a will actually makes the estate administration process easier,¹⁸ even if it is not mandatory to be prepared during a lifetime. A will is actually important. It is defined in Section 2 of the Wills Act 1959 as a declaration that is legally binding to be carried out after the one's death which also includes children's custody, guardianship, and education.¹⁹

A personal representative, often known as the executor, is chosen to carry out the testator's wishes when there is a will. The executor or personal representative named in the will is responsible for managing the deceased's estate after the testator passes away and ensuring that everything is done in accordance with the testator's wishes. It is permitted for the deceased to appoint more than one executor, according to Section 4 of the Probate and Administration Act 1959.²⁰ Even if an executor is named in the will, he or she cannot continue to carry out their responsibilities without obtaining authorisation from the administrative body. The nominated executor should go first to the Civil High Court to obtain a Grant of Probate as such a document authorises the administration of the estate of the testator for the executor.

For intestate cases, the deceased's estate will be managed by the appointed administrator. The terms and procedures used in intestate cases are different, although they have the same rights and obligations as the executor. In the event that the deceased did not prepare a will, the Letter of Administration will replace the Grant of Probate. Just like in a testate case, obtaining the Letter of Administration issued by the Civil High Court is important as this document officially and legally authorises the administrator to carry out his duties. Before requesting the Civil High Court for the Letters of Representation,²¹ a Muslim must

¹⁸ Nur Syahidah Abdul Jalil "Tidak dituntut atau sukar dituntut?" 6 November 2021, accessed September 3, 2023 <https://www.utusan.com.my/rencana/2021/11/tidak-dituntut-atau-sukar-dituntut/>

¹⁹ Mohamad Ali Roshidi Ahmad "Wasiat: Instrumen Penting Pengurusan Harta Pusaka Islam," 19 Jun 2020, accessed September 3, 2023, <https://www.bernama.com/bm/tintaminda/news.php?id=1852681>

²⁰ Section 2 of the Wills Act 1959.

²¹ "What Is a Grant of Probate (GP) And Letter of Administration (LA)?" accessed September 3, 2023 <https://www.propertyguru.com.my/property-guides/what-is-grant-of-probate-gp-and-letter-of-administration-la-27762>

first obtain the certificate of *faraid* issued by the Shariah Court, and the process of dividing the inheritance must comply with the *faraid* law, mutual agreement or denial of rights (*takharruj*)²² either without charge or compensation.

From the standpoint of the legislation governing estate administration, it is to be noted that Islamic law, customary Malay tradition, and Civil Law all have an effect on Muslim estate administration in Malaysia. Since Malaysia practices a dual legal system, Civil Law and Islamic law are both used to administer estates in Malaysia. This position is in line with the State List under the Ninth Schedule of the Federal Constitution.²³ Generally, various administrative bodies are appointed to manage estate administration in Malaysia namely the Estate Distribution Division, Amanah Raya Berhad (ARB), and Civil High Court.²⁴ Since Sabah and Sarawak have distinct laws, regulations, and processes, the author will leave out details regarding estate administration practices there,²⁵ and only highlight Peninsular Malaysia. In addition, this article will not discuss the Shariah Court, despite the author's earlier statement that Muslims involved in estate administration must first receive a *Faraid Certificate*²⁶ from the court, as the Shariah Court lacks the authority to grant letters of representation.

The *Jumaaton and Raja Delila v. Raja Hizaruddin*²⁷ case trialed at the Shariah Court of Appeal is one of the cases that shows the Shariah Court's lack of authority in estate administration. In this case, even

²² Letters of Representation is required to appoint someone to administer the deceased's estate within its authority.

²³ Mohd Khairy Kamarudin and Azwan Abdullah. *Amalan Pembahagian Faraid di Malaysia*. Journal of Global Business and Social Entrepreneurship, 2(3), (2016) 11–19.

²⁴ Ninth Schedule of the Federal Constitution.

²⁵ Ainan Husnaa Muhammad Saifullah and Siti Mashitoh Mahamood. *Isu-Isu Berbangkit dalam Pengurusan Harta Pusaka Ringkas Secara Berwasiat dan Tidak Berwasiat di Amanah Raya Berhad (ARB)*. Journal of Shariah Law Research, 5(2), (2020): 207–230.

