

Issues and Challenges of Perintah Faraid (Faraid Order) in Inheritance Distribution for Muslims in Malaysia

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Abstract: In Malaysia, the Muslim society's lack of concern for inheritance management and administration may cause mistreatment and injustice to the rightful heirs of inheritance. This situation is much influenced by the attitude and actions which do not meet the standards set by Allah SWT. The implementation of Perintah Faraid (Faraid order) by the Shariah Court in Malaysia should be practised as a mechanism capable of systematic and Shariah-compliant management and distribution of inheritance property to the rightful heirs. Instead, there exist some issues which need to be resolved in order to achieve the original objective of preserving the welfare and interest of rightful heirs and avoiding disadvantage or difficulties to them. The main objective of this study is to discuss the status and practice of Perintah Faraid in the Shariah Court and the issues which beset its implementation as well as the required proactive steps to be implemented for the improvement and welfare of Muslim society in Malaysia.

Key words: Perintah Faraid, inheritance distribution, Islamic law inheritance, difficulties, Shariah Court, welfare

INTRODUCTION

Perintah Faraid is a declaration which contains a valuation of inheritance or property of the deceased and ascertainment of the rightful Muslim heirs entitled to the inheritance distribution after Faraid computation is certified and issued by the Shariah Court by virtue of legal provisions. The issue of Perintah Faraid depends on the need and application of the heirs and is therefore, not compulsory (Muda *et al.*, 2008). However, urgent action is required to manage the inheritance after death to avoid mistreatment and injustice to the rightful heirs particularly small children (if any) who need the inheritance for subsistence or survival (Ahmad and Laluddin, 2010).

In this regard, the best approach which needs to be applied before an official legal application is that the heirs must first discharge their obligations required by Shariah procedure (Ahmad *et al.*, 2014). These obligations include funeral expenses, discharge of the deceased's debts outstanding, division of matrimonial property, fulfilling bequest in a will (if any) before distribution of the

inheritance to the rightful heirs. According to Ralip (2013), matters such as mortgages, sell and purchase claims, caveats on land interests and others also need to be discharged prior to distribution of estate or inheritance. This is also occurred in the context of astrofiqh and cosmofiqh studies in Malaysia that required appropriate procedure as well (Safiai *et al.*, 2016, 2014; Ibrahim *et al.*, 2015; Ibrahim and Safiai, 2014).

Before use of the term Perintah Faraid, the phrase frequently used was 'Sijil (Certificate of) Faraid'. This is proven by the title of an Arahan Amalan (Practice Direction) issued by JKSM or Jabatan Kehakiman Syariah Malaysia (Shariah Judiciary Department of Malaysia) for example, the title of Arahan Amalan No. 2 Tahun 2003 was 'Penentuan Tempat Permohonan Sijil Faraid' (Determination of Place of Application for Faraid Certificate). Another term used was 'Perakuan Pewarisan' (Declaration of Inheritance) or 'Perakuan Pewaris' (Declaration of Heir) or 'Perakuan Pesaka' (Declaration of Inheritance) or 'Perakuan-Perakuan Pewarisan' (Declarations of Inheritance) as contained in

the act or enactment of respective states. Currently however, most state Shariah Courts in Malaysia apply the term *Perintah Faraid* in accordance with its use in *Arahan-arahan Amalan* (Practice Directives) issued by JKSM such as the titles of *Arahan Amalan No. 1 Tahun 2007* that is '*Perintah Faraid*' and of *Arahan Amalan No. 7 Tahun 2011*, '*Prosedur Permohonan Perintah Faraid*' (Application Procedure for Faraid order). Application for *Perintah Faraid* requires to be supported by an affidavit, that is a written statement sworn before the court registrar or Shariah Judge. Hence, a declaration of the heirs and their portions of inheritance determined by Faraid computation issued by the Shariah Court through a *Perintah Faraid* has the force of law similar to other orders.

LEGAL STATUS OF PERINTAH FARAIID

As contained in the legislative lists in the ninth schedule of the Federal Constitution, there are two provisions relating to inheritance property with or without will (intestate) for Muslims which are List I, Federal List, item 4(e) Paragraph (i) and (ii) and List II, state list, item List I, Federal List, item 4 provides for federal jurisdiction of civil and criminal law and administration of justice, including (e) subject to Paragraph (ii), the following matters: contract, partnership, agency and other special contracts, master and servant, inns and innkeepers, actionable wrongs, property and its transfer and hypothecation, except land, *bona vacantia*, equity and trusts, marriage, divorce and and legitimacy, married women's property and status, interpretation of federal law; negotiable instruments, statutory declarations; arbitration, mercantile law, registration of businesses and business names, age of majority, infants and minors, adoption, succession, testate and intestate, probate and letters of administration; bankruptcy and insolvency; oaths and affirmations; limitation; reciprocal enforcement of judgments and orders, the law of evidence.

