The Roles of Penghulu on Small Estate Distribution

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Abstract: Distribution of the estate is one of the most important issues in the human life. The property acquired through the distribution of the estate can lead to an individual’s future. Some people assume that property is used as measure of the success of a person’s life, so there will be room for the disputation in the authority of the estate. The existence of a dispute in the inheritance division takes place in various forms, some of the which caused the inheritance to be divided only after so long as the inherited person died, some also due to the uncertain estate position, and some of the heirs who deliberately committed crucial documents such as death letter, agreement letter and soon. The delay in applying for settlement of the estate after the death of the property owner (deceased) is a common phenomenon occurring in our society. Many cases are not properly addressed by the heirs and have not been resolved immediately even though the death has taken place for several years. There are certain cases which took decades to complete, and even death cases that took place before the Japanese occupation period had not yet been resolved. The community of ours seems to be trivial about the settlement and division of this estate. They seem to be unaware that the postponement in the division creates a very large legal and law. Any estate that left by the deceased should be manage as soon as possible to avoid any other problem that might be occur in the future. There are several applicants who are eligible to apply and manage the estate by the deceased in the Small Estate Distribution Act 1955. Section 8 (1) of the Small Estate Distribution Act provides for the parties who may apply, one of them is head of community or penghulu or placement officer. This paper will discuss the roles of penghulu to assist the community in management of estate, especially unclaimed estate.

Keywords: Estate planning, small estate, unclaimed estate, penghulu

1. Introduction

Estate in terms of purpose is object of value which can be sold and the value is not loss unless all humans do not use it (Muda, Yusof and Zakaria, 2006). Furthermore, according to the terms of inheritance or mirathestate is the property of the deceased person who has become the sole right of his/ her benefactor to be distributed among those entitled (Harun, 2018).

Estate management is a process in distributing the property of the deceased according to Hukum Syara’ according to the Qur’an for Muslims and for non-Muslims under the Distribution Act 1955. The management of the estate should be dealt to avoid the following problems such as rising in heirs, frozen assets, losing the distribution of false information or wills can’t be implemented. One of the applicants that eligible to apply the estate by the deceased in the Section 8(1) Small Estate Distribution Act 1955 is head of community (Penghulu)(Harun, 2018).

Penghulu or pahuluin Malaysia and Brunei, is the highest leader in a Mukim. The mukim has a several villages. The village will be headed by the village chief, to the court or to the place. The rules are responsible to the state government and appointed by a state government. Penghulu must be able to communicate with the villagers. He must be able to take a look and feel in a mosque. Therefore, the headman must be able to read the Quran and the Jawi script. Those who are elected must come from the state and local dialect must be learned and mastered also be able to communicate with locals (Zain and Ahmadi, 2016). There are some duties and responsibilities of the headman in a particular area:

i. Government intervention with the people
ii. Carry out tasks directed by Districts Officer and Assistant
iii. Assisting the Land Administrator
iv. Monitor the crime scene
v. Promoting unity of the population
vi. Manage matters related to smallestate
vii. Other mukim matters

The role of penghulu become more important because most of the RM60 billion worth of estate not claimed or not distribute in Malaysia since independence, is in the form of real estate and money. The assets covered
homes, land and cash that were not claimed by the heirs.

2. Unclaimed Estate

One of the duties and responsibilities of the penghulu is to manage matters related to the small estate. Small estate is property subject to the Small Estate Distribution Act 1955 (Act 98) and is an act drafted to process and settle the small estate of the deceased. Section 3 (2) of Act 98 defines the small estate as the property of the deceased leaving only immovable property or together with moveable property and the value shall not exceed RM2 million and intend not in accordance with the Will Act 1959 on the date of application. Property of the following is considered as small estate:

a. Land only;

b. Land with house;

c. Land, houses and moveable property such as jewellery, shares, EPF contributions, money savings, motor vehicles, furniture, clothing, etc.; and

d. Land and any amount of claim under sections 7 and 8 of the Civil Law Act 1956 (Act 67).

According to the Small Estate Distribution Act 1955, distribution of inheritance jurisdiction is managed by three agencies and the differentiate of moveable and immovable property.

High Court

Operate if estate that leaves either immovable and moveable, or immovable only with a value greater than RM2 million, or only moveable estate with a value greater than RM600,000, or testamentary estate for non-Muslims regardless the value of the estate.