²⁶ Muhamad Helmi Md Said and Muhammad Amrullah Drs Nasrul. *Muslim Estate Administration: The Locus of Malaysian Syariah Court in Malaysia*. International Journal of Islamic Thought, 19(1), (2021): 73–78.

²⁷ A *Faraid Certificate* is a document produced by the Syariah Court that includes a list of the beneficiaries who are entitled to the deceased person's

though the parties in this case are Muslims, the Shariah Court of Appeal determined that the Civil Court is legally qualified to settle disagreements pertaining to estate administration, particularly those involving the distribution order, while the Shariah Court is not authorised to do so. Since the Shariah Court lacks authority, it will not be mentioned as one of the administrative bodies in this paper.²⁸

A similar outcome can be seen in the case of *Per Rosmawati binti Sharibun & Anor*²⁹ where the issue was whether *Latifah* who is the plaintiff was entitled to receive money from the bank account of the deceased, Dato' Sharibun bin Wahab, and his third wife. By referring to the case of *Jumaaton and Raja Delila v. Raja Hizaruddin*, the Court determined that the Civil Court has jurisdiction to decide whether the money in the joint account is regarded as a gift under Islamic law.

The same rule applies in the case of *Azzaharuddin bin Mohd Nadzir v. Nordin bin Mohd Nadzir & Ors*,³⁰ whereby the Shariah Court was declared by the High Court as not having jurisdiction in declaring a property as an estate. These three cases clearly show that the Shariah Court lacks the required authority with respect to inheritance. However, the Shariah Court is still recognised by the Civil Court as the only institution having the power to make decisions regarding *faraid* and related issues, especially regarding the list of beneficiaries in the *faraid* Certificate.

Additionally, there are other statutes that govern the matters of estate administration in Malaysia, namely the Public Trust Corporation Act 1955,³¹ the Small Estates (Distribution) Act 1955,³² as well as the

assets as well as the precise portion of that estate that each beneficiary is entitled to, computed in accordance with the *Faraid* rule and approved by the court.

²⁸ *Jumaaton and Raja Delila v. Raja Hizaruddin* [1998] 6 MLJ 556.

²⁹ Section 46(2) and Section 50 of the Administration of Islamic Law (Federal Territories) Act 1993.

³⁰ *Per Rosmawati binti Sharibun & Anor* [2002] 4 AMR 4913.

³¹ *Azzaharuddin bin Mohd Nadzir v. Nordin bin Mohd Nadzir & Ors* [2009] 4 ShLR 106.

³² Public Trust Corporation Act of 1955 (Act 532) is an Act that governs the laws pertaining to the Public Trustee and Official Administrator. The said also provides the provision on matters relating to the vesting of the Public Trustee and Official Administrator's property, rights, and liabilities in a company, to control the company's exercise of its functions and powers,

Probate and Administration Act 1959.³³ However, the primary focus of this article is mainly on the Small Estates (Distribution) Act 1955. A revision to this Act was proposed in 2022,³⁴ which received various reactions from the public and other administrative bodies as well. Although this amendment primarily attempts to broaden the authority of the Estate Distribution Division as well as to clear the backlog of cases, it also has an impact on both bodies of ARB and the Civil High Court. This issue of overlapping authority between ARB and the Civil High Court should not arise because the amendment's sole goal is to benefit the Estate Distribution Division and not to reduce the jurisdiction of either the Civil High Court or ARB. Therefore, the authors will make an analysis of this amendment, and also consider how these amendments may affect the jurisdiction of the Civil High Court as well as ARB. The authors will also offer some actionable suggestions at the conclusion of the article to potentially prevent this dispute between the administrative bodies from getting worse.

ESTATE DISTRIBUTION DIVISION: OVERVIEWS AND ARISING ISSUES

When discussing about type of estate, there are three known categories of estate namely small estate, non-small estate as well and simplified estate.³⁵ Small Estate is a term used to describe an estate that is entirely or mostly made up of immovable property, particularly a building or piece of land. Next, a non-small estate is any property left by the deceased that is worth more than RM 2 million, regardless of whether it was left with a will. And lastly, as for simple estate, it can be defined as a property left by the deceased without a will and with a value of no

as well as to provide for matters related to and incidental to estate management.

³³ Small Estates (Distribution) Act of 1955 (Act 98) is An Act pertaining to matters incidental thereto and the distribution of small estates of deceased persons.

³⁴ Probate and Administration Act of 1959 (Act 97) is an Act a law governing letters of administration and probate.