The matters mentioned in paragraph do not include Islamic personal law relating to marriage, divorce, guardianship, maintenance, adoption, legitimacy, family law, gifts or succession, testate and intestate. And List II, state list, item 1, provides.

Except with respect to the federal territories of Kuala Lumpur, Putrajaya and Labuan, Islamic law and personal and family law of persons professing the religion of Islam, including the Islamic law relating to succession, testate and intestate, betrothal, marriage and divorce, dower, maintenance, adoption (legitimacy), guardianship, gifts, partitions and non-charitable trusts; *Wakafs*. Thus, the

jurisdiction of the Shariah Court by virtue of the state legislative powers, only relates to personal laws of Muslims (including relating to property) within the boundaries of the limited powers as provided for in the ninth schedule, List II state list, item 1 of the federal constitution. According to Ibrahim (1991) by the civil jurisdiction relating to succession, testate and intestate, the Shariah Court is given only the power to determine the portions of the heirs under Islamic laws and issue a *Sijil Faraid* (Faraid Certificate) or *Perakuan Faraid* (Declaration of Faraid) now named as *Perintah Faraid* (Faraid order). However, in administration of inheritance or estate, probate and letter of administration are included in the List I, Federal list, item 4 (e) (i) in the ninth schedule of the federal constitution.

Nevertheless, the small estate (Distribution) Act 1955 (Act 98) provides for the application of Faraid laws to deceased Muslims. This matter is contained in Sections 12(4) and 12(7) as follows, Section 12 (4), provides: the collector shall call evidence when necessary to ascertain the religious or customary law applicable to the devolution of the estate of the deceased. And Section 12(7) provides.

The collector shall ascertain in such manner as may be most appropriate, the law applicable to the devolution of the estate of the deceased and shall decide who in accordance with that law are the beneficiaries and the proportions of their respective shares and interests.

In order to manage matters relating to intestate inheritance of a deceased Muslim, the Islamic Religion administration act or enactment or Shariah Court enactment of respective states has provided jurisdiction to the respective state Shariah High Court for example in Selangor, Section 61(3)(b)(viii), Islamic Religion Administration (Selangor) enactment No. 1 year 2003 which states:

- A Shariah High Court shall
- In its civil jurisdiction, hear and determine all actions and proceedings in which all the parties are Muslims and which relate to
- Distribution and succession of inheritance, testate or intestate
- Ascertainment of persons entitled to and their respective proportions in the inheritance if the deceased was a Muslim

In relation to this, the specific provision of *Perintah Faraid* is contained in the Islamic Religion administration act or enactment of respective states, that is in *Wilayah Persekutuan* (Federal Territory) in Section 50 of *Akta*

Pentadbiran Undang-Undang Islam (Wilayah-Wilayah Persekutuan) 1993, Johore (Clause 65, Enakmen Pentadbiran Agama Islam (Negeri Johor) En. 16/2003), Malacca (Section 53, Enakmen Pentadbiran Agama Islam (Negeri Melaka) En. 7/2002), Negri Sembilan (Section 65, Enakmen Pentadbiran Agama Islam (Negeri Sembilan) En. 10/2003), Perak (Section 54, Enakmen Pentadbiran Agama Islam (Perak) En. 4/2004), Selangor (Section 65, Enakmen Pentadbiran Agama Islam (Negeri Selangor) En. 1/2003), Pahang (Section 51, Enakmen Pentadbiran Agama Islam (Pahang) En. 3/1991), Kedah (Section 20, Enakmen 4 Tahun 1994 Enakmen Mahkamah Syariah (Kedah) En. 12/2008), Perlis (Section 65, (Enakmen Pentadbiran Agama Islam Perlis En. 4/2006 (Pindaan 2008), Terengganu (section 15, Enakmen Mahkamah Syariah (Terengganu) En. 3/2001), Sabah (Section 15, Enakmen Mahkamah Syariah (Sabah) En. 6/2004), Sarawak (Section 14 ordinan Mahkamah Syariah (Sarawak) Bab 42/2001) and Penang (Section 65, Enakmen Pentadbiran Agama Islam (Negeri Pulau Pinang) En. 2/2004).

