

## Concept of Islamic Inheritance Law (Faraid) in Malaysia: Issues and Challenges

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**Abstract:** Faraid is based on the Al-Quran, Al-Sunnah, the consensus of the Prophet's (Peace and Blessings Be upon Him) companions and their ijtiha the process of making a legal decision by independent interpretation of the legal sources, the Al-Quran and the Sunnah. The interest of pursue knowledge in Islamic inheritance jurisprudence since to learn and understand the Islamic inheritance jurisprudence, to identify whether a person is an heir or heirs. Identify parts or shares each beneficiary is entitled to the estate and the calculation (computation) which may serve to reward any part or beneficiaries through the method of calculation (mathematics). Although, faraid role in managing distribution of the estate but the distribution of wealth in this way can lead to certain problems if not administered properly and not properly understood. It is estimated that a total of RM42 bln. of Muslim inheritance has failed to be distributed to the rightful heir due to a certain problems. Among the factors that have been identified are related to the lack of effectiveness of the administrative system and also the attitude community and the attitude of the heir itself. Thus, by looking at the problems occur, society should been exposed by the faraidh concept as a way of distribution of property and should be made the distribution of property during life as preliminary planning to avoid potential problems due to the the property left after their deaths. This is because the problem of arrears estate can bring bad implications from the perspective of economics, law, religion and social relationship. Accordingly, this study aims to discuss the issues and problems arising in the course of distribution of the estate using faraid system.

**Key words:** Estate, inheritance, the division of property, social relationship, inheritance

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### INTRODUCTION

#### The Islamic Inheritance Law (Faraidh)

##### Sources of Islamic Inheritance Law and the verdict to

**learn it:** Islam is much more than a religion, it is a way of life. Islam is guidance from God that directs us through life and God willing into the next life. It is for this reason that God also guides us through the process of death and dying. Everyone will faced of the death whether sooner or later, however there are a few things we should do to make our passing easier for those we leave behind. One of those things is to make sure we leave an Islamically sound will. Islam has placed great emphasis on both the laws of inheritance and making a will thus there is compelling evidence that every sane adult Muslim should have a will.

“It is the duty of a Muslim who has anything to bequeath not to let two nights pass without writing a will”

“A man may do good deeds for 70 year but if he acts unjustly when he leaves his last testament, the wickedness of his deed will be sealed upon him and he will enter the Fire. If (on the other hand) a man acts wickedly for 70 year but is just in his last will and testament, the goodness of his deed will be sealed upon him and he will enter the Garden”

The Islamic will in Arabic, al wasiyah is a set of instructions that come into effect after a person's death. The will is acted upon after the payment of funeral expenses and any outstanding debts. “...of what they leave, after any bequest they (may have) made or debt...” (Quran 4:12). When one of Prophet Muhammad's close companions suffered from a severe illness he asked how much of his vast wealth he should bequeath as a gift because he only had one daughter who qualified to be an inheritor under Islamic law. The Prophet SAW, may the mercy and blessings of

God be upon him, stated one third and said, "it is better to leave them rich rather than poor and destitute".

Faraid is based on the Al-Quran, Al-Sunnah, the consensus of the Prophet's (Peace and Blessings Be Upon Him) companions and their ijthihad the process of making a legal decision by independent interpretation of the legal sources, the Al-Quran and the Sunnah (Awang, 2008). The interest of pursue knowledge in Islamic inheritance jurisprudence since to learn and understand the Islamic inheritance jurisprudence to identify whether a person is an heir or heirs, identify parts or shares each beneficiary is entitled to the estate and the calculation (computation) which may serve to reward any part or beneficiaries through the method of calculation (mathematics).

In the Al-Quran, there are two verses related to inheritance. The verses in the first category explain the beneficiaries rights in general without discussing their portions in detail. While the verses in the second category which is the Al-Mawarith verse, Allah (SWT) explained in detail regarding the beneficiaries and the portions or shares for each of the beneficiary. Among the verses that are mujmal in nature, Allah (SWT) commanded meaning:

For men is a share of what the parents and close relatives leave and for women is a share of what the parents and close relatives leave, be it little or much an obligatory share"

Allah commands you concerning your children, the share of male is equal to the share of two females; then if there be daughters only, though more than two, then for them is two third of what is left and if there be only one daughter for her is one half. And for each of the parents of the deceased is one sixth of what is left, if there be a child of the deceased but if he has no child and leaves parents, then for the mother is one third but if there be his many sisters and brothers, then for the mother is one sixth, after any bequest which has been made and debts. Your fathers and your sons, you know not which of them will be more profitable to you.