³⁵ Sharifah Mahsinah Abdullah, "Govt hopeful amendments to Small Estates (Distribution) Act 1955 Will Clear Backlog of Inheritance Cases," 26 September 2022, accessed September 4, 2023. <https://www.nst.com.my/news/nation/2022/09/834574/govt-hopeful-amendments-small-estates-distribution-act-1955-will-clear>

more than RM600,000. However, since the Estate Distribution Division is the major focus of this article, small estates will be the main focus of the discussion.³⁶ There are three requirements that the heirs must adhere to in order to submit a small estate application to the Estate Distribution Division. First, the worth of all of the deceased's assets cannot be greater than RM2 million. Secondly, there is no will left by the decedent. Thirdly, there must be immovable property under the deceased's name within the Land Office's authority (a house, a flat, or a plot of land). The main legislation that governs small estates is the Small Estates (Distribution) Act 1955 [Act 98] which applies to both Muslims and non-Muslims. As a result of the establishment of this Act in 1955, the Land Administrator is given the power to hear cases involving small estates which before this was only bestowed to Civil High Court.³⁷ The function of this institution is to manage inheritance applications, coordinate the estate administration obligations, simplify the ownership transfer procedure, aid in the process of re-registering the deceased's land ownership with the state government, and lastly support the state government's efforts to stop unchecked land fragmentation.³⁸

A Land Administrator is in charge of the hearing in the Estate Distribution Division and is also given exclusive jurisdiction to handle the estate administration process.³⁹ The uniqueness of this organisation is that the beneficiaries may choose one of the relevant districts or state Land Offices to submit their application if there are estates located in different states. Apart from that, the heirs can also bring their case directly, without seeking assistance from an attorney. In addition to being able to represent themselves, there are no filing fees payable by the

³⁶“Harta Pusaka Besar, Harta Pusaka Kecil, Harta Pusaka Ringkas,” Kumpulan Pengurusan Harta, accessed September 1, 2023 <https://www.pengurusanharta.com.my/post/harta-pusaka-besar-harta-pusaka-kecil-harta-pusaka-ringkas>.

³⁷ Section 3 (2) of Small Estates (Distribution) Act 1955.

³⁸ Muhamad Mu'izz Abdullah and Ahmad Mustapha Mat Ali. *Implikasi Pindaan Akta Harta Pusaka Kecil (Pembahagian) 1955 [Akta 98] Terhadap Pentadbiran Harta Pusaka Di Malaysia*. Kanun: Jurnal Undang-undang Malaysia, 35(1) (2023): 95–118.

³⁹ Nur Fadlin Roslan and Azlin Alisa Ahmad. *Pentadbiran Harta Pusaka Dan Implikasi Negatif Harta Tidak Dituntut*. Malaysian Journal of Social Sciences and Humanities (MJSSH), 7(4), (2022),1-15.

heirs for applying for the Letter of administration. Only the Order fee is charged to the heirs. If the total value of the deceased property is less than RM1,000, then the Order fee is only RM10. If it is less than RM50,000, then the Order fee is only RM30. On the other hand, if the property exceeds RM50,001, then the order fee will be charged based on 0.2% of the value of the deceased's property. Such features indirectly attract many heirs to utilise this institution.

Since its establishment on March 1, 1974, the Estate Distribution Division has successfully resolved many cases in relation to estate administration. It typically gets almost 60,000 new petitions for the division of small estates every year, or more than 65% of all estate division applications in Malaysia as compared to other agencies. This fact is in line with the organisation's objective which is to help people especially those from lower and middle classes. Even though the costs are reasonable and cheaper in comparison to other administrative agencies, the Estate Distribution Division provides very good service⁴⁰. As mentioned earlier, before requesting the Civil High Court or ARB to issue letters of representation, one must first obtain a *faraid* certificate issued by the Shariah Court. However, there is an exception in the Estate Distribution Division. The requirement is waived because the Land Administrator in the Estate Distribution Division is qualified to calculate the beneficiaries' parts under *faraid*, thus eliminating the need to submit an application for a *faraid* certificate to the Shariah Court.⁴¹ Instead of issuing a *faraid* certificate, the Estate Distribution Division will identify each beneficiary's portion according to *faraid* in its distribution orders or letters of administration, both of which are represented by Form E which is the Distribution Order, and Form F which is a form to obtain an order appointing any individual to be the deceased's estate