The term used in reference to Perintah Faraid and its legal effect varies such as 'Perakuan Pewarisan' (Selangor, Johore, Penang, Malacca, Perak and Negri Sembilan, Sabah and Sarawak), 'Perakuan Pewaris' (Terengganu), 'Perakuan Pesaka' (Kelantan), 'Perakuan Pusaka' (Perlis), 'Perakuan-Perakuan Pewarisan' (Wilayah Persekutuan (Federal Territory) and Kedah) and 'Sijil Faraid' (Pahang). As example, 'Perakuan Pewarisan' in Selangor is provided in Section 65, Enakmen Pentadbiran Agama Islam (Negeri Selangor) 2003 which states.

If during any proceedings relating to the administration or distribution of estate of a deceased Muslim, any court or authority other than the Shariah High Court or the lower Shariah Court is required to determine:

- The persons who are entitled to proportions in the inheritance or
- The proportions of the inheritance they are respectively entitled to

Then the Shariah Court may on the application of any person claiming to be the beneficiary or his representative and after payment of a prescribed fee by him, certify the facts found by the said court and the opinion of the said court on the persons entitled to the inheritance and their respective proportions.

The Shariah Court has no jurisdiction to execute the distribution order because it lies within the jurisdiction of the Civil Court and small estate (Distribution) Section, Department of Director General Land and Mines, Ministry of Natural Resources and Environment (JKPTG) and Public Trustee limited (ARB).

CATEGORY AND CLASSIFICATION OF ESTATE VALUATION IN APPLICATION FOR PERINTAH FARAI

Inheritance property may be divided into two categories which are: immovable property such as land, house, building and movable property such as bank savings, shares, employee provident fund (KWSP), (shares), vehicles and valuable jewellery. In a case of application for Perintah Faraid, it is very important to ascertain which court has jurisdiction, the lower or Tabung Haji (Pilgrimage Investment Savings), takaful (insurance policy), cooperative high Shariah Court, based on the estate valuation. The different jurisdictions are as follows.

Lower Shariah Court: In a case of application for Perintah Faraid registered in the lower Shariah Court, the total value of the estate or inheritance must not exceed either RM50,000 or RM100,000 or RM300,000 depending on the state concerned. The civil jurisdiction of the lower Shariah Court in Wilayah Persekutuan (Federal Territory) provides that the value of the estate may not exceed RM50,000 (Section 47(2)(b), Akta Pentadbiran Undang-Undang Islam (Wilayah-Wilayah Persekutuan) 1993 and in kelantan, not exceeding RM20,000, (Section. 11(2), Enakmen Pentadbiran Mahkamah Syariah (Kelantan) En. 3/1982.

The states which have the civil jurisdiction of the Lower Shariah Court provision at an estate value not exceeding RM100, 000 are Johore (Section 62(2)(b), Enakmen Pentadbiran Agama Islam (Negeri Johor) En. 16/2003), Malacca (Section 50(2)(b), Enakmen Pentadbiran Agama Islam (Negeri Melaka) En. 7/2002), Negri Sembilan (Section 62(2)(b), Enakmen Pentadbiran Agama Islam (Negeri Sembilan) en. 10/2003, Selangor (Section 62(2) (b), Enakmen Pentadbiran Agama Islam (Negeri Selangor) En. 1/2003), Kedah (Section 18(2) (b), Enakmen Mahkamah Syariah (Kedah) en. 12/2008), Pahang (Section 48(2) (b), Enakmen Pentadbiran Agama Islam (Pahang) En. 3/1991, Penang (Section 62(2) (b), Enakmen Pentadbiran Agama Islam (Negeri Pulau Pinang) En.2/2004, Perak (Section 51(2) (b), Enakmen Pentadbiran Agama Islam (Perak) en. 4/2004, Perlis (Section 62(2) (b), Enakmen Pentadbiran Agama Islam (perlis) En. 4/2006 (Pindaan 2008), Terengganu (Section 12(2) (b), Enakmen Mahkamah Syariah (Terengganu) En. 3/2001 and Sabah (Section 12(2) (b), Enakmen Mahkamah Syariah (Sabah) En. 6/2004.

