

## ISSUES OF GROUP SETTLEMENT'S LAND INHERITANCE MANAGEMENT IN PENINSULAR MALAYSIA

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**Abstract:** *The transfer of wealth after one's death is an essential matter in Islam as the religion emphasizes the paramountcy of lawful ownership. Therefore, the inherited wealth should be distributed to the rightful heir to benefit and live a comfortable life. The study aims to review the inheritance management issues in the group settlement through a literature study. The previous works of literature are analysed using content analysis for the issues they conveyed other than the purpose, methodology of the study, and the finding. The study found that there is quite some literature throughout times discussing the inheritance administration problem as well as the planning instrument in distributing the deceased estate in the research area. However, the specific study that points to the issues of group settlement in Malaysia has limited publications, although the notable problems are not solved thoroughly. Despite that, three main issues of group settlement's land inheritance management are identified: lack of population knowledge on the inheritance practice, inefficient system and relay of information, and Group Settlement Act (GSA) 1960 restrictions. As a result, there is a delay in commencing the inheritance management by the beneficiaries.*

**Keywords:** *Faraidh, Inheritance Management, Estate Management, Group Settlement, Hibah, Malaysia*

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### INTRODUCTION

Inheritance management refers to the act of administrating the process of wealth transferring from a deceased to his or her beneficiaries. In Islam, inheritance management started with the benefactor's death and ended with the beneficiaries' decision on the wealth distribution. On the other hand, the group settlement, which is defined as land that is grouped with other land and cannot be sold except as a whole as well as cannot be leased partially or wholly, is subjected to additional law; Group Settlement Act (GSA) 1960 (National Institute of Land and Survey, 2012).

Supposedly, inheritance management procedures should ease the deceased's family members, as they probably need the wealth for the continuation of their living. However, the conduct to manage the inheritance varies according to the categorization of that wealth under the provision of Malaysia's law, whether it is a small estate, normal estate (large estate), or portable estate. Moreover, different type of land ownership also means other conducts for inheritance apply. Consequently, this gave difficulties to the first-timer to manage the

inheritance as different categorization has different sets of process, reference centre, and restrictions.

In addition, dealing with the inheritance management of group settlement's land also means that there are certain additional compliances involved, which complicates the process of wealth distribution. Furthermore, the group settlement population's lack of knowledge and self-awareness also contributes to the difficulties as they could not manage their land inheritance accordingly and tend to difficult the situation they are already in even more. The study revolves around literature study as its basis in methodology. On that account, several publications on group settlement land's inheritance distribution are observed to fulfill the paper's focus.

## LITERATURE REVIEW

The studies from the past are primarily on the context of Federal Land Development Authority (FELDA) lands despite plenty of group settlements in Malaysia such as Federal Land Consolidation and Rehabilitation Authority (FELCRA), Rubber Industry Smallholders Development Authority (RISDA), and other state-developed lands. Even the study on the state-developed land in East Malaysia also seems scarce on the issues of inheritance management. One of the studies that look at the group settlement as a whole is Mohamad, Noor, Tapah, Hassan, Zainal, Muslim, and Alias (2014), in which they explain the status of the land given by the government in the group settlement scheme. In conclusion, the previous studies mainly investigate the factor of legislation, Shariah perspectives, and socio-economic aspects of the settlers concerning their land inheritance practices.

Studies related to GSA 1960 are on the constraint of ownership transferring which applies to the settler. Particularly, when owning the group settlement's land, the constraints are already existed, from before death to after death due to the Act enactment. Arifin and Hussin (2015) seek the Act implications on the inter-generational transfer of wealth of the FELDA settlers through literature study. They found that past studies showed that the settlers preferred for appointment of administrators rather than giving the land ownership to one or two of the authorized beneficiaries. Meanwhile, Hisyam, Khairy Kamarudin, Muda, Mohamed Said, Rahim, and Razzak (2020) focus on hibah application as a possible solution for the case of inheritance management in the group settlement.