⁴⁰ Pusat Informasi Tanah dan Ukur "Pengurusan harta pusaka di bawah Akta Harta Pusaka Kecil Pembahagian 1955," accessed September 3, 2023 <https://pintu.instun.gov.my/>

⁴¹ Adzidah Yaakob, Kamilah Wati Mohd, Hasnizam Hashim, Abidah Abdul Ghafar, Muhammad Nazmi Khamis, Kamarul Azman Mustapha Kamal. *The Importance Of Administration Of Estates In Malaysia From Legal And Maqasid Syariah Perspectives*. INSLA e-Proceeding Vol 3 No.1, (2020): 689-699

administrator, respectively.⁴² In addition, this institution will issue specialised orders, namely the Distribution Order and the Letter of Administration, making it similar to the Civil High Court.

To begin the process, a qualified person may submit applications for the division of small estate once they meet the necessary requirements. Among the types of qualified people are; heirs of the *Baitulmal*, creditors and caveators, purchasers under a valid Sale and Purchase Agreement, Land Mortgagee or Land Lease Holder, *Penghulu* or Settlement Officer appointed by the Land Administrator; and lastly personal representatives from ARB. The group of people who belong to this category of qualified persons includes individuals who are the deceased's legal heirs as well as those who have an interest in the deceased. Therefore, since they are called qualified persons and are eligible to make the application, heirs need not to be startled if other parties attempt to claim for their rights in this administrative body. Once the parties have identified who is the qualified person, the qualified person or the applicant must complete Form A as instructed under Section 8 Small Estate (Distribution) Act 1955.⁴³ If the heir has never filed an application before and this is their first time doing it, filling out Form A is a must. Form A is a straightforward form that is accessible online or at the Land Office and contains personal details of the deceased.⁴⁴ Namely the list of assets, debts, and beneficiaries. In addition, the heir may complete Form P in accordance with Section 17 of the Small Estate (Distribution) Act 1955 if they fail to gather all the deceased's estate or cancel the administrator or trustee.⁴⁵

⁴²Muhammad Amrullah Drs Nasrul and Wan Noraini Mohd Salim. *Administration of a Muslim's Estate under Section 17 of the Public Trust Corporation Act 1995 With Special Reference to Transfer of Vehicles*. IIUM Law Journal. 25 (1) (2017): 121-136.

⁴³Sri Wahyu Sakina Ahmad Sanusi, Nurauliani Jamlus Rafdi, Noor Aimi Mohamad Puad and Mohd Musa Sarip. *A Review On Bequest Writing in the Management Of Property in Malaysia*. Proceeding of the 4th International Conference on Management and Muamalah 2017 (ICoMM) (2017): 497-502.

⁴⁴Section 8, Small Estate (Distribution) Act 1955.

⁴⁵The form can be accessed from <https://www.jkptg.gov.my/my/pembahagian-pusaka-kecil>.

Once the applicant has completed Form A, he is required to print the form, take it to the Magistrate or Commissioner of Oaths for a signature, and bring the required documents to this institution. No later than twenty-one days after the date of online application, the heirs must attach their application with copies of supporting papers. However, it can take five to six months due to the complexity and special circumstances of the case, such as cases pertaining to multiple layers of death which involve deceased persons of different generations, and properties in different districts. After Form A has been filed, the Land Administrator will send Form B to the Registrar of High Court (Power of Attorney Section) to ascertain if anybody has previously filed an application involving the deceased's estate, as well as to the Jabatan Penilaian dan Perkhidmatan Harta (JPPH) to assess whether the estate is worth more than RM2 million.⁴⁶ The Land Administrator would not proceed with the application unless the High Court and the JPPH have approved it. If not, only the High Court may make a ruling ordering the application to be heard. The Estate Distribution Division would then notify the applicant of the hearing application if the case is simple and uncomplicated as well as if there is no issue with JPPH or the High Court. The notice for the hearing application is brief, but it contains a lot of crucial information, including information regarding the hearing. The heirs have to be present during the hearing; otherwise, they must provide the Land Administrator with a good reason.