In Sarawak however, the civil jurisdiction provision for the Lower Shariah Court is more than the other states, that is not exceeding RM300,000 (Section 11(2)(b) ordinan Mahkamah Syariah (Sarawak) Bab 42/2001.

Shariah High Court: In a case of application for Perintah Faraid registered in the Shariah High Court, the total value of estate or inheritance must not exceed RM50,000 in wilayah persekutuan (Federal territory) or RM100,000 in states other than Wilayah Persekutuan and Sarawak or three hundred thousand Ringgit (RM300,000) in Sarawak. In addition to valuation, cases of munasakhat (layers of deaths) are also within the jurisdiction of the Shariah High Court as stated in practice directive, Arahan Amalan No. 4 Tahun 2010. Generally, Perintah Faraid has to be affirmed in the Shariah High Court even though it is issued by the state Lower Shariah Court (Muda *et al.*, 2008).

Issues

Preparing of documentation: One of the common problems relating to Perintah Faraid is incomplete or inadequate preparation of documentation. This occurs because documents required during registration are either forgotten, lost, misplaced and so on. According to Wan-Harun (2012), the process of resolving a case will be delayed due to adjournment until documents are obtained and filed. For example, important documents for the application of Perintah Faraid process are identity cards of heirs, marriage certificates or divorce certificates, death certificates of deceased and other related documents. If any document required is missing, the process of distribution cannot proceed.

This is evident in a case of application for Faraid in the Lower Shariah Court at Hulu Langat, Kajang, Selangor by the applicant Otsman Bin Omar (Kes Mal Bil: 10005-040-0821-2011). This case registered on the 1st April 2011 took 3 months to resolve because of a documentation problem. The problem arose when the husband had not submitted the marriage certificate to the court on mention date on the ground that it could not be found. So, the trial was adjourned to give the applicant the opportunity to submit the certificate on the following mention date. On the next date, the same thing occurred and the court again adjourned the trial, directing the applicant to obtain a new marriage certificate so that the case could go on smoothly. This situation delayed the issue of a Perintah Faraid by the Shariah Court.

Another example is the case of application for Faraid of the estate of deceased Sairon bin Samati, registered on the 30th March 2009 (Kes Mal Bil: 01100-040-0256-2009). According to the report, the document naming the heirs to the estate was not complete causing delay in the process. In an application for Faraid of the estate of deceased Sa'ad bin Bujang (Kes Mal Bil: 01100-040-0319-2008), the case had to be postponed to another date because the applicant did not

submit the divorce certificate of the deceased. Likewise in another case, Masod bin Kamarudin (Kes Mal Bil: 01100-040-0260-2009), trial had to be adjourned to another date because the applicant had not proven the death of a sibling which occurred a few days before the case was registered.

As a consequence of the problem of inadequate or incomplete documentation, the courts suffer from a backlog of unresolved cases which should have been settled promptly (in about two weeks) but instead are delayed by a long period (Mohdas, 2013).

Inadequacy of e-Syariah system: With regard to Perintah Faraid, another element which plays an important role is the Faraid computation to determine the shares for each heir, after the rightful heirs have been identified. In Malaysia, Faraid computation is done using an e-Syariah application developed in the website of JKSM (Department of Shariah Judiciary of Malaysia) available through the internet at any time. Even so, from another angle, this Faraid computation application has its own weaknesses which need improvement. This system may only compute for cases of layered deaths up to 50 layers and does not function beyond that (Hamid, 2015). This may disrupt the process of Faraid computation and delay the issue of Perintah Faraid. In order to overcome this inadequacy, the concerned official has to manually calculate. Besides this, the solution of the application is displayed in awkward fractions with big integers for numerator and denominator which could be simplified. For example in an application in Ali bin Yunus (Kes Mal Bil: 01100-040-0313-2008), the deceased left behind three daughters and a surviving wife who later died leaving the same heirs (three daughters). The final Faraid computation in the Perintah Faraid stated that each daughter was entitled to a $\frac{18}{72}$ share and the Baitulmal a $\frac{18}{72}$ share. This fraction could have been reduced to a simple fraction of $\frac{1}{4}$ which the heirs could more easily grasp.