This is fixed proportion from Un doubtedly Allah is All Knowing, Wise

But those of (blood) relationship are more entitled (to inheritance) in the decree of Allah. Indeed, Allah is Knowing of all things"

Worth management planning in Islam is divided into two, during the lifetime and after the death of property

owner mean while the management of property after owner's death is subject to law of succession (Faraid). Faraid word in language has many meanings. Among them is the decisive, sure, legalize and obliging. According to Islamic terminology, the division of property Inheritance is a Muslim who had died whether he left a will before his death. And the inheritance will be distributed to his heirs such as children, wife, husband, mother, according to Islamic law. The property is divided into beneficiaries are the remaining property left after defraying the funeral expenses financing, debt heir, charity, vows and will be justified by Islamic law which is not >1/3 of the total assets (Mohamad, 2002).

#### **Form of property that can be divided in faraid are:**

- Land
- Building (house)
- Jewelry (gold, silver, etc.)
- Insurance and cash (either invested or not)
- Animal livestock such as goats, cattle, camels, buffalo, etc

The list of beneficiaries who are entitled to receive an inheritance of male consists of 15 person which is:

- Son
- Grandson of sons and younger
- father
- Paternal grandfather and above (from the father side)
- The brother of the both parents
- The brother of the same parents (father side)
- Siblings of the same mother
- A nephew of the same parents
- A nephew of the same father and younger
- The uncle of the same parents
- The uncle of the same parents
- Son of the uncle of the same parents
- The child's uncle father
- Husband
- Tuan

The list of beneficiaries who are entitled to receive an inheritance of female consists of 10 person which is:

- Girls
- Granddaughter of son
- Mother
- The maternal grandmother
- Paternal grandmother
- The sister of same parents
- The sister of same parents
- Mother's sister
- Wife
- Puan

Although, faraid has been playing a vital role in the division of succession property, the fact remains that the distribution of the property through this way may lead to some problems if it is not properly administered and truly understood. It is estimated about RM 42 bln. of the Muslims inheritance property could not be distributed to the legal heirs due to the certain reasons. Amongst the identified factors are particularly related to the lack of efficiency in administration system and also the attitude of the legal heirs. As the result of the occurrence of the problem, people should be exposed to the way of distribution of property during their lifetime as a mode of an early estate management planning to avoid any difficulties which may evolve regarding to the property distribution after their death. The failure of the distribution of said estates could lead to several bad implications in forms of legal, economic, religion and social perspective. This form of estate planning can be applied widely in the current situation for the benefit of society.

#### **THE ISLAMIC INHERITANCE LAW (FARAIDH) PRACTICES IN MALAYSIA**

Distribution of estate of Muslims community in Malaysia are actually made based on Islamic law, namely law inheritance even law The principal is applicable as civil law. This is because the law used is only the purely for administrative matters such as application procedure for distribution of the estate, the application process, distribution jurisdiction and so on (Azmi and Mohammad, 2011). In the determination of the heirs such proportion each and matters related to the distribution, all subject to legislation. For example, provisions There in the Small Estates (Distribution) Act 1955 (Act 98). Section 12 (7) of the Act 98 provides that the distribution of the estate of the deceased shall be in accordance with the law applicable to it. This means that for Muslims, division of property shall be in accordance with the Law of Inheritance.

**Institutions and distribution of estate and applicable law:** Managing distribution of the estate is handled by four institutions that have set each jurisdiction.

**Amanah Raya Berhad (Pusaka Ringkas) (inheritance brief):** Controlling the deceased's estate which is left only movable property and its value does not exceed RM 600,000 according to the Akta Perbadanan Amanah Raya Berhad (Act 532). For example, if the deceased just leave the money in savings financial institutions (BSN, ASB, Pilgrims Fund, EPF), vehicles (cars, motorcycles), shares and dividends.