The heirs may, however, be exempted from the requirement to attend the hearing if they are too old or incapable to attend. They may submit a letter of consent by completing Form DDA, which is accessible online or at the Land Office and needs to be signed in front of the Commissioner of Oath as proof that the non-present heirs gave their actual consent to the decision of the upcoming hearing. Everyone who attends the hearing must bring their original documents, specifically their identity card. The copy of other documents submitted with the Form A earlier must also be brought by the applicant. The Land Administrator will begin the hearing when everyone is present in the hearing room and will start by determining whether or not the information provided in Form A is accurate. The Land Administrator also has the authority to call witnesses, question them, and order the production and delivery of documents. However, lawyers are not allowed to attend the

⁴⁶ Section 17 Small Estate (Distribution) Act 1955.

hearing without the Land Administrator's authority. The rationale behind this rule is to allow the related parties to decide by themselves on the matters without any interference from the third party.

After the hearing, if no issues arise, the Land Administrator will appoint the administrator chosen collectively by all of the heirs to manage the deceased's assets. In addition, the administrator has other responsibilities which include using the estate's assets to pay for the deceased person's debts and funeral expenses (to reimburse what has been paid) and also the costs associated with obtaining the Letters of Administration. For Muslims and non-Muslims, the designated Land Administrator's responsibilities differ. According to Section 6 of the Distribution Act 1948, the Land Administrator will allocate the estate for non-Muslims according to the Distribution Act 1948.⁴⁷ On the contrary, the *faraid* law will guide the distribution of estates for Muslims. In the event that beneficiaries agree that the estate should be distributed differently without following the Distribution Act 1948 or *faraid* rules, the Land Administrator may follow it as long as it does not violate any law. The heirs must submit the order for distribution in Form E to the relevant authorities in order to have it enforced, namely the Land Office, Tabung Haji,⁴⁸ the Road Transport Department of Malaysia (JPJ)⁴⁹ for vehicle ownership, Amanah Saham Nasional Berhad (ASNB)⁵⁰ if the dead left any shares, and banks. In order to transfer the assets to the relevant authorities, each authority, agency, company, or bank will want a copy of the Letter of Administration that is prepared by the Land Administrator, therefore, it is wise for the heir to request several copies of it.

⁴⁷ Refers to a form that all of the heirs must complete detailing how to divide the deceased's property. They can indicate on this form whether they reject or accept the distribution.

⁴⁸ Section 6 of the Distribution Act 1948.

⁴⁹ "Tabung Haji Board (TH) to Offer a Variety of Facilities to Malaysian Hajj Pilgrims," accessed July 2, 2023. <https://www.tabunghaji.gov.my/en/about-us-0>.

⁵⁰ "JPJ is an administrative division of the Malaysian Ministry of Transport. JPJ's responsibility is to carry out legislative, regulatory, and judicial obligations in accordance with the Road Transport Act," accessed September 2, 2023, <https://www.jpj.gov.my/web/main-site/sejarah-jpj-malaysia>.

Among the challenges that are currently faced by the Estate Distribution Division is the high number of case backlogs. According to one of the cited articles, there are 72,348 cases in total that this institution has not yet addressed and that require prompt attention. With 13,423 cases, Kedah has the biggest backlog of cases, followed by Selangor (10,358) and Kelantan (7,414).⁵¹ The increasing backlog of cases is a concern because if more cases are added to the backlog, more property will become frozen. This backlog of cases usually happens for a number of reasons. When a family disagreement could not be addressed through negotiation and no effort was made to find a solution, some heirs, for example, would rather see the matter ended and put to rest. In situations like this, the Estate Distribution Division would not remove the file once the case is finished because they feared that the heir might return after the family dispute was resolved. However, this kind of circumstances does not simply affect one household. When they have not yet made a final decision, many families, particularly heirs, leave their cases unresolved at the Estate Distribution Division. The same article also mentioned that the other reason for the increase in backlog cases is the loss of the deceased's important documents. The heirs might decide to drop their action after failing to locate the important documents that the Land Administrator had demanded. They might not know where to look for the document, so the last remaining choice is to simply let the case go. Additionally, when compared to the ratio of the officers from other agencies, the number of new cases in the Estate Distribution Division each year is high. This is one of the reasons that estate administration takes longer than expected, and this puts a lot of pressure and restrictions on the Estate Distribution Division.⁵²

Despite efforts taken to reduce the backlog cases, only a small number of cases were resolved by the end of 2022. This demonstrates clearly that the existing mechanisms to reduce the backlog of cases

