AN OVERVIEW OF THE INHERITANCE LEGAL SYSTEM IN MALAYSIA AND INDONESIA: ISSUES FACED BY BOTH COUNTRIES

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ABSTRACT

The practice of inheritance, both civil and Islamic, has always been subjected to various laws and regulations and involves the participation from relevant institutions as well as the family of the deceased. Since religion and culture do not exist in isolation, it has been observed in both Malaysia and Indonesia that the practice of inheritance involves various legal systems such as civil law, Islamic law as well as customary practices. Due

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to the application of various laws, there can exist the issue of conflict of jurisdiction between the three legal authorities. These difficulties are further exacerbated when variant laws and customs exist in certain communities and are tightly held on to by certain individuals, especially those who lack the legal and procedural knowledge of inheritance. This situation leads to adverse implications such as difficulties in the distribution of estate, determination of status of heirs as well as impending disputes among the family members. This paper therefore seeks to examine the legal system involving inheritance and its practices in Malaysia and Indonesia. Through doctrinal research, it has been found that both Malaysia and Indonesia share similar factors which had attributed to inheritances; First, there is a lack of knowledge among the beneficiaries and second, the court's decision in upholding priority over civil rights. This paper is based primarily on the analysis of secondary sources such as journals, conference papers, textbooks, statutes, case laws, and other library-based documents. The findings of this study show that a cohesive approach needs to be spearheaded by the government in educating the society on the law of inheritance. Legal reforms in terms of the jurisdiction of the judiciary will also serve as an ideal solution over the revolving inheritance issues in both nations.

Keywords: *inheritance, legal system, customary practices, Malaysia, Indonesia*

INTRODUCTION

Inheritance involves two key components: the assets of the deceased and the beneficiaries of the aforementioned assets. Administration of estates on the other hand, is the process in inheritance wherein it deals with both components, the management of the deceased's assets and the distribution of the remaining assets to the rightful beneficiaries. In general, when a person dies, his estate remains frozen and will have to be properly administered until it is settled. The conclusion of the process is typically marked with the distribution of the remaining asset to the beneficiaries. As a technical term, "estate administration" is used to describe a series of tasks, which includes the appointment of a personal representative, a collection of the asset, payment of debts, and distribution of assets (Richards, Paul, & Leslie B. Curzon, 2011). Estate administration is regulated by the inheritance laws of the country. Both

Malaysia and Indonesia have a set of different laws governing the process of inheritance.

In Malaysia, various legal procedures involving the deceased's assets must be complied with. For a proper estate administration to be carried out, the person who is managing the deceased's asset must be adequately competent in engaging in such a process. Regarded as the representative of the deceased, it is pertinent that he is equipped with sufficient knowledge and expertise to carry out his duties until its completion. Apart from the role played by the personal representative, the involvement of the beneficiaries is equally crucial to ensure the estate administration process proceeds smoothly and efficiently. Although the beneficiaries are not directly involved in the estate management as they are the recipients to the estate, their cooperation is nonetheless essential to further ensure the process of estate administration proceeds effortlessly without any delay.

The situation however is quite different in Indonesia where it is not necessary for the society to comprehensively understand the estate administration process. In practice, the Indonesian community will usually delegate the task to the government through the High Court or Shariah court expecting the case to be fairly decided without any conflict of interest. Another distinctive characteristic of the Indonesian inheritance legal system is that is the lawsuit can alternatively be managed by the community themselves through customary law. There is a lack of uniformity of the customary law as the regulations and rules of customary law are different in each location in Indonesia are based on the norm of the local *adat* community (M. Toha Abdurrahman, 1976: 102). One region may produce a different set of law based on the influence of the familial system.

This paper therefore aims to discuss the various legal aspects of inheritance in Malaysia and Indonesia and the common problems associated with the inheritance process in both countries.

OVERVIEW OF THE INHERITANCE LAW IN MALAYSIA

The Inheritance legal framework in Malaysia is rather unique as Muslims and Non-Muslims are governed under different sets of inheritance laws which are parallel to each other. While the estates of the non-Muslims are governed solely by civil law,[1] the Muslims are subjected to both civil and Shariah laws due to each law possessing exclusive authorities in some regions of inheritance.

[1] Among the civil law statutes that govern the inheritance matters are the Wills Act 1959 and Distribution Act 1958.

For example, the civil high court holds authority in matters of the issuance of probate while the Shariah court is the sole institution authorized to issue *Fara'id* certificate.

