

A Comparative Analysis of Frozen Estates in Malaysia and Indonesia

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Abstract

In Malaysia, a frozen estate is an estate of a deceased owner that has not been administered by the beneficiaries even after six months have passed from the owner's death and refers to freehold land, where the annual rent is payable by the heirs. However, difficulties with unclaimed estates are critical, since it has been stated that the latest valuation of unclaimed estates in West Malaysia stands at RM90 billion in 2021. As a result, despite assertions that these estates have diverse effects, the total number of non-administered estates cannot be determined. Therefore, the purpose of this article is to examine frozen estates in Malaysia and Indonesia. The debate employs a comparative approach by examining contemporary sources and secondary materials such as case law, statute legislation, and other non-legal and legal literature. This study indicates that Malaysia and Indonesia are both dealing with frozen estates, with a large number of frozen estates causing loss to beneficiaries as well as both countries.

Keywords: frozen estates, comparative analysis, Malaysia, Indonesia

1. Introduction

In situations where estates are not administered, it means that no formal request has been made for letters of administration or probate to handle the assets and affairs of a deceased person. This is called frozen estates. This occurs when six months have passed since the individual's death without any application being submitted. It is possible that beneficiaries have indeed applied to administer the estate, but the case remains unresolved or full administration has not been granted due to various factors, such as disputes among the beneficiaries.

According to the applicable laws in Malaysia, non-administered estates are transferred to the Corporation and are governed by specific sections of the Small Estate (Distribution) Act 1955, the Public Trust Corporation Act 1995, and the Probate and Administration Act 1959. However, the administration procedures for these estates have certain gaps because the system does not facilitate the tracing of estates if beneficiaries have not initiated any application for administration. Consequently, it is not possible to determine the exact number of non-administered estates in Malaysia.

Nevertheless, in 2005, it was reported that approximately 900,000 out of 6.2 million lands were still registered in the name of deceased individuals (Rashid, 2005). Additionally, in 2007, local news reported that over a million inheritance cases, amounting to around RM40 billion, remained unclaimed, with properties owned by Malays accounting for approximately RM38 billion of that total (Bakar, 2010). In 2013, the value of the non-administered property was reported to increase drastically to RM52 billion (Isa, 2013) and further increase to RM66.6 billion in the same year. In 2016, the news reported that Malaysia's current value of non-administered estates was around RM60 billion (Aziz, 2016). Meanwhile, the latest record in 2020 has recorded RM70 billion (Haque, 2020) and RM90 billion in 2021 (Kamarulbaid, 2021) of properties in Malaysia that were frozen due to not being administered by the heirs of the deceased. Although the statistics did not provide separate figures for non-Muslims and Muslims, Muslims make up the majority of these unclaimed assets (Mohamad, 2016).

However, the applicable laws for frozen estates in Indonesia are governed by various inheritance law systems. In Indonesia, there are three applicable inheritance law systems: the western inheritance law system, the customary inheritance law system, and the Islamic inheritance law system (Maryani et al., 2022; Daud & Azahari, 2019; Nasution, 2019). These different systems provide guidelines for the division and distribution of assets in the event of a frozen estate. However, no data are provided for the number of frozen estates in Indonesia.

Therefore, this research undertakes a comparative analysis of the frozen estates in Malaysia and Indonesia based on the current legal framework for both countries and determines to what extent the available legal framework can solve the issues of frozen estates in Malaysia and Indonesia.

2. Method

This study employs desktop analysis and references to secondary sources and references as well as reports from authorities such as academic journals, government agencies, and

reputable research institutions. Content analysis involves an extensive review of relevant literature related to frozen estates, requiring a significant time spent in the library. This includes a comprehensive study of primary and secondary sources regarding the management and administration of unclaimed estates in West Malaysia and Indonesia, allowing for comparative analysis. Using online databases, such as WOS, Scopus, Emerald Insights, and other commendable databases, references were made to refereed journals related to frozen estates, management, and administration of unclaimed assets in Malaysia and Indonesia.

Doctrinal analysis is conducted by examining various materials, including statutory provisions such as the Probate and Administration Act 1959, Small Estates (Distribution) Act 1955, Public Trust Corporation Act 1995, National Land Code 1965, Land Acquisition Act 1960 (Act 486), Town and Country Planning Act 1976 (Act 172), case law, and other legal and non-legal literature such as textbooks, articles, newspaper clippings, conference proceedings, and seminar papers.