⁵¹“The purpose of ASNB's establishment was to use a varied investment portfolio to generate a respectable level of income distribution and capital increase for Shareholders,” accessed September 2, 2023. <https://www.asnb.com.my/asnbfaq10.php>

⁵²“Backlog of Over 70,000 Estate Distribution Cases,” Sinar Daily Online, 1 August 2022, accessed April 29, 2023, <https://www.sinardaily.my/article/177550/malaysia/national/backlog-of-over-70000-estate-distribution-cases>.

have not been successful. Therefore, in order to prevent this situation and reduce the negative effect on the nation's economic growth,⁵³ the Estate Distribution Division must take other necessary steps to address issues since the backlog of cases is growing and requires attention. Amending or revising the statute governing the Estate Distribution Division is one of the practical solutions that must be implemented. This is because the Small Estates (Distribution) Act 1995 is the main legislation governing small estates in Estate Distribution Division. Without having a precise and comprehensive Act, the procedure in the Estate Distribution Division cannot be well executed. Since this Act was created and has been in use for a while, it may be necessary to undertake significant amendments in order to address the concerns at the Estate Distribution Division, particularly those pertaining to backlog cases. Such amendments are necessary to ensure the continuous update of the regulations that govern the Estate Distribution Division to suit the current situation.

ANALYSIS ON THE SMALL ESTATES (DISTRIBUTION) (AMENDMENT) ACT 2022

As a governing body aspiring to become a premier land management and administration entity, the Malaysian government has taken aggressive measures to address the abovementioned issues by enacting a comprehensive amendment to the Small Estates (Distribution) Act 1955 by introducing Small Estates (Distribution) (Amendment) Act 2022.⁵⁴ After passing its reading in the Dewan Rakyat for the Second Meeting, Fourth Term, Fourteenth Parliament on October 21, 2021, this legislation is now known as the Small Estates (Distribution) (Amendment) Act 2022.⁵⁵ The Dewan Rakyat (the House of Representatives) and the

⁵³ Rohaniza Idris "Pindaan RUU Harta Pusaka Kecil Mudahkan Urusan Waris," 26 October 2021, accessed September 2, 2023, <https://www.bharian.com.my/berita/nasional/2021/10/880353/pindaan-ruu-harta-pusaka-kecil-mudahkan-urusan-waris>.

⁵⁴ Hani Kamariah Mat Abdullah, Suhaimi Ab Rahman, Rasyidah Md Khalid and Nurul Aiman Mat Abdullah. *Perkembangan pengurusan dan pentadbiran harta pusaka Islam Malaysia*. BITARA International Journal of Civilizational Studies and Human Sciences, 3(1), (2020): 42–53.

⁵⁵ Small Estates (Distribution) (Amendment) Act 2022 (Act 1643) is a recent amendment to Small Estates (Distribution) Act 1955. This Act, however, not yet in force.

Dewan Negara (the Senate) legislated the Small Estates (Distribution) Bill 2021 in the first reading on October 11, 2021. On October 26, 2021, the second reading of the bill was approved.⁵⁶ To date, there have been numerous responses to the decision to amend this Act. The amendment made in the Small Estates (Distribution) (Amendment) Act 2022 aims at reducing backlogged cases rather than simplifying the administration of small estates. Apart from that, there are other objectives of this amendment, namely, to make it simpler for the community to manage the small estate, to optimise the current system in this body, giving applicants a choice when submitting application petitions, and lastly to enhance the usage of technology in this body. All of these goals are crucial to ensure that the Estate Distribution Division system functions properly and fixes what has gone wrong, particularly during the pandemic era. Due to COVID-19 especially during the 2020-2021 Movement Control Order (MCO), a majority of the estate administration procedures in the Estate Distribution Division were adversely impacted, one impact being the increase in the number of backlog cases.⁵⁷

The presence of the Small Estates (Distribution) (Amendment) Act 2022 brings about a number of changes that will significantly affect the Estate Distribution Division. For instance, Section 2A to 2C gives the Minister the authority to appoint someone from the Estate Distribution Division (which includes the Estate Distribution Officer, Land Administrators, and Deputy President of Estate Distribution) to become the Estate Distribution President or to confer authority on the President of Estate Distribution.⁵⁸ The President is required to conduct himself in a reasonable manner, whereby he/she is officially responsible for determining the jurisdiction territory as well as handling the estate administration and distribution. As required by this Act, the President has full authority and direct control over all Estate Distribution

⁵⁶“RUU Harta Pusaka Kecil diluluskan Dewan Rakyat”, Berita Harian Online, 26 October 2021, accessed April 13, 2023, <https://www.bharian.com.my/berita/nasional/2021/10/880389/ruu-harta-pusaka-kecil-diluluskan-dewan-rakyat>.