Apart from the duality of law, estate administration under inheritance is also subjected to multiple institutions known as the administrative bodies. There are three administrative bodies which are empowered to grant the authority to deal with the deceased's estate, namely the High Court, Amanah Raya Berhad, and the Estate Distribution Division (Fatin Afiqah Md Azmi & Mohammad Tahir Sabit Mohammad, 2011). These institutions play a crucial role in the estate administration process through the issuance of specific authorization letters and orders, which differ on a case-by-case basis. The field of estate administration has been regulated and requires a person to apply for such authority to avoid any parties from falsely managing the estate or falsely representing the demands of the deceased. The authority is granted by these bodies in the form of a document, generally known as the letter of representation. If the application made to the wrong body or for the wrong type of letter of representation, then the process of estate administration and distribution might be delayed as the jurisdiction of each administrative body is depends on the type and value of the asset and the nature of death of the deceased, whether testate or intestate.

Another body which is empowered to deal with inheritance, although exclusive to a Muslim's estate, is the Shariah Court. Unlike the other bodies, the Shariah Court is empowered to issue *fara'id* certificates. The *fara'id* certificate, however, does not provide the authority to administer the assets but merely functions as an affirmation as to who are the beneficiaries entitled to the estate as well as their prescribed portion (Noraini Noordin et al., 2012: 27-38).

The concept of duality of legal system practiced in the Malaysian law of inheritance reflects a sound idea which could cater the position of the Muslim and non-Muslim subjects. From the legal perspective however, such practice gives rise to the occurrence of legal and technical issues, apart from the common social issues revolving the deceased and the family members. One of these issues involve the need to determine the law which possesses the jurisdiction over cases involving Muslim and non-Muslim subjects such as estate of *muallaf* who died leaving a non-Muslim spouse and children. Occurrence of such cases always spark arguments between the public as which legal system should prevail over another. The situation remains unchanged despite the need to harmonize between the two legal system has long been addressed by the academics and researchers.

1. Jurisdiction of Inheritance Law under the High Court

In the context of inheritance, the High Court has the widest jurisdiction compared to Amanah Raya Berhad and the Estate Distribution Division. Apart from granting the letter of representation, the High Court also has the power to hear cases and disputes involving inheritance. In terms of the High Court's jurisdiction in granting the letters of representation, there are two types of documents which the High Court can issue; namely the Grant of Probate and Letter of Administration. The Grant of Probate is a grant under the seal of the court authorizing the named executor or executors to administer the testator's estate. It is granted upon the application of the executor or executors in cases where a valid will has been left by the deceased. The Grant of Probate is deemed to be a critical instrument required to unlock the deceased's assets (Muhammad Ridhwan Ab Aziz et al., 2014).

In contrast, the Letter of Administration is a grant issued by the High Court upon application after the death of a person intestate, which allows the authorized party to distribute the estate of the deceased according to law. However, the court will instead grant the "Letter of Administration with Will Annexed" under certain conditions, including if the testator had left a valid will but had neglected to include an executor appointment clause, or if the executor predeceases the testator, or if the executor renounces his right to administer the estate. In these circumstances, the court will treat the application similar to that of an interstate case. The grant of probate will affirm the appointment of the executor named in the will, which enables him to act in his actual capacity as the testator's preferred choice of a personal representative.

The Letters of Administration, on the other hand, appoint an administrator, which is decided by the court to deal with the deceased's estate. The grant of probate holds a few advantages over the letters of administration in terms of procedure. For instance, the appointment of an executor is already mentioned in the will, thus avoiding uncertainties and unnecessary disputes as to who will administer the deceased's assets. In applying for the letters of administration, the beneficiaries must first decide on an administrator. Another difference that can be seen is regarding the requirement of providing sureties, whereupon a grant of probate application has no such requirement. Letters of administration, on the other hand, will only be issued upon providing two sureties who possess assets with a value similar to or exceeding the value of the deceased's estate (Alma'mun, S., 2010). In cases involving a high value such as millions of ringgits, there can be difficulties in finding sureties that fulfill the required asset values. Though the requirement can be dispensed with, such a process will consume more time and will delay the application for Letter of Administration.