Small Estate Section, Land Office

Operate if estate that leaves either immovable and moveable, or immovable only with a value less than RM2 million.

Amanah Raya Berhad (ARB)

Operate for the moveable estate that no exceed RM600,000 only.

3. Factor of Unclaimed Estate

There are lot causes that brings to issue of unclaimed property. It can divide into the several factors:

Awareness Factor

Lack of awareness in the community in making of financial planning is one of the causes that led to unclaimed property issues. Consequently, the awareness of how important it is to make early planning on the distribution of property before death is very important so that the heirs do not have problems managing the distribution of the legacy (Afiqah, Azmi, Tahir and Mohammad, 2011). It is undeniable that faraid law has been outlined in Islam as a way of distributing the deceased’s estate, but in practice, practically the implementation of this law is not as easy as it may seem (Zuleika and Desinthy, n.d).

This is because the inherited settlement process usually takes time because it involves processes in certain bodies and requires a high commitment to the heirs to manage them. Hence, the management of relocation property often has difficulties and is faced with difficulty of being distributed to the proper heirs (Harun, 2018). Generally, it can see that the factors that contribute to this issue involve multiple parties.

Social Factor

Social factors are also one of the key factors that led to an increase in estate that not claimed in Malaysia. The issue of delays in inheritance application management often occurs in the community. Traditional custom of rural communities is not to hasten the application of inheritance, especially when it involves immovable assets until the occurrence of layered mortality. This is because of the attitude of the individual and the community itself (Harun, 2018). The attitude of laziness and the ease of adoption has become the custom of the society to
slow down and take it easy to apply for the division of the dead estate of the deceased, especially for those who are often faced with the stigma of ‘grave ground still red already wanting’, which indicates that the distribution of inheritance does not need to be hastened. Attempts not to hasten and delay the distribution of inheritance is one of the reasons for the allocation of inheritance to be missed (Fatin and Mohammad, 2011).

In general, most Muslim societies have learned that the inheritance should be divided according to faraid law after the death of the individual occurs. The Islamic community now thinks that early planning in the management of property division should not be done during life as a result of the implementation of Islamic law that has been enacted in this response must be changed because of the thinking of such a society. Total frozen property increases. In addition, such assumptions would also cause the beneficiary to bear all the problems arising in connection with the claims and management of the estate left by the property voters (Fatin and Mohammad, 2011).

In addition, the problem in the distribution of this estate will arise when the property owners take a hype about it by not informing the heirs of the property owned so that the heir does not know the existence of the abandoned estate. Even worse, if property owners do not care about things related to their landowners’ documents which will lead to problems later on (Harun, 2018). For example, due to the loss of land ownership documents, it will cause difficulty in determining the boundary of the land in case of overlapping of boundaries, this is because the land ownership does not appear to be unclear if the landowner's documents are missing. Not only that, the consequences of losing the land ownership document can cause the heirs to be difficult to identify the land that is to be divided and difficult to prove the existence of the land when filing an estate claim at the Small Estate Section, Highl Court or Amanah Raya Berhad (Omar, 2009).

**Administrative and Legal Factors**

Administration of estate management needs to be seen to ensure that it is in harmony with the will of Islam for the benefit of society as well as the State. This is because, some argue that the estate administration system in Malaysia is said to be ineffective resulting in arrears in the estate of tens of billion ringgit. Generally, the inheritance can be divided into three, i.e., small heirlooms, large heritage and simple inheritance (Afiqah, Azmi, Tahir and Mohammad, 2011). The three types of division of property are based on the value of the property left by the deceased. Similarly, the law adopted in managing the administration of these three types of property is different. For the application for the distribution of small estate where the value of the property shall not exceed RM2 million, it shall be made at the State Land Office of the States of Malaysia (Small Estate (Distribution) Act 1955). Whereas the value of the property exceeds RM2 million, the application must be made in the CHigh Court and the allocation of the estate that determines the faraid section is managed by the Syariah Court.

Accordingly, the existence of various jurisdictions, indirectly has caused the public to feel that it is very complicated and misleading to manage the distribution of this estate. Even worse for those living in the interior, they only have limited knowledge due to the lack of exposure on matters relating to estate management. Hence, the management system and distribution of this estate became less effective as many were misled where they should begin applying for this division of inheritance. These difficulties cause the loss of self-motivation in themselves to create and manage the distribution of inheritance among themselves (Harun, 2018; Noordin, Shuib, Zainol, Azam and Adil, 2012).