⁵⁷“Parlimen Malaysia” accessed September 4, 2023 <https://www.parlimen.gov.my/bills-dewan-rakyat>.

⁵⁸Haikal Raman “Mendepani cabaran pasca COVID-19 dalam pentadbiran tanah,” 25 July 2021, accessed September 1, 2023, <https://www.astroawani.com/berita-malaysia/mendepani-cabaran-pasca-covid19-dalam-pentadbiran-tanah-310349>,

Division Officers. It is opined that by creating a new post according to this amendment, the Land Administrator's burden is actually reduced, and the tasks at Estate Distribution Division are distributed in a more sensible and organised manner. Since numerous new positions are created as a result of this change, the workload pressure at the Estate Distribution Division can be lessened.

In addition, the definition of "small estate" has been amended by Section 3(2) to include any property, whether it is movable or immovable. Any state can use the amendment as well. More interestingly, the jurisdiction of this institution has been increased from RM 2 million to 5 million.⁵⁹ The amendment has enhanced the jurisdiction of the Estate Distribution Division. Additionally, Section 4(2) of this Act has been amended enabling petitions to be submitted in any State where the movable or immovable property is situated. In addition to saving money, it is also convenient for the heirs who reside far from the office of the Estate Distribution Division.

Moreover, according to Section 8(1) and 18(1) of this Act, a report can be made to this organisation to obtain consent from the beneficiary, creditor, or purchaser whenever there is an absence of application of obtaining grants of probate, letter of administration, or for distribution of an estate, within 6 months of the date of death. However, with the amendment, a new provision is introduced where the petitioner may request a summary distribution by making a request to remove a trustee who is a minor or when the entire worth of the property is less than RM600,000.⁶⁰ It is supported by Section 8C whereby this body may award Letters of Administration to a petitioner or any beneficiary for specific purposes (absence of authority for the division of the estate), at which point they will be under the control and supervision of this body.⁶¹

Next, under Section 9(1), only the petitioner may get a copy of the notice of petition. Copies of the notice to each individual listed and addressed in the petition as a beneficiary of the estate or any interest must be provided by the petitioner.⁶² This amendment removes Section

⁵⁹Refer to provisions from Section 2A to 2C of the Small Estates (Distribution) (Amendment) Act 2022.

⁶⁰Section 3(2) Small Estates (Distribution) (Amendment) Act 2022.

⁶¹Section 8(B) Small Estates (Distribution) (Amendment) Act 2022.

⁶²Section 8(C) Small Estates (Distribution) (Amendment) Act 2022.

9(2) as it is no longer necessary to publish a petition notice. As for Section 10, a guardian for any beneficiary or claimant of the estate or any interest therein who is a minor or a person of unsound mind may appoint any suitable person to assist them in any matter relating to the proceedings for the distribution of the estate.⁶³ However, it is substituted with new hearing procedures where this body has the authority to limit public access.⁶⁴ Sections 12(11) and 12(12) also state that in cases where the beneficiary is unable to attend the hearing, a letter of consent from the beneficiary is needed. If there is no letter of consent, the hearing can be postponed.⁶⁵

Meanwhile according to Section 13(2), a beneficiary who is either a minor or mentally incapacitated must have their share of any movable property registered in their name and there must be a caveat to safeguard the beneficiary's interest.⁶⁶ In accordance with the new provisions of Section 15(4A) and (4B), this body may order the sale of the land or any portion of it with the approval of the beneficiaries holding a two-thirds majority of the shares in the property or any portion of it.⁶⁷ Section 16(1) requires the petitioner to make arrangements for the registration of any distribution order that pertain to the land.⁶⁸ As for the new clause which is under Section 16A (1) and (2), any order made may be amended to correct a typing error and to make other changes in accordance with the regulations that the Minister will make.⁶⁹ It is supported by Section 29 which states that a person who feels wronged has 30 days from the day the order, decision, or act is made or done to initiate an appeal with the High Court.⁷⁰ As a substitute, a new First Schedule will be created which will also include new considerations for this body to take into account when deciding how to distribute any movable property.