Regarding the subject matter, the High Court possesses unlimited monetary jurisdiction. In practice however, cases involving asset values of more than two million ringgit are heard by the High Court, irrespective of the type of asset (Akmal Hidayah Halim, 2012).[2] It is common for an application for Letters of Representation to the High Court due to its extensive jurisdictional coverage. The introduction of the court-annexed system and e-filing system has shortened the time duration from the date of application until the extraction of the sealed copy of the Grant. It now takes only two or three months for non-contentious probate proceedings where the application has all required documents attached, is using the correct court documentation and no disputed issues or any collateral disputes related to the estate arise.

2. Jurisdiction of Inheritance Law under Amanah Raya Berhad

Amanah Raya Berhad (ARB) plays a vital role in estate administration. ARB acts as a personal representative on behalf of the deceased's beneficiary once appointed by either testator, the court or upon request made by all beneficiaries. The role of the personal representative is crucial in estate administration, as most of the beneficiaries do not possess sound knowledge about procedural and technical aspects of estate administration.

As opposed to the High Court and the Estate Distribution Division, ARB assumes the lowest monetary value under its jurisdictional capacity in granting the letter of representation. An estate that consists only of movable property, the value of which is less than RM 600,000 can be administered by ARB. The Corporation has an authority to operate under the Public Trust Corporation Act 1995 section 17 to issue either a Declaration or a Direction order to the beneficiaries for the distribution of the estate. The jurisdiction awarded to the Corporation is fairly limited in terms of monetary value, as many people nowadays have movable property assets in excess of RM600,000.

There is a loophole in the law with respect to the case jurisdiction of movable assets exceeding RM600,000 but less than RM2,000,000 as there is no explicit provisions of the jurisdiction to deal with such property. This condition will unnecessarily delay the process of estate administration and distribution. Thus, it is submitted that the jurisdiction of such cases should remain with the ARB with the condition that corporations need to increase the

[2] The Jurisdiction of the civil High Court to issue Grant of Probate or Letter of Administration is stated under Section 24 of the Court of Judicature Act 1964 which is subject to the monetary value and the types of assets involved.

estate value up to RM2,000,000 similar to the monetary jurisdiction policy of Estate Distribution Division in 2009.

3. Jurisdiction of Inheritance Law under the Estate Distribution Division

The Estate Distribution Division is a government body under the Department of Director General of Lands and Mines, Ministry of Natural Resources and Environment. As the name indicates, the focus of this unit is to deal with intestate cases involving small estate, comprising either only immovable assets or a combination of immovable and movable assets, whereby the amount is not more than RM2,000,000. The Small Estate (Distribution) Act 1955 is the primary source of authority for the Estate Distribution Division in dealing with estate administration and issuing of distribution order and letters of representation. In order to enhance the unit role, several amendments have been made to the Act, including an increase in the value of the estate that can be dealt with by the unit from RM600,000 to not more than RM2,000,000.

Similar to the High Court, the Estate Distribution Division is statutorily empowered to issue letters of representation, which in this case are known as the Letters of Administration (Form F of the 1955 Act). However, Administrative Letters are only granted in exceptional cases to an administrator that was appointed based on the agreement of all heirs. The letters of administration give the power to the administrator to collects all assets of the deceased, pay the debts, and distribute the deceased's estate to all entitled heirs. In straightforward cases, the land administrator will only grant the distribution order (Form E) to the beneficiaries, which gives two immediate effects. The first involves immovable assets such as land, where the beneficiaries will be registered in the land title. As for movable assets, a copy of Form E is submitted to the related institution to enable each of the entitled beneficiaries to obtain their secured portion.

OVERVIEW OF THE INHERITANCE LAW IN INDONESIA

Inheritance in Indonesia is governed by a diversity of laws due its multicultural nature, comprising a variety of ethnic groups. There are three elements associated with the law and practice of inheritance in Indonesia which are custom, Islamic teaching, and civil law. These elements are further coded either in specific statutes or may exist as unwritten traits that bind the practice of inheritance. Generally, there are three types of laws governing the rule of inheritance law in Indonesia (Akhmad Haries, 2014). Firstly, the inheritance

law, as outlined in the Indonesian civil code (KUHPer), which is regarded as the foundational law for inheritance that applies on every individual regardless of their ethnic standings. Secondly, inheritance law based on Islamic law, which governs how the principle of *Fara'id* method is applied to distribute the asset among heirs. The provision, which is originally derived from the Al-Qur'an and Al-sunnah, has been outlined by the Indonesian government in the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI). This regulation is aimed at the Muslim society in Indonesia, though it is not considered as a binding rule even against the Muslims in Indonesia. The KHI acts as a reference by the religious courts in deciding cases concerning Muslim inheritance. The final law of inheritance is the customary law that applies to different ethnic communities of that region.