Forgot or uncertain of facts: In addition, a quite critical situation is when the heirs do not remember or do not know the facts of the family lines or the dates when other heirs died. For example, they forgot the marriage history of the deceased or are unsure of death dates before or after the deceased, do not know the names of other heirs, are unsure of whether other heirs are rightful heirs to the deceased's estate or have no evidence of declaration of presumption of death by the Civil Court (Abdul, 2011). All these factors have a direct effect on distribution of inheritance in determining the heirs and their respective shares (Wan-Harun, 2012). The problem of forgetting heirs or not knowing the family lines of the deceased may

cause an affidavit to be corrected a few times (in some cases up to 3 times) because incomplete or inaccurate information complicates the task of a judge in properly computing for proper distribution (Abdul, 2011). This indirectly disrupts the process of issuing a Perintah Faraid promptly for the heirs to obtain their share of the inheritance at financial institutions which require a Perintah Faraid as a condition for surrendering the inheritance.

Layered deaths (Munasakhah): Postponing the process of settling an inheritance for years or decades makes it likely for deaths to occur among heirs subsequent to the death of the deceased before distribution of his property. The share of inheritance of the deceased heir is then inherited by his heirs and this goes on and on until the deaths of some other heirs (Wan-Harun, 2012). This situation adversely affects the issue of a Perintah Faraid for the rightful heirs, particularly those who depend on the inheritance for survival or subsistence.

This is the situation found in the case of Rosman Roslan lwn. Kassim Hj Arshad and Yang Lain CLJ 669 whereby a death which was left to occur too long without any action after it until the deaths of rightful heirs causing a situation of layered deaths or munasakhah. In this case the heirs did not take any letter of administration to distribute the estate of the deceased, Hj Abu Bakar, since the year 1937. Thereafter, there were too many heirs complicating the ascertainment of their lineage for distribution of inheritance. Another example is the application of Faraid in the Shariah High Court in Penang for the property of the deceased, Haji Ahmad bin Haji Abdullah (Kes Mal No: 07200-040-0013-2011) who died on 29/01/1953. This is a case of layered deaths or munasakhah with 55 heirs altogether.

Another case of layered deaths in the Penang Shariah High Court concerned the deceased, Nayan Bin Jelani who died on 28/03/1936 (Kes Mal No: 07100-040-0173-2009). In this case, long after his death, the heirs realized that they should file an application for Faraid distribution. There were 22 heirs in multiple layers thus complicating the case.

Inaccurate information concerning heirs: In some of the cases, the applicant had given inaccurate information or had not given the required information in the application form and affidavit necessitating re-application for the process of investigation and trial. This was the situation in the case of Tapar @ Mustaffa bin Daud (Kes Mal Bil: 01100-040-0306-2009). In this case, the son of the deceased applied for Faraid without legal representation. Based on records, trial was conducted twice. In the first trial, the applicant did not state the death of the

deceased's parents. The case was postponed and it was discovered later that the parents of the deceased had died earlier than the deceased. This was also the case in Mahmud bin Zainol (Kes Mal Bil: 0110-040-0250-2009), whereby the applicant, Noor Afendi bin Mahmud (son of the deceased), did not state information on the biological parents of the deceased in his affidavit causing the case to be adjourned.

Further, there was also the case of inaccurate information on the rightful heirs because a few of the heirs gave false information (Mohdas, 2013). There were in reality ten heirs but false information was given on oath that there were only two heirs. This may be categorised as concealment of rightful heirs (Wan-Harun, 2012). Such a situation indirectly tarnishes the image of the Shariah Court. It made it seem as if the investigation by the judge during trial was not transparent whereas the reality is that some heirs may be dishonestly concealing information.

Lack of cooperation among heirs: Another major problem relating to closing of investigation to obtain a Perintah Faraid is the lack of cooperation and understanding among the heirs. Various excuses are given by heirs for their absence at court proceedings for investigation or trial. This indirectly causes delay in the process.

Such a situation occurred in a case of the Lower Shariah Court at Hulu Langat, Kajang, Selangor in which the deceased Sarif bin Abd Hamid died on 3rd May 2001 (Kes Mal No: 10005-040-1032-2012). The case was registered on 7th May 2012 and took 4 months to be resolved. The problem arose from the heirs themselves. The case should have been resolved promptly instead it took longer due to two postponements. After mentioning of the case, the court ordered for the case to be postponed to a date for the purpose of taking oath over the father's name. However, one of the heirs later made an application to postpone the case to another date based on the reason that there was an emergency which could not be avoided. The court agreed and issued a notice requiring the heir to attend court together with his advocate or without legal representation at the time and on the date fixed, failing which and without good reason, the court would take appropriate action.