**Seksyen Pembahagian Pusaka/pejabat Tanah (a small inheritance):** At the state level or district is known as distribution unit inheritance, handling property of the deceased who left immovable property (Land) or immovable property and movable property such as money bank deposits and so on and its value does not exceed RM 600,000 and intestate according to the Wills Act 1959 Act force is the Small Estates (Distribution) Act 1955 (Act 98) (Amendment small estate valuation to be RM2,000,000 enforced soon). For example, the deceased leaves only two pieces of land or leaving two plots of land and money savings Fund Board Haji.

**Mahkamah Tinggi (large estate):** Controlling the deceased who left property whether immovable property (Land) or personal property worth more than RM 600,000 or property intestate (for non-Muslims) though its value is <RM600,000 (Halim, 2009). The High Court also handles cases under appeal Section 29 of the Act, the Small Estates (Distribution) Act 1955 which is used Probate and Administration Act 1959 (Act 97).

**Mahkamah Syariah:** Handle cases determination of heirs and a part of everyone's heir issued the "Certificate of Inheritance". This is based on the Enactment Administration of Muslim states or the Administration Act Islam (Federal Territories) Act 1993 (Akta505). Next The Syariah Court has jurisdiction in matters of wills, grants, endowments, illegitimate children, marriage, matrimonial property and This lineage whose decision even closely related Syariah Court relating to matters on the distribution of the estate.

#### **ISSUES AND CHALLENGES ON ISLAMIC LAW OF INHERITANCE IN MALAYSIA**

**Attitude and ignorance beneficiaries:** Legal management and administration of the estate of Islam in Malaysia have been executed by Islamic law and civil law. Although, it has been practiced in this country for centuries but research needs to be done so that, justice can be upheld. From one point of inheritance, Islam using individual systems, this means that the estate can be divided to be owned by individuals (Hassan *et al.*, 2014). The entire estate can be expressed in a specific value that can be divided and then that amount is divided among the heirs are entitled to receive pursuant to the respective divisions. There are some causes that are said to lead to a breach of the estate of omission is due to the ignorance of the community or heirs in respect of the distribution of the estate. Some of the people were not to be concerned and assume that the task of completing the estate is a tough task (Sait and Lim, 2006). Similarly, there are also

complaint that the process of division of property inheritance takes some time to be resolved. This matter happen may be caused by the current system is no longer appropriate to the current situation or may be due to people who did not understand his own public affairs division of the possessions of the deceased. Sometimes, they act to hand the task only to the eldest son who is said to have the full right and responsibility of making the application. There are also issues such as the negative perceptions which argued that it was inappropriate to accelerate the process of division of property as it is often misinterpreted as an act of disrespect for the property owner who recently died (Muda *et al.*, 2006). There by it can also block the distribution of the estate is made immediately.

Indeed, it is undeniable that for some people, especially among the Malays community consider the issue of inheritance as something that is very sensitive to talk about (Noordin *et al.*, 2013). This situation indirectly prevent noble heirs who have an understanding and awareness of these matters is to perform division of estate, thus it is unfortunate when they are labeled as greedy and lust for wealth of the deceased caused the emergence of discord and dissension among family member. To prevent this, in the end all the heirs sit on their hands and look forward to when the matter would be resolved and who should start. In the case of this example, estate settlement, each afraid to speak up, ask about inheritance later be accused desires wealth, greed for wealth. Therefore let each estate is up for so long without completing. The study carried out revealed the fact that there are many treasures that have not made an application for the allocation and some cases into the case of prolonged. In fact, there are some cases of estate settlement which took decades to complete. By nature, they have neglected their obligation to divide the inheritance while they also have ignored the claims of religion in order to expedite the distribution of the estate.