1. Jurisdiction of Inheritance Law under the Civil Code

In its historical overview, the Civil Code is a blueprint of the colonial government known as *Burgelijk Wetboek Voor Indonesie*, abbreviated as BW. BW was incorporated as a law by the Indonesian government and later was known as KUHPe or civil law. Initially, this law was only introduced to the European and Chinese communities, known as the *Tionghoa* communities, residing in Indonesia. Whereas for the Muslim community, inheritance law is handled by the Religious Court (Pengadilan Agama/PA), which primarily refers to KHI as the primary source of law (Yusuf Somawinata, 2009: 129-149).

There are two essential principles regarding the law of inheritance based on the Civil Code (Surini Ahlan Sjarif & Nurul Elmiyah, 2005: 13). The first one emphasizes the concept of individuality, where the owner of an asset possesses full control and authority to deal with his property. In contrast, the second principle denotes the social aspect, which correlates to the sense of mutual interest between them. While it is true that the owner holds full power on how to dispose of his assets, there is sufficient concern that such an Act might devoid the rights of or even cause harm to the heirs left behind. To control the action of the owner, the civil code regulates the concept of *Legitieme Portie*, where the law secures certain parts of the asset to a particular heir (Mohammad Yasir Fauzi, 2016).

Unlike Malaysia, inheritance law under the civil code does not recognize the concept of self-owned assets or assets jointly acquired during the marriage as the law treats inheritance as an asset whose ownership is deemed to change

from the deceased to the beneficiaries. This provision can be seen in Article 849 of the Indonesian Civil Code:

> *"The law does not look at the nature or the origin of the items in a legacy to regulate inheritance."*

The basis of an heir inheriting the deceased's asset under civil law exists in two ways. First, the provision is governed by civil law that emphasizes the bloodline. This can be further divided into four groups; namely families of direct descent (children, descendant, etc.), families of direct ascent (sibling and parents), grandmothers and grandfathers, and finally family members in the sideline and other relatives up to a sixth degree calculated from the deceased. Secondly, the heir must be appointed directly by the deceased through testament. The status of the testament will apply only if the testator has died and cannot be withdrawn. Besides, the inheritance in civil law also describes that the following conditions must be fulfilled in inheriting the deceased's asset. First, it must be proven that the testator is deceased. Secondly, there must be an heir who acts as a recipient of the deceased's assets. Finally, the heir must be competent and entitled to inherit the property left by the testator.[3]

In an event where the deceased passes away and leaves no heir, then the inheritance is considered as a deferred asset or asset without proper ownership. In this situation, it falls under the role of a specific entity known as *Balai Harta Peninggalan* to care for the asset. The arrangement for such assets must be reported to the local state prosecutor's office. If, within three years, the assets are left unclaimed, *Balai Harta Peninggalan* shall transfer the ownership and management of the asset to the state.

2. Jurisdiction under the Islamic Inheritance Law

The second inheritance law that applies in Indonesia is Islamic inheritance law. Islamic inheritance law is used as a reference for judges in PA to adjudicate cases involving the management of inheritance in Indonesia. The existence of this institution goes in line with the fact that Islam is the largest religion in Indonesia (Akhmad Haries, 2014). In terms of its statutory legislation, Islamic inheritance law in Indonesia refers to KHI, which serves as a guiding principle for religious court judges in resolving cases relating to Muslim inheritance.

In article 171 KHI letter (a), three important points emphasize on the management of inheritance. The first point is regarding the transfer of ownership rights from the deceased to the heirs. The change of ownership

[3] KUHPer, Article 830 of 1874.

rights takes place upon the death of the deceased and involves those who have a relationship with the deceased, namely the heir. In Islamic inheritance law, the existence of the relationship is proven through heredity or relationship that exists outside of marriage. The provisions are provided in KHI Article 174 paragraph (1) letters (a) and (b). The second point is the term *tirkah*, which is similar to the concept of liabilities on the part of the deceased in his capacity, which includes repayment of debts, funeral expenses, payment of zakat, and others.[4] This provision relating to holy Quran which states:

> *"... After being taken for the inherited testament or after the debt is paid."*
>
> (Surah al-Nisa': 11)