There are also situations of heirs who discuss with each other but fail to reach consensus due to lack of cooperation and compromise among them or they may also not hold any discussion. In a Penang case at the Shariah High Court, the deceased, Yam Binti Tuapi had died on 31st Disember 1957 (Kes Mal No: 07200-040-0386-2010). In this case, there was no discussion at all among the heirs hence causing a delay in distribution of inheritance while the number of heirs also increased thus complicating distribution.

Lack of awareness and knowledge regarding inheritance management: In addition to the above problems indifference or lack of concern regarding matters of inheritance management including Faraid by the heirs also contribute to delay in settling distribution of estate at once through obtaining a Perintah Faraid. This situation was seen in a case of application for Faraid in the lower Shariah Court at Hulu Langat, Kajang, Selangor (Kes Mal No: 10005-040-1351-2009) registered on the 5th August 2009. In this case, the deceased Baba Bin Hasan, had passed away on 6th Oktober 2003. It took 6 years to apply for a Perintah Faraid after valuation of the total estate at RM 20,000. It took a long time for the heirs to be aware because they did not know about Perintah Faraid or Faraid itself. Had the application been made and the case resolved promptly after the deceased had passed away, the heirs would have surely benefited earlier from the inheritance to assist them for a better life.

Challenges

Role of authorities: In this regard, the authorities need to play the leading role to boost the status and authority of the Shariah Court, particularly in matters relating to inheritance management and administration for Muslims in order to achieve justice. Thus, in meeting this challenge to realize the objective, proactive steps need to be taken such as the following.

Improve the capacity of the e-Syariah system: Improve and upgrade the capacity of the e-Syariah system currently applied by the JKSM (Department of Shariah Judiciary of Malaysia), particularly in cases of munasakhat or layered deaths so that it exceeds the present capacity of 50 layers of deaths. This will at once assist in resolving many critical cases of munasakhat and avoid injustice to rightful heirs.

Legislate a Faraid act (statute) or provisions in existing acts or enactments: The need for a specific statute such as a Faraid act is important as a guideline and for ensuring uniformity of actions by concerned agencies. This at once facilitates and assists parties directly involved in managing court proceedings related to inheritance estate of Muslims in the Shariah Court. Alternatively, several provisions may be included and enforced in existing acts or enactments such as the Enakmen Jenayah Syariah Negeri-negeri (State Shariah Criminal Enactment) to make obligatory an application for Perintah Faraid and penalise acts which intentionally delay distribution of inheritance.

Develop a systematic and uniform method of investigation: A detailed and comprehensive research should be initiated by legal authorities such as Shariah Court Judiciary Department (JKSM) and Shariah research officers so that a specific method of investigation may be developed and made into Standard Operating Procedure (SOP) which is uniform in the conduct of investigating heirs in any Shariah Court in Malaysia.

Empower an awareness campaign of inheritance management: As there are still social groups who do not realize the importance of inheritance management, what more appreciate the Islamic concept and philosophy underlying distribution of estate, an awareness campaign should be introduced and intensified. All parties particularly the small estate (Distribution) section, Department of Director-General Mines and Land (JKPTG), Department of Islamic Development (JAKIM), Department of Waqf, Zakah and Hajj (JAWHAR), Department of Shariah Judiciary (JKSM), state religious departments, village heads (penghulu) and all leaders of society should join hands to expand this awareness campaign to all heirs on the importance of proper and systematic settlement and distribution of inheritance.

Expand the learning of Faraid principles/knowledge: In order to achieve this aspiration, the teaching and learning of Faraid may be implemented in the new curriculum of Islamic Education in secondary schools (KBSM) (Ali, 2011). In addition, according to Ahmad and Laluddin (2010) if all this while education relating to Faraid is being taught only in religious schools, it is only appropriate to extend it to national and private schools as well. Further, certain incentives need to be introduced to encourage local producers to broadcast dramas, films or special slots in programs on local television network, serially or periodically on the importance of inheritance management (Ahmad and Laluddin, 2010). Therefore, education relating to Islamic inheritance including management, planning and legal principles need to be imbued, nurtured and empowered through appreciation and practice as the platform for rehabilitating the ignorance on inheritance law which has shackled the Muslim society in Malaysia (Ahmad and Laluddin, 2010).