**The lack of understanding of the actual concept of inheritance:** Based on the aims of justice in the distribution of property, division of property in Inheritance should not be construed as too rigid and constraining. However, the community itself has narrowed the application of the law division of inheritance of the assets resulting the implementation process is impractical. In fact, it is clear that people still do not understand the concept of division of Inheritance of assets in Islam ways. The rights of distribution to the beneficiaries are entitled through the literal understanding of the law has led to problems which the solving inheritance to a small

parts making it less worth and no has the potential to be developed. The division of inheritance is by law actually is solely to determine the rewards and the rights of a beneficiary and not a command for the distribution of land, causing fragmentation inheritance physically. Even determining the division of inheritance is defined in the law is not stating that the estate should be divided one by one between all member heirs according to their share. For example, a plot of land with an area of not one acre should be divided into all ten people heirs when there Other soil. This is because other land can be put to name another beneficiary ownership of the land can become more widespread, valued and have the potential to developed and promoted. The situation aggravated by the existence of the law of the land countries where the the land inherited heirloom may be registered in the public as the owner of a small land in the ownership, thus enabling they make a deal on the land (Degree and Awang, 2006). The solution taken by divide this small land title has resulted in a low value and difficult to be commercialized.

According to Islam, all the heirs are entitled to compromise to ignore altogether the division of put all the names of heirs in all areas of inheritance and agreed divide in ways more appropriate to the circumstances and needs of existing property. Even according to their rules of “Al-takharuj” or withdrawal of the estate, one of heir was allowed to withdraw either from getting all share in the estate or part of it. the Withdrawal is made by unconditional payment of compensation or other consideration provided. Therefore, fragmentation of the estate to small lots of less value and benefits could be avoided. However, the concept of “Al-takharuj”. It seemed so less practice because people still shackled by way of division construed narrowly.

## CONCLUSION

Islam is a religion that is fair and perfect. It contains a variety of regulations and guidelines for regulating human life become more organized. Among of the guidelines is fix the muamalat system includes a system of inherited land or inheritance law known as Faraidh. Islamic inheritance distribution system known as the inheritance under a distribution system the best in the division of property. It is a decree of Allah has been mentioned in Al-Quran and in Hadith by Prophet Muhammad (SAW) It is a system that is fair and proper that there is not been practice by other religions. Even the Islamic inheritance system has a high quality system of inheritance in excess of Islam.

Allah (SAW) had arranged this inheritance law under the system that set the rates and who are right

recipients. In its determination, Islam has defined a more to the men than the women. This is because responsibilities entrusted to men harder than women. They are required to pay a dowry and took away all her family's livelihood. They also became a patron of the group of women from all forms of oppression. For the women, apart from getting the inheritance they also get a living or living expenses which is imposed on men. In addition, they are also not required to bear the cost of living for himself and his family all the duties which will be borne by his father. After they married, the obligation shall be borne by her husband.

In determining the recipient, Islam religion has determine their heirs who have blood relations and legal marriage with the deceased are entitled to receive the property without the right to distinguish between men and women. The distribution of the estate is not based on the interests of certain beneficiaries but according to justice irrespective of his position, power and wealth of a person. Upon death, the members of the legal heirs will receive the assets of a deceased person to follow a predetermined rate. By the fair and orderly distribution, inheritance under a system not only strengthen family ties but its people always guarantee a happy life and avoid tribal and family that could lead to a split among family members.

### RECOMMENDATIONS

There are four institutions in Malaysia which has jurisdiction related to the distribution of the estate which is Amanah Raya Berhad, Mahkamah Tinggi, Seksyen Pembahagian Pusaka/pejabat Tanah Serta Mahkamah Syariah who are responsible in manage the property left behind. The emergence of fourth institutions can cause confusion to society to overcome this issues, a suggestion that the four institution need to merged under a single unit with powers to deal with property left behind by the law of inheritance could help smooth the flow of application process. As we can see situations of the beneficiaries have to commute to Estate Distribution Unit, then to the Syariah Court and then back to the Estate Distribution Unit or sometimes had to deal with the Civil High Court. This combination makes the distribution of the estate can be done more effisyen and facilitate the heir to resolve the matter with the easy ways as Muslim inheritance is a combination of two laws, namely the law of the land and Inheritance Law as well as legal and Other side of legislation such as the contracts act, the trustee act, the law of wills and grants, accordingly the form of a

unique institution should be established where it is able to manage all arising problems related distribution of the estate.

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