Tirkah is impliedly mentioned in the provision on KHI, which can be found in Article 175 paragraph (1) regarding the obligations of heirs. Under this article, the heirs have the responsibility to manage several things, including the settlement of funeral expenses and any outstanding debts. The settlement of these tasks takes priority over the distribution of assets to the heirs. The final point is that regarding the status of entitled heirs, which is regulated under Chapter III of KHI, covering from Article 176 to Article 191. Article 174, for instance, stated about the heirs, which can be divided into two groups. The first group is based on blood relations (*nasab*), while the second group is based on marital relations such as widows. In general, those who are entitled under inheritance consists of children, fathers, mothers, and spouses.[5]

Cases involving different religions in Islamic inheritance law are not explicitly stated in the law. However, it does not mean that the religious court does not have a legal reference to solve problems or cases in question. The court may still refer to Al-Qur'an, Hadith, and other sources of deriving the *hukm*. The involvement of a different religion in Muslim inheritance in Indonesia is not treated as a legal issue under the KHI. Such occurrence sparks the clash of jurisdiction between the District Court and the Religious Courts. Generally, the District Court (*Pengadilan Negeri/PN*) holds the authority to hear cases of non-Muslim inheritance in Indonesia. In contrast, the Religious Court possesses the authority to hear inheritance cases involving Muslims. If a deceased is a non-Muslim and the one who filed a case is a Muslim heir, then the Religious Court will at least not accept the case or reject the claim.

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4 Sarmadi, A. S. (2016). "Hukum Waris Islam di Indonesia (Perbandingan Kompilasi Hukum Islam dan Fiqh Sunni)," http://www. aswajapressindo. co. id/.

5 See the Compilation of Islamic Law (KHI) Indonesia, Book II "Inheritance Law", Chapter One regarding general provisions, Article 174, Paragraph (2).

However, if the deceased is a Muslim and the one who filed the case is a non-Muslim heir, the case will still be entertained under Islamic legal provisions contained in KHI. However, the non-Muslim heirs are set aside from the lists of the recipient of the deceased's assets due to different religions.

3. Jurisdiction of Inheritance Law under the Customary Inheritance Law

The Indonesian government outlines customary inheritance law following the mandate of the constitution (Akhmad Haries, 2014). As opposed to the civil code and Islamic inheritance law, the customary inheritance law is an unwritten law that is based on the local customary practices that have been handed down for generations by the community. The customary inheritance law is pluralist in nature, as this happened due to the diverse cultural backgrounds in Indonesia. The unique feature under this category of law is that under the customary law, death is not necessarily a cause for inheritance. In other words, inheritance law is not bound by the death of the deceased (*Ibid*.).

Customary inheritance law is widely practiced and may differ between each region as Indonesia is a nation consisting of various tribes. For instance, the Sumatera Island consists of the *Akit, Minangkabau, Bata*, and *Malay* tribes, while in Java, there are the *Madura, Osing, Bedouin, Tengger,* and *Javanese*. In Sulawesi, there are the *Buton, Bugis*, and *Makassar* tribes and in Papua, there are the *Kapauku, Asmat* and *Amungme* tribes. As a result, these different tribes and different cultural backgrounds gave birth to different customary rules, which also involves inheritance. Inheritance law has also been influenced by marriage or cultural acculturation that caused by the influence of a religion of that particular tribe. This practice eventually produced different legal dynamics in each region.

The concept of heirs under the customary inheritance law is based on three types of lineages, namely patrilineal (fatherly), patrilineal (maternal), and parental (mother-father) (Mohammad Yasir Fauzi, 2016). According to the patrilineal system, the lineage is derived from the father who acts as a determining factor in the offspring of posterity. In this system, women do not become a factor that connects families. Instead, they follow their husbands. This system applies to the *Nias, Gayo*, and *Batak* tribes, and some in *Lampung, Maluku,* and *Timor*. Meanwhile, the matrilineal system is a system that follows the lineage of the mother. Married women will remain while their children enter the lineage of their mother. This system is found in *Minangkabau, Kerinci, Semendo*, and several regions in eastern Indonesia. Matrilineal systems prioritize female heirs rather than males. The third is the parental

system, where bloodline comes from both sides, namely the father and mother and ancestors. Both are equally important in determining the heirs of both parties. This group laid the foundations of equality between husband and wife in their respective families (Sudarsono, 1991: 6).