Nevertheless, most of the study in inheritance management revolves around the theme of FELDA settlers' social, economic, and socio-economic issues. Mohamad, Talib, and Noor (2011), Nor Muhamad and Mat Hussain (2013), Ahmad, Idris, and Wahid (2017), as well as Suhaili and Rahim (2018), are among of the researchers that inquire on socio-economy aspects in relation to FELDA settlements. Studies such as Mohamad, Talib, and Noor (2011) and Nor Muhamad and Mat Hussain (2013) mainly observe the inheritance management practice from the settlers' point of view. Settlers' attitudes, knowledge, and opinion are considered information to explain the problem of inheritance management in the group settlement. Interestingly, both studies are social case studies that observe a single settlement only and use a mixed qualitative and quantitative method.

Mohamad, Talib, and Noor's (2011) study is based on Lurah Bilut's settlement, the first FELDA settlement in Malaysia and the State of Pahang, while Nor Muhamad and Mat Hussain (2013) studied the first settlement in Johor, Taib Andak's settlement. Logically, the settler's

family should have known their land inheritance managerial procedure as the settlements had been there since 1958 (FELDA Lurah Bilut) and 1960 (FELDA Taib Andak). However, the results of both studies show that attitude and knowledge problems are still there, causing delay and difficulty in managing the land accordingly. In their study, Mohamad, Talib, and Noor (2011) also add that there is a need for enactment of the law that forces the beneficiaries to complete their land inheritance management within a specific amount of time so that the lackadaisical attitude could be diminished.

On the other hand, Ahmad, Idris, and Wahid (2017) look into the socio-economy discussion of whether inheritance management practice in the group settlement will affect the palm oil industry. In addition, the study concerns the effect of the practice on the inter-generational social ties and connections in the FELDA community. Amazingly, the study manages to reach up to 500 settlers from four settlements in Peninsular Malaysia. The result describes positive and adverse effects from the inheritance management practice that follow GSA 1960 requirements. Also, according to the study, there is a need for clarification on the land status, which is actually a lease from the state government, so that sense of belonging could be reduced.

After that, Suhaili and Rahim (2018) is a socio-economy study in which they touch on land inheritance in a part of their study. The study pointed out that some Raja Alias' settlers are still facing difficulties managing the land inheritance. All beneficiaries still require the same inherited accommodation, hence making the land transferring process quite troublesome. Next, Mohammad *et al.* (2014) is the only one that focuses on Shariah aspects regarding the group settlement. Their study tries to explain the status of ownership upon the land in the group settlement. Using the concept of benefits' ownership (*milk al-manfa'ah*), the ownership status of those land comes into the sense that the land is bound to several restrictions by the laws. From observation, the group settlement's land is also labelled in the ownership document as a '*pajakan mukim*' or lease-hold for 99 years.

## **FINDING**

From the analysis of the literature, it is found that some of the researchers point that the complications in the settlement are caused by the legislation provision, weaknesses of the system, as well as people's attitude and knowledge on inheritance management (Mohamad, Talib & Noor, 2011; Arifin & Hussain, 2015). These three factors are the main perpetrators in the hindrance for an effective inheritance distribution. They must be dealt with from time to time in order to diminish the negative effects.

## **INHERITANCE DISTRIBUTION AND GROUP SETTLEMENT ACT (GSA) 1960**

As mentioned earlier, the practice of inheritance management in the group settlement is rather complicated and slightly different from normal conduct as there are restrictions due to GSA 1960 as well as the status of land ownership. Section 14 of the Act clearly mentions that transfer of ownership shall be done only up to two-person. In the case of dispute and discontent among the beneficiaries, the transfer of the land ownership could not be performed; thus, the administrator's appointment will take place for the sake of the land development. The further dispute could cause the land to be auctioned by the authority; however, this is the very last possibility.

First and foremost, the restrictions on the appointment of the following land's owner may cause dispute among beneficiaries, especially when involving many heirs (Ariffin & Hussin, 2015; Ahmad, Idris & Wahid, 2017; Suhaili & Rahim, 2018). Even the nomination of the administrators for the land could be quite concerning if the beneficiaries could not sit together and see eye to eye among them. Mohamad *et al.* (2014) see this as a product of ignorance, hence suggesting the explanation of the beneficial ownership (*milk al-manfa'ah*) concept and settler's responsibilities to be included in the GSA 1960. By demonstrating the status of the land that the settlers own, the comprehension of the settlers on the ownership issues will be straightened up, and hopefully, the sense of responsibility prevails over greed.