In addition, long-term management of the long-term inheritance process causes people to lose their commitment to continue and manage the process of allocating this estate to completion. The problem faced by the administration when dealing with the distribution of the estate is the absence of the heirs during the hearing which causes the trial to be delayed on another date which is not necessarily the date of the next-of-kin (Omar, 2009). Sometimes, the information submitted by the applicant is incomplete and the court order can’t be issued. There is even a case where the applicant fails to produce a faraid certificate for not applying to a Syariah Court or a court order is later issued (Harun, 2018).

Other problems encountered in applying for inheritance distribution such as applicants or beneficiaries cannot produce proof of deceased death will also extend the period of time to settle the distribution of the estate. In addition, the phenomenon of layered mortality will complicate the process of allocation of inheritance (Dahan, Mara and Ahmad, 2012). Such are the things that will induce the beneficiaries to give up in managing the distribution of the estate between them because of the long and long periods of time to solve them. In addition, the high costs of spending also stave off the heir’s efforts in continuing the distribution of this estate (Stum, 2000).

**4. The Reason of Delaying in Distribution of Estate**
Among the factors that cause of delaying in the estate distribution to the legal heirs are:

**Wrong Response**

Some of the people assume that it’s unnatural to divide the estate too early, supposedly “grave ground is still red”. If there is one of the heirs who recommend that the division and settlement of the property be made immediately, he will normally be viewed as obscured by the other heirs, accused of being unenforceable, disrespectful to the deceased and so forth (Harun, 2018). To prevent this, finally all the heirs take refuge and wait for it when it will be resolved and who should start. The eldest son is usually one of the siblings should be manage this estate but he keeps on silent. Sometimes, these things take a long time for many years. These is an incorrect and contradictory notion of Syara’ because the distribution of inheritance should be hastened so that the heirs can bedetermined.

**Too Polite**

The Malay community is well known for its high courtesy. They are very careful not to say anything bad about them. In the case of the settlement of this estate, for example, each one is afraid to speak up, asking about the estate will be accused of wanting to property, for property. Hence each let the estate so long without completing it. In such a way, they have neglected their responsibility to divide their inheritance (Harun, 2018; Awang, 2008). These means that they have set aside religion solely because of their modesty not inplace.

**Lack of Knowledge and Information**

Lack of knowledge and information can be interpreted to two purposes.Firstly, heirs do not have a deep knowledge of the process of the distributing the estate either law or law. They do not know what they should do, where and to whom it should be presented. Secondly, they do not know about the risks and implications of their actions deferring the distribution of the estate. They regard no legal or legal consequences. As a result, the heir is leftunobtrusively (Awang, 2008).

**Do Not Concern**

Some of the people assume that the task of resolving this estate is a trivial task. They take an adamant attitude and assume that deferring the settlement of this estate does not have any effect, either law. They are not concerned about the demands of religion that demand them to hasten the distribution of inheritance. That’s why sometimes the estate is left untouched for so long. They just want to finish it when something who are profitable will come to them, for example when the property is to be sold, charged or taken back by the government and earned compensation money (Afiqah, Azmi, Tahir and Mohammad, 2011).

Often such conditions occur on real estate. They have no sense of responsibility to solve them, because the land is not where. As long as it not desirable the land is left. Some of those who live outside of the region or the state refuse to return to their home due to their lack of time, inadequate for little property and various reasons. Whereas when made wedding feast, they can back at village to celebrateit.

**Disputes among the Heirs**

Dispute over one’s heirs also one of the reasons why the estate is left unresolved. Disputes may exist before death and persists. In the event of death, the offended heirs are unable to meet each other, not to mention the estate or to talk about it. Disputes may also exist after death. There may be some disgruntled heirs in a matter during the management of a corpse for example or some deliberately trying to master or acquire the property of the deceased for his own sake (Harun, 2018; Awang, 2008). This happen as a result of greed and excitement and sometimes love the property so as not to overtake others. As a result, the estate is not divided and left.