The family system serves as a significant influence in customary inheritance law, especially in determining the heirs and portions of the inheritance. Therefore, the inheritance systems based on customary law in Indonesia can be divided into three based on the following:

a) Individual Inheritance System

Within this system, the property of the deceased can be inherited or divided to the heirs as applied to Javanese, Batak, and Sulawesi community.

b) Collective Inheritance System

In this system, the applicable provisions are that the inheritance cannot be inherited or shared with each individual or heir. This means that the property is inherited together. For instance, "*Harta Pusako*" applied to the Minangkabau community in West Sumatera and "*Tanah Dati*" in the Ambon peninsula (Tolib Setiady, 2009).

c) Major Inheritance System

The system of inheritance determines that only one child gains the entire inheritance. For example, in Bali, those who have the right to inherit all of his parent's property are the oldest son. In Batak, it often happens that the youngest son has the right to inherit all of his parent's inheritance. While in Semendo land in South Sumatera, the oldest daughter is entitled to inherit the property of their parents (Hazairin, 1982: 15).

ANALYSIS AND DISCUSSION

As the recipient of the deceased's assets, the beneficiaries are not directly involved with the estate management, administration, and distribution compared to the personal representative. Nevertheless, their involvement is crucial and necessary since it could affect the smooth running of the estate administration and distribution process. If the beneficiaries cooperate with the

personal representative and show a positive attitude as well as adhere to the distribution order, then the process of estate administration would be smooth, and the actual distribution can take place faster. It is therefore paramount that the beneficiaries display a positive and agreeable attitude either to the personal representative or among themselves. Unfortunately, this is not always the case and beneficiaries sometimes have uncooperative attitudes. To a certain extent, the beneficiaries' attitude is seen as the major cause of the delay in estate administration and distribution. This situation can be identified in two aspects. The first one involves the lack of knowledge on the part of the beneficiary as to the rules and procedures, while the second one is the personal attitude of the beneficiaries towards the administration of the estate.

1. Lack of Knowledge among the Public on Inheritance Rules in Malaysia and Indonesia

Although beneficiaries are not allowed to directly deal with the deceased's estate due to the lack of authority, their presence and cooperation are essential because they are one of the main components in estate administration. They have a connection with the deceased and his estate and legacy. However, they must also, at least, have a general knowledge on the laws of estate administration to avoid any potential stumbling blocks and complicate an already complicated process. For instance, in cases relating to nomination in Employees' Provident Fund (EPF) account, there is a perception among the Muslim beneficiaries that all the money under the deceased's EPF account belongs to the nominee. It is also a misperception because it is explicitly established by statute that the candidate operates in an administrator's capacity.

The appointment allows the money in the EPF account to be withdrawn without the administration documents, and that money will be in the nominated person's hands. Lawmakers mean this as a way to facilitate the transfer of the EPF money so that the nominated person then disperses it to the rest of the beneficiaries. If the candidate did not perform his duty as required by statute or even held the money for his benefit, in this case, it would be regarded as an offence commission in criminal or civil cases. The personal representative could take legal action against the nominee who failed to distribute the money accordingly.

Some beneficiaries are not aware of the jurisdiction and the function of the administrative bodies, to the extent that they have approached the wrong body instead (Noraini Noordin et al., 2012: 27-38). For instance, testate cases involving Muslim deceased persons requires the applicant to first apply for

the *Fara'id* certificate from the Shariah Court, before the filing of probate in the High Court. This is because the same *Fara'id* certificate will be enclosed as part of the supporting documentation to apply for the probate. The Shariah certificate is substantial proof regarding the list of entitled beneficiaries and the prescribed portion for the beneficiaries. Besides, the will of the Muslim deceased has been inspected and confirmed to its validity, which prevents the will from being challenged in the future. If an application to the civil court was made without obtaining the *Fara'id* certificate and other required documents, the applicant would not succeed in his application hence would delay in the administration and distribution of the estate.

In some cases, the property involved might be subjected to the specific method of administration and distribution and would not be subject to distribution according to the law of inheritance. An example of the property is the group settlement land, such as FELDA land. According to Zulkifli Mohamad et al. (2011), the delay in the administration of the estate was partially caused by a lack of awareness among the Felda group settlers to the law relating to Felda land. Under section 7 of Land (Group Settlement Area) Act 1960, different law applies to the Felda land in case of death of the first settlor, unlike the standard type of land which is governed by the National Land Code 1965.