The next section, Section 15, manifestly describes that the land shall not be divided or distributed whether following the beneficiaries' agreement or *faraidh* portions. Apparently, this is due to the land development objectives that sought to protect the economic value of the land and settlers' interest (National Institute of Land and Survey, 2012). The exact section of the Act provides that the land shall not be leased partially or wholly at any time as initially, the land is given to be developed by the settlers themselves. Therefore, the settlers only can either work the land personally or hand it over to the FELDA management for an exchange of a certain amount of payment periodically.

Given the explanation of the restrictions, it is understood that all inheritance-planning instruments must adhere to GSA 1960, or else it will not be applicable (Hisyam *et al.*, 2020). In addition, consent from the State Authority, Land Development Schemes Management, if required, and all beneficiaries are also needed to implement the instrument (FELDA, 2019). Therefore, additional requirements must be met, despite having the chance to be practiced in the group settlement. In addition, further review is justified to ensure no incoming issues afterward. Therefore, indeed there are specific difficulties in practicing instruments such as *hibah* and bequest in the group settlement, which are frequently used to plan the inheritance systematically.

Hence, the compatibility of the law implementation today should be looked into whether it needs amendment or more explanation so that the subject of the law understands more on the legal practice. GSA 1960 also affects FELCRA, RISDA, and other state-based land development in Peninsular Malaysia. Therefore, there is a demand to investigate whether people in those settlements face the same difficulties as reported before. Sabah and Sarawak have other provisions of the law in the same matter, hence also required to be explored if the subsequent system development is an integrated system of inheritance management. If both systems of East Malaysia and West Malaysia exhibit similar features and characteristics, more likely, the system development could be expanded uniformly.

## **SYSTEM INADEQUACY AND INEFFICIENCY**

An *efficient system* is a system that could produce maximum output with a given level of input used, system limitations, and available technology (Papanicolas & Smith, 2014). It had been over 60 years of FELDA land development projects. Starting from its initiation on the 1st of July 1956 and Lurah Bilut's settlement in 1958, today's statistic shows 317 land development schemes in eleven states of Malaysia, which involves almost 120,000 settlers (FELDA, 2019). Other land development schemes such as FELCRA were also founded in the 1960s, specifically the 1st of April 1966, while RISDA was established in more recent years, seven years later (FELCRA, 2021; RISDA, 2021).

Consequently, a lot of effort and time is needed to comprehensively include all settlers or the population in improving their inheritance literacy, as their family will continue to grow. Nevertheless, the government's further plan on data digitalisation could pave the way in order to solve the issues of literacy involving technical procedures in inheritance management. As for now, the study shows that the land development authority such as FELDA still struggle in communicating with their settlers regarding the inheritance management issues (Arifin & Hussin, 2015). In addition, it is crucial for the information on the land's status to be conveyed as disputes between families can be avoided from the very beginning, according to Ahmad, Idris, and Wahid (2017). The researchers also opined that a mechanism for governing the administrators' conduct is essentially required.

Mohamad, Talib, and Noor (2011) state that many of the settlers claim that the process of proper inheritance management involves a procedure that is too long, complicated, and time-consuming. Eventually, this will discourage the settlers' intention to manage their inheritance in accordance with the law's requirement. After that, the same researchers point that there is a necessity for FELDA officials' qualifications to be reevaluated, as their incompetency will affect the function of the system. Other than that, there is an imbalance in the ratio between the number of the officer and settlers that could lead to delay in managing the inheritance (Mohamad, Talib & Noor, 2011).

Ultimately, modern management sciences are mainly concerned with production and output (Cunningham, 1979). In the context of inheritance management in group settlements, the system's output is the distribution of the wealth inheritance to the rightful parties. From the system user's perspective, the management process should be effortlessly done, thus encouraging the population to manage their inheritance through the right channel. On the information circulation, evidently, all parties in the settlement, including the residents, should assume the roles in educating themselves without depending much on other people to inform them.