⁶³ Section 9 (1) Small Estates (Distribution) (Amendment) Act 2022.

⁶⁴ Section 10 Small Estates (Distribution) (Amendment) Act 2022.

⁶⁵ Section 11 (2A) Small Estates (Distribution) (Amendment) Act 2022.

⁶⁶ Sections 12(11) and 12(12) Small Estates (Distribution) (Amendment) Act 2022.

⁶⁷ Section 13(2) Small Estates (Distribution) (Amendment) Act 2022.

⁶⁸ Sections 15(4A) and (4B) Small Estates (Distribution) (Amendment) Act 2022.

⁶⁹ Section 16(1) Small Estates (Distribution) (Amendment) Act 2022.

⁷⁰ Sections 16A(1) and (2) Small Estates (Distribution) (Amendment) Act 2022.

EFFECT OF THE AMENDMENTS IN RELATION TO ESTATE ADMINISTRATION

Numerous impacts, particularly on other administrative bodies, can be noticed as a result of the amendments described above.⁷¹ It is hoped that this amendment will improve the process structure and eliminate delays. Based on the amendments, it is clear that the complicated procedures in the Estate Distribution Division are now simplified. As a result, the backlog of cases caused by the delay in managing the estate may be indirectly reduced. In addition, these amendments will result in an annual rise in the value of immovable property, namely land and buildings. These amendments should be put into effect in order to deal with the cost of living, which is increasing daily. Furthermore, regardless of where a petition is filed within the same state, the Land Administrator has the power to consider petitions brought before him. This demonstrates clearly how dedicated this body is in assisting heirs in resolving their estate disputes. It will also relieve the heirs of having to travel to another state or district because everything can now be completed in one place.

Apart from that, these amendments also permit every case to be decided even without the participation of some of the decedent's heirs and without their approval. This is due to the fact that previous procedures involved a number of heartbreaking instances. Elderly heirs who need to manage their inheritance must climb stairs to attend the hearing. By simplifying the processes, this body is now more considerate of the concerns of heirs, who are primarily elderly. Additionally, if there are small typographical errors or omissions that differ from the facts provided during the hearing, amendment can be done, and this makes things simpler for the heirs. Last but not least, time and money are obviously saved by these amendments as heirs do not need to go to other administrative bodies that charge high fees compared to the Estate Distribution Division.

Despite the positive reactions to these amendments, certain parties are unsatisfied with them. Other administrative bodies, namely the Civil High Court and ARB, are likely to lose power in estate administration as a result of this amendment, with people choosing to go to the Estate Distribution Division rather than these two institutions. It is

⁷¹ Section 29 Small Estates (Distribution) (Amendment) Act 2022.

therefore evident that, with the most recent Act the Estate Distribution Division's monetary jurisdiction has expanded, which is intended to lower the current backlog of cases and streamline the processes at the Estate Distribution Division. These amendments are not made with negative intentions toward other organisations. These amendments ought to be welcomed because they will boost the authority of the Estate Distribution Division and lessen the workload of the Civil High Court and ARB. Lastly, in order to prevent confusion, the public has to be exposed to information regarding each administrative body's jurisdiction.

CONCLUSION

In conclusion, the Estate Distribution Division is well-known among the public because of its affordable fees and its power in managing small estates. However, there are many backlog cases due to several issues and problems that negatively impact the body. To overcome this issue, the Small Estates (Distribution) (Amendment) Act 2022 has been introduced which has received both positive and negative reactions. Many people have responded positively, saying that it can expedite the process and make things easier for the heirs. Even though these amendments have received favorable feedback, certain parties contend that they actually reduce the power of other administrative agencies like the Civil High Court and ARB. Compared to other administrative bodies, this institution will receive more clients due to the monetary jurisdiction's expansion, indirectly causing loss to the Civil High Court and ARB.

Thus, it is advised that the authority of the ARB and Civil High Court be increased or changed in order to ensure that the amendment has no effect on them. This enhancement is necessary to prevent confusion among the heirs on which body should be chosen. In addition, the author believes that it is time for the government to establish a specific body to oversee the power granted to each administrative body. This body is crucial for policing every administrative entity in existence to prevent power abuse. Based on the facts above, the authors hope that the Small Estates (Distribution) (Amendment) Act 2022, which entails several advantages, especially for the Estate Distribution Division, can be utilised efficiently in the process of estate administration.

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