While the land can be distributed accordingly based on whether the deceased died testate or intestate, the rules for the Felda land employs a different approach where only two people can be named as receiver of such land. Though in reality, these two receivers shoulder the same responsibility as that of the personal representative in distributing the usufruct from such land to entitled beneficiaries according to the rule of succession (Nasrul Hisyam Nor Muhamad & Norazila Mat Hussain, 2014). The lack of awareness is corroborated by a complex mechanism that not only deviates from the generic method of land inheritance administration but contradicts the laws of *Fara'id.*

Meanwhile, the same situation can be seen in Indonesia where the community struggles in identifying which legal procedures they should follow in managing the administration of estate. The three inheritance laws which co-exists in Indonesia has been regarded as complex to the members of the community as some of them lack the necessary knowledge on inheritance rules. This situation is more prevalent in rural areas where people are not familiar with the legal knowledge of inheritance law. This problem can be attributed to the lack of strong initiative by the Indonesian government in spreading awareness as well as information on the applicable inheritance laws existing in the country. The government's role in spreading awareness is important to

ensure the society is well-informed as well as to minimize any uncertainty and ambiguity and to prevent any misunderstanding among the community as to what law that needs to be taken, while taking into consideration of the fact that many people still consistently rely on their customary law rather than civil or Islamic law. This is the scenario which often creates t conflict among the people.

Apart from the lack of knowledge, the problem also lies in the attitude of the people such as the failure to prepare a wealth distribution plan after they die, even among the wealthy people Assuming that these category of people have a better access to education and practical knowledge, their situation and others are more or less the same as majority of these people did not equip themselves with sufficient knowledge about how to distribute the estate and which law that requires to be followed namely civil law, Islamic law or customary law.

2. The Adverse Attitude of the Beneficiaries towards Inheritance practice

In Malaysia, there is often a negative personal attitude displayed by the beneficiaries which interrupts the smooth process of estate administration. The attitude of taking things for granted, for instance, is an example of the beneficiaries' attitude, which could cause delays and other problems in estate administration. This condition can be seen in cases involving a late application for estate administration to the administrative bodies. Two attitudes have commonly caused delays in the application. The first is the classical perception that processing the administration of the deceased's asset quickly is a sign of disrespect to the deceased as well as a sign of greediness. The second possible cause is the carefree attitude among the beneficiaries themselves.

These attitudes are in contrast to the requirements of the law, where an application for estate administration should be made not less than six months after the death of the deceased. Failure in complying with this rule will not penalize the applicants, but they must provide explanations for their late commencement in doing so. This attitude of stalling the matters is detrimental in the administration of the estate, where an emphasis is placed on settling matters quickly and efficiently.

Greediness, which is substantiated with the lack of tolerance, is another factor that could cause a delay in estate administration. For instance, testate cases involving Muslim will or *wasiyah* made to an adopted child may be contested by the other beneficiaries. Under Malaysian law, the right of the adopted child is secured, provided the gift made is not more than one-third

of the deceased's asset under the rule of *wasiyah* (Alma'mun, S., 2010). Still, the insatiability among the beneficiaries could disregard the right of the adopted children by trying to conceal the facts during the application for a *Fara'id* certificate from the Shariah Court. A similar scenario can be seen in the application for the jointly-acquired property by the deceased's polygamous wife, where her right was denied by the deceased's children from the other wife due to a sense of greediness, which clouded their mind and reasoning (Miszairi Sitiris & Akmal Hidayah Halim, 2010: 26-46).

The same negative traits can be seen in scenarios among the people in relation to inheritance issues. In Indonesia, conflict often occurs among the relatives of the deceased whereby a member of the family would file an application to the court without the approval of other family members who would prefer to utilize customary law out of respect to ancestors and customary practices. As there are no binding rules which necessitates the application of a specific law, it has led to conflicts among the older and younger generation within the family. Another distinct point regarding the inheritance conflict in Indonesia is the *"Gono Gini"* property. This case arises when a married couple decided to get a divorce and demanded property rights over each other. The situation worsens with the involvement of the family members from both sides where this scenario also portrays a never-ending series of unresolved disputes throughout the community in Indonesia.