### **ATTITUDE AND KNOWLEDGE OF THE SETTLEMENT POPULATION**

The individual of the group settlement plays a crucial part in solving the managerial issues as the initiation of the inheritance management process at small estates unit depends on their understanding of the procedure, legislation, and Shariah rulings. However, some of the studies spot that some of the beneficiaries of FELDA settlers still do not understand the implication of GSA 1960 thus failed to comprehend their lands ownership's status and the restrictions inflicted by the enactment of such Act (Arifin & Hussain, 2015; Nor Muhamad & Mat Hussain, 2013). Similarly, Mohamad, Talib, and Noor (2011), in their case study on Lurah Bilut's settlers, reported that the settlers do not entirely understand the managerial procedure of inheritance management. Inevitably, the settlers will be prone to technical error, and that mistakes sometimes would cost money and time.

After knowledge, the attitude of the settlement's population affects the inheritance management process. The beneficiaries' lackadaisical attitude indeed will delay the process as it is not tended as soon as possible (Mohamad, Talib & Noor, 2011). Some of the population is also still too dependent on other people when it comes to inheritance management (Nor Muhamad & Mat Hussain, 2013). As a result, if the dependent person fails to submit Form A at the initial stage, no one will assume responsibility. According to Nor Muhamad and Mat

Husain (2013), the stigma of '*tanah kubur masih merah*' or the feeling of guilt in sorting the inheritance management due to others perception makes the beneficiaries back down from managing the inheritance early. The act of distributing the inheritance ahead of time is sometimes perceived by society as improper and manifests the beneficiaries' greediness for the deceased property.

Lastly, another issue sourced from the people of the group settlement is the beneficiaries' inability to discuss and sort out the inheritance management. By having proper discussion and consensus among the beneficiaries on the next land's owner, the inheritance of the land in the group settlement could be managed straightforwardly. In their study, Mohamad, Talib, and Noor (2011) reported that disputes within the family cause 60.62% of the delayed cases in Lurah Bilut's settlements. Failure in nominating only two owners will cause the land to be administrated by some of the beneficiaries or, to some extent, the group settlement administration in adhering to Section 14 of the GSA 1960. In the end, the beneficiaries' number will continue to increase due to the death of previous beneficiaries and cause difficulties in the transferring process of land ownership at a later time. The problem is that when there is death among the former beneficiaries, the asserting of the following beneficiaries will be more challenging. Some could take the easy way out and choose not to inform the next beneficiaries, hence using the unlawful property.

There is so much to ponder on the population's level of knowledge regarding inheritance management. For a start, the population needs to grasp the fundamental idea of inheritance management and know where to refer for the procedure. The knowledge of technical procedures is important to avoid mistakes that cost time and more money and ensure completion of the inheritance management as per the law. It might be causing difficulty to the beneficiaries at the start, but subsequently, in the near future, it will pay off, as there is no need for hassle when the land is auctioned. Besides technical and law knowledge of inheritance management, Shariah's knowledge is salient for a swift course of action. Although there are academicians or Shariah experts that the people could refer to, one should still educate themselves in the matter so that there are no legitimate beneficiaries are left out in the discussion of inheritance distribution.

## **DISCUSSION**

The findings from the literature review indeed uncover that improvement could be made to the group settlement law and inheritance law, inheritance management process, and settlers' awareness concerning their land ownership. Besides the inheritance management literacy of the settlers, the authority needs to improve their management mechanisms and infrastructures. The federal government and FELDA should go for a mechanism capable of solving the worst-case scenario without difficulties. Hence, the crucial circumstances that led towards that are inspected.

Regarding the legislation that administers the inter-generational transfer of group settlement's land ownership, the law only provides a short-term solution for the land economic value problem. As mentioned before, GSA 1960 restricts the ownership registration up to one or two persons, which means if the deceased left behind more than two beneficiaries and all of them claim for their rights, the land would be legally owned by them. For a generation, the land might not be a hassle to administer, and the land value is still considered significant. However,

after that, the problem probably kicks in as the rightful beneficiaries increase and the matter of responsibility is neglected. As for the time being, the law leaves the matter to the beneficiaries to resolve their own land ownership.

After that, the land ownership in the group settlement could not be forced to be purchased. In the condition that a beneficiary or two afford to purchase the remaining portion of the land by a fair price, but the other is not willing to sell, the status quo of the land stands. Despite the severity and complication that was expected afterwards, the beneficiaries who wish to hold their ownership over the land could do so. Adding insult to the injury, the person can neglect his or her responsibility towards the property without facing specific legal repercussion.