5. **Roles, Duties and Responsibility of The Penghulu**

Penghulu plays major roles to ensure a success government delivery system at micro or mukim level throughout the country. For this purpose, the Malaysian government appointed a huge number of penghulu and community leaders in each state to facilitate various government initiated programs and initiatives throughout the respective mukim. Since 90’s, the Penghulu Office has been placed under the Districts Office Development Division to streamline the management and to monitor the duties of penghulu within the districts (Zain and
Penghulu is one of the leaders of the community who are very close to the heirs. The leader responsible for his mukim will always be sensitive to the problems they face and not to miss the problem of inheritance. There have been many actions taken by the penghulu in dealing with this problem in their respective mukim, but still many heirs who have not yet settled the estate. Among the roles the headman can play in assisting the heirs to complete their inheritance (Harun, 2005):

a. Providing advice to beneficiaries
b. Help fill up the application form
c. Assist the settlement /discussion
d. Host an illustration program

Next, if the deceased left by no heirs and without will and hibah, as a head of community he need to help and responsible to the small estate that left by deceased by manage the small estate according to the process that need to be follow. It is because the small estate that left by deceased need to manage as soon as possible to avoid from being as a frozen property. As penghulu, they have eligible to manage and apply the small estate if there are no heirs to claim the small estate according to the law in Section 8(1) Small Estate (Distribution) Act 1955 (Harun, 2018). The small estate that left by deceased with no heirs, no will and no hibah should contribute to Baitumal which is the last place where the small estate should be. This is an important issue to the penghulu because it can help the soul of the deceased rest in peace and calm in the new place. If the deceased is non-Muslim, the small estate should be contributed to state government for immovable property and to federal government for movable property (Kamarudin and Hisham, 2018).

Furthermore, there are some responsibilities that penghulu should do if there is no one to manage the small estate that left by the deceased in the village. First, penghulu must report to the Land Administrator if the heir does not apply for inheritance after 6 months from the date of death (Section 18(1) Small Estate (Distribution) Act 1955). Second, after six months the Land Administrator may direct the penghulu to apply for inheritance (Section 18(1) Small Estate (Distribution) Act 1955). If the property is not a small estate, penghulu is required to report to Amanah Raya Berhad (Section 18(1) Small Estate (Distribution) Act 1955). Penghulu can besummoned by the Land Administrator in any trial as a witness (Section 12(3) Small Estate (Distribution) Act 1955). Penghulu is not a subject to any payment when claiming for inheritance (Section 18(2) Small Estate (Distribution) Act 1955).

Other than that, as a penghulu there are lot of alternatives to help community in awareness of the small estate that left by the deceased. One of the alternatives is making a program or clinic to educated and give some knowledge to community about the estate. Penghulu also can cooperate with the Department of Director General of Land and Mines for making a program awareness of the small estate. Second, penghulu should know inside out of the village so this will be easy to cooperate and fostering friendship leader and the community. Third, penghulu should provide the application of small estate. It is because the heirs or the community easy to get from penghulu than go to related office. Fourth, penghulu should mutual opinion with land officer to resolve minor issue of small estate in the community. There some example of the program which is ‘A Day with Heirs’ that brief and description about estate. Seminar and Estate Dialogue is for heads of departments and resident local by region (Harun, 2005; Othman, 2005).

6. Conclusion

In conclusion, managing the estate is one of the responsible to all the people in this world if the deceased left property. Instead of just submitting an application to divide the estate at the Land Offices, but have the collective responsibility to settle the distribution as best as possible. Procedures on distribution of the small estate actually easy and simple. However, there are still many among the heirs who have not settle the estate. The heirs should be jointly responsible for solving as soon as possible estate for the sake of ensuring the well-being of the family institution and the relationship of the offspring of the property owners. To further enhance the spirit of heirs to the settlement of inheritance, penghulu needs to play arole.

Furthermore, penghulu was leader in community that help other people to find the solution in the problem that faced by the community. The good leader can lead the community to find some peace and calm in the village and the actions that take by penghulu can avoid the problem that might be happen to them. Section 8(1) Small Estate (Distribution) Act 1955 that eligible for penghulu to manage and apply the small estate was good approach. It is because it helps government to avoid from estate that not unclaimed.
In fact, the provision of the law which specifically concerned with the estate should be created so that specific features or conditions for determining the estate can be identified and standardized. The importance of determining a property as the estate also requires high awareness among the deceased’s heir to the rights of other concerned with the estate it gets the attention it deserves.

References