3. Inheritance involving parties of a different religion

In Indonesia, one problem that usually arises is the differences of religion between the deceased and the heirs. Under Islamic law and civil law, it has been asserted that parties of different religions are not entitled to each other's assets under inheritance (Maharani, Dhea Swasti & Diana Tantri Cahyaningsih, 2018: 197-207). Religious differences occur because of the conversion of one of the parties, either the deceased or the heir. This rule applies to the family members such as children of different religions where they do not inherit from the deceased should their religion be different. It is a clear rule under Islamic law based on the hadith of Imam Bukhari and Muslim, which reads:

> *"From Usamah bin Zaid RA: That the Messenger of Allah said: Muslims do not have inheritance rights to unbelievers, and unbelievers do not have inheritance rights to Muslims." (H.H Muttafaq Alaih)*

Despite the clear position regarding this matter, reference to the case under Supreme Court decision number 1582k/pdt/2012 shows the otherwise. In this

case, the parties of a different religion from the deceased were entitled to the deceased's assets. According to the court, they obtained the assets based on the concept of obligatory will (*wasiat* wajibah). Such a case has been referred to as a precedent, which has led to the opening up opportunities for parents who have different religions from their children.

In Malaysia on the other hand, issues on inheritance in relation to difference of religion is not associated with the conversion out of Islam but rather, the relationship between the converted person and his non-converted family members. Upon conversion to Islam, one will be subjected to the Islamic law. Similarly, when he dies, the administration of his estate will have to be in accordance with the Islamic law of succession. Conversion to Islam assumes the person being subjected to the jurisdiction of the Syariah Court. Nevertheless, such does not negate the right of his non-converted family members from claiming their entitlement over the converted deceased's estate through the civil courts. This is because matters relating to probate do not fall within ambit of the jurisdiction of the Shariah Court only, it also falls within the jurisdiction of the civil court.

4. Inheritance status of children born out of wedlock

Among the concerns of the government of both countries is the recent rise in society of children born outside of marriage or also known as children born out of wedlock (Kumoro, R. Youdhea S., 2017: 12). In Indonesia for instance, based on the case at the Constitutional Court (Mahkamah Konstitusi/MK) decision no. 46 / PUU-VIII / 2010, the rights to inheritance involving children born out of wedlock does not only concern their mother and family but also involve receiving from the side of the biological father as an assurance for them to get a decent life.

The Supreme Court inferred its understanding of children born outside of marriage as a child who was born from an unregistered marriage. Also, based on the Constitutional Court's decision, children born outside of marriage are entitled to the inheritance so long as it can be proven that they have a blood relationship. In this situation, the children will not only inherit from his mother and family but also his father (Sari Pusvita, 2018: 31-51).

The Constitutional Court based its decision on the civil law in giving rights to children out of wedlock as stipulated by the Civil Code following in Article 280 of the Civil Code that states:

> *"With the recognition of children outside of marriage, a civil relationship is born between the child and his father or mother."*

These two issues are closely related to the aspect of religion, where despite being accepted by the civil law as a legal and accepted practice, such occurrences pose a danger to the religion, primarily Islam. In a country where the dominant population is the Muslims, such occurrences should be curbed and mitigated as an effort to safeguard the lineage and preserve the family institution.

CONCLUSION

The differences of legal systems, together with a variety of customary rules that take place in Malaysia and Indonesia, denotes an inheritance practice that is unique to each state despite sharing certain similarities such as the influences of civil law and Islamic law. In Malaysia, the primary issue which has been identified involving inheritance revolves around social problems, particularly among the interested parties such as the deceased's family members and beneficiaries. The factors behind the occurrence of such issues include the lack of knowledge behind the personal representatives as well as the deceased's family members, which often gave rise to other unwanted complications. While the law and the system may not be fool proof, the greater responsibility lies on the shoulders of the involved parties in equipping themselves with the necessary information in managing the deceased's assets. In Indonesia, the identified issue involves the legal and procedural aspects of inheritance, particularly those involving Muslim persons. The mixture of different laws adopted by the judges in arriving at a decision affects the distribution of the deceased's assets, which may not be in line with *Shariah* standards. This could affect the rights of entitled beneficiaries under the *Fara'id* principle while bestowing the distribution to those originally not entitled under the sacred law. The degree of issues faced by the two states is unmistakably severe and requires immediate attention, if not a solution from the respective authority, mainly the government. It is hoped that the identification of problems as well as the discussion in this paper can be useful to the stakeholders and the broader society in remedying the ongoing problems which occurs in cases of inheritance.

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