Next, if we look into the inheritance management holistically, the beneficiaries had the option to manage the inheritance or otherwise. No fine or penalty is imposed for delaying the management process. Also, no specific amount of time is stipulated for the beneficiaries to register the inheritance management application. The complication in concluding the inheritance management is seen in the future when it is already too late. This includes the land inheritance in the group settlement.

Hence, the adequate solution is for the authority to use their legislative power to enforce the inter-generational land transfer of ownership, such as in the case of a vehicle. The vehicle must be held by only one beneficiary in accordance with the current law. Another practice is the division of land that gave all owners at least an acre of the land. It is a bit peculiar when the Small Estate (Distribution) Act 1955 allows the land division without considering the size of the land, while the National Land Code prohibits the division of land that causes its owner to hold less than an acre of land. The authority could consider the land vastness, type of land, and the number of beneficiaries before the enforcement. Therefore, the issues that revolve around land economic value and complicated inheritance management could be hindered, as the management is set to ease ownership transfer in the future.

The authority also needs to research the suitable time period for the beneficiaries to initiate the inheritance distribution application process. They should contemplate the issues based on the possibility of beneficiary death and the ability to gather assets and beneficiaries' information. Ultimately, these approaches surely will ease the management of the estate, but the authority needs to provide a decent infrastructure and staffing to ensure the management is concluded unequivocally. They must support the capability of the Estate Distribution Office, especially the Inheritance Officer (Land Administrator), which was understaffed for so long, causing a delay in the management process.

## **RECOMMENDATION**

Whilst the issues in the group settlement are exceptional cases in a way, they are still affected by the general conduct of inheritance management. Therefore, future study on inheritance management undoubtedly impacts how land inheritance in group settlement are dealt with. Thus, for future researches, the researcher might want to look into the conduct of inheritance management in other countries or jurisdictions. For instance, in Sabah and Sarawak, the law practised are pretty dissimilar to the Peninsular Malaysia counterparts. A study on how the inheritance is distributed under a different provision of law and circumstances should give new ideas for the policy-maker to improve the effectiveness in the management. Inheritance

management of group settlements' land and other types of land, nevertheless, is a form of law implementation that still had some flexibility for a change to be made.

Next, the digitalisation of data means that more data could be transferred, kept and secured in its digital form. The process of keeping the records and documents supposedly become more convenient for the public service office. On the other hand, data sharing between the government agency should be fully utilised for beneficiaries and properties verification. The future study must look into the technology advantages for data management and the most suitable and secure technology to handle sensitive documents. For the last decade, people have discussed blockchain technology for the transaction book-keeping, education, as well as manufacturing sector (Marr, 2018). Maybe in the new decade, a technology with similar security as the blockchain yet allows documents to be stored privately for the public sector could be formulated for the use of inheritance management.

Thirdly, concerning the issues of land inheritance management in the group settlement, the necessitated study is on the long-term solution for the settlers as today's conduct only solve the problem for the early generation. As mentioned before, there is no restriction on the number of beneficiaries of the group settlement's land inheritance, making the land portion per beneficiary decrease over time. It diminishes the land economic value, which the Group Settlement Act 1960 sought to safeguard from the very beginning.

## CONCLUSION

To sum up, the issues in the group settlement need to tend immediately and carefully to ensure efficient inheritance management. Part of the problem could be solved through the knowledge and literacy of the settlers. Through *faraidh* knowledge, legislation comprehension, and technical understanding, the process of inheritance management would be accelerated as mistakes in management and misunderstanding could be avoided. Only after those does the focus switch to the system and competency of the officials involved in it. Therefore, future research should be on structuring an educational mechanism that could tackle the literacy and awareness issues through available resources or platforms such as schools and mosques. In addition, there is a need for research on inheritance management in FELCRA, RISDA, *Rancangan Tanah Pingir*, and others state authority' group settlements to be compared with each other. After reviewing past researches, the study that sparks interest and instates urgency for inheritance management reformation is also needed—for example, an inheritance management study purposed to uncover a new mechanism and digital data management. The next step should be an integrated system, including process tracking and notification.

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