Role of heirs: Each heir should be fully obliged to ensure that distribution of inheritance be properly settled in the best possible manner. There should not be any procrastination or waiting period after death to begin the affair of estate distribution. It should be harmoniously

done promptly after the death of one of the heirs and be just to all heirs. It is better that immoveable property such as land or buildings, after ascertainment of the respective shares, especially if there are already a large number of accumulated heirs, be commercially developed by a registered family company so that it may generate continuous economic returns for the family.

CONCLUSION

Perintah Faraid is very important in affairs relating to distribution and administration of Muslim inheritance in Malaysia, being a certified order of the Shariah Court. This is to ensure that only the rightful heirs may take possession of their inheritance according to the predetermined distribution based on Faraid computation. Hence, an application for a Perintah Faraid has to be promptly made by the living heirs after the death of the deceased to avoid injustice due to delay. In addition, Perintah Faraid also minimises the risk of negative matters related to inheritance distribution such as fraud or concealment of rightful heirs, abuse of rights of the heirs and manipulation among heirs. This is because the Perintah Faraid contains the details of the rightful heirs and their share of inheritance and has the force of law. In this regard, the application procedure to obtain the Perintah Faraid needs to be complete so that the process of investigation runs smoothly and the inheritance case may be resolved without neglecting the rights of any heir.

RECOMMENDATIONS

In order to enhance the efficacy of the Perintah Faraid, parties involved, both the authorities and the heirs must join hands to play a more dynamic and proactive role for the welfare and well-being of the rightful heirs, particularly and for the Muslim society in Malaysia as a whole.

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REFERENCES

Abdul, M.N., 2011. [The status of Faraid order in the Shariah High Court in Penang and its solution]. BA Thesis, National University of Malaysia, Bangi, Malaysia. (In Malay).

- Ahmad, M.Y. and H. Laluddin, 2010. Estate management: Problems attitude of the Muslim community in Malaysia and solutions according to Islamic perspective (In Malay)]. *Shariah Law Rep.*, 4: 30-34.
- Ahmad, M.Y., N.Y. Isa and A.F. Omar, 2014. Analysis of heir pre-investigation mechanism: According to Shariah perspective. *Mediterr. J. Soc. Sci.*, 5: 107-112.
- Ali, Z., 2011. [Perception of society towards the need for Faraid knowledge in Islamic education curriculum]. Master Thesis, National University of Malaysia, Bangi, Malaysia. (In Malay).
- Hamid, A.M.S., 2015. [Role of e-Shariah in department of Shariah Judiciary of Malaysia]. Malaysia.
- Ibrahim, A., 1991. Towards islamization of laws in Malaysia: Issues and proposals. National University of Malaysia, Bangi, Malaysia.
- Ibrahim, I.A. and M.H. Safiai, 2014. The role of amateur observatories in falak education in Malaysia. *Mediterr. J. Soc. Sci.*, 5: 40-48.
- Ibrahim, I.A., M.H. Safiai and E.A. Jamsari, 2015. Functions of astrofiqh observatories in Malaysia in solving astrofiqh issues. *Mediterr. J. Soc. Sci.*, 6: 112-119.
- Mohdas, S., 2013. [Analysis Faraid order in the Syaria Lower Court, Hulu Langat, Cheras, Selangor]. National University of Malaysia, Bangi, Malaysia, Pages: 52 (In Malay).
- Muda, M.Z., M.R. Awang, A.B. Mohamad and M.Y. Ahmad, 2008. [Introduction to Law and Estate Administration Wills and Endowments Muslims in Malaysia]. National University of Malaysia, Bangi, Malaysia, ISBN:9789832234647, Pages: 204(In Malay).
- Ralip, A.M.I., 2013. [Limited Powers Complicate Distribution Process of Inheritance]. *Berita Harian, Johor Bahru, Malaysia*, (In Malay).
- Safiai, M.H., E.A. Jamsari and I.A. Ibrahim, 2014. Malaysian observatories and those of the Islamic Civilization Era: General similarities. *Middle-East J. Sci. Res.*, 20: 2164-2171.
- Safiai, M.H., I.A. Ibrahim, E.A. Jamsari, M.Y. Ahmad and B.M. Nasir, 2016. The continuity of astrolabe as a multipurpose astrofiqh instrument. *Intl. J. Appl. Eng. Res.*, 11: 6081-6086.
- Wan-Harun, W.A.H., 2012. [Manage Inheritance]. PTS Professional Publishing, Sdn Bhd, Selangor, Malaysia, ISBN:9789673690466, Pages: 268 (In Malay).