3. Literature Review

In Malaysia, Section 39 of the Probate and Administration Act 1959 provides that where a person dies intestate, his movable and immovable property until administration is granted in respect thereof shall vest in the Corporation in the same manner and to the same extent as it vests in the Probate Judge in England. On the making of an order for a grant of administration by the Court, all such property shall vest in the administrator. By virtue of Section 81 of the Probate and Administration Act 1959, the Court may grant letters of administration with or without the will annexed of the non-administered estates to the Corporation.

The provision for non-administered estates can also be found in Section 18 of the Small Estates (Distribution) Act 1955, which provides that in cases where a proprietor of any land has died and no proceedings have been taken, to the knowledge of a Settlement Officer of the district or the penghulu of the locality in which the proprietor's land is situated, within six months of the date of death, a grant of probate or letters of administration or for distribution under this Act of the estate of the deceased has been taken. The said Settlement Officer or the said penghulu shall report the matter to the Land Administrator, and the Land Administrator may immediately direct the Settlement Officer or the penghulu, or some other Settlement Officer of the district or some other penghulu, to lodge a petition for distribution of the estate unless he has reason to believe that the land was not part of a small estate, in which case he shall report the matter to the Corporation.

By virtue of Section 16 of the Public Trust Corporation Act 1995, the Corporation may, as soon as it learns on such evidence as it deems sufficient that any person who dies intestate leaving property in Malaysia, immediately take possession thereof and provide for its safe custody until letters of administration are granted by the Court.

The issue of unclaimed estates in Malaysia, as reported in local newspapers, should have raised awareness among the public and relevant authorities, prompting efforts to address the problem. It was reported that 900,000 out of 6.2 million lands were still registered under deceased individuals (Rashid, 2005). According to Ahmad Hidayat (2008), the majority of

these unclaimed estates belong to Muslims, and RM1.8 billion has been classified as unclaimed moneys under the Unclaimed Moneys Act 1965 (Act 370) by the Registrar of Unclaimed Moneys.

Local newspapers also reported that in 2006, there were over a million unclaimed inheritance cases worth approximately RM38 billion (Bakar, 2010). These figures may be underestimated because they exclude unclaimed moneys held by various agencies and financial institutions. The value increased to RM40 billion in 2007 (Bakar, 2010), RM42 billion in 2011, and RM52 billion in 2013 (Isa, 2013), and reached RM66.6 billion in the same year based on statistics from the Department of Islamic Judiciary of Malaysia. However, in 2016, Datuk Hamim Samuri, former Deputy Minister of the Ministry of Water, Land and Natural Resources, stated that the value of unclaimed estates in the region was RM60 billion, which is lower than the figure reported in 2013 (Aziz, 2016). Meanwhile, the latest record in 2020 has recorded RM70 billion (Haque, 2020) and RM90 billion in 2021 (Kamarulbaid, 2021).

The data on the total value of unclaimed estates lack valid research findings and official reports or statistics. The information relies mainly on uncorroborated evidence reported in newspapers. Despite this, many researchers have cited these figures in their discussions on unclaimed estates (Mahamood, 2008; Rashid & Yaakub, 2010; Ahmad & Laluddin, 2010; Noordin, 2012; Kamarudin & Alma'amun, 2013; Shafie, Yusoff, & Al-Edru, 2014).

Studies have identified several contributing factors to the problem, including the lack of importance placed on Islamic estate planning, particularly among Muslims, and beneficiaries' ignorance of the required procedures. Some beneficiaries may also be apathetic to claim their rights due to factors such as lack of time, high expenses, and inconvenient bureaucratic processes (Halim, 2019; Arshad & Halim, 2015; Rashid & Yaakub, 2010)). However, these findings are based on the researchers' observations and lack supporting statistics.

The increasing income levels and asset possession among Malaysians also contribute to the growing number of unclaimed estates (Buang, 2008). As income increases, the values of deceased individuals' estates increases. If these estates are not properly administered, the number of unclaimed estates will continue to rise.

Despite repeated reports on the increasing values of unclaimed estates, no research has been conducted to develop a method to solve this problem (Noordin, 2013). Some suggestions have been made, such as using hibah as an estate planning instrument to prevent estates from being frozen due to non-administration by beneficiaries (Rusnadewi & Nor Hisyam, 2013).

To reduce the number of non-administered estate cases, suggestions have been made to establish a single body for non-contentious estate proceedings, acting as a monitoring body to encourage beneficiaries to apply for estate administration within six months of the individual's death (Arshad & Halim, 2015). Failure to do so would result in the Public Trust Corporation administering the estate. While these suggestions are significant, they lack comprehensiveness in providing a comprehensive solution to the current problem of unclaimed estates.

In contrast, in Indonesia, there are three applicable inheritance law systems: the western

inheritance law system, the customary inheritance law system, and the Islamic inheritance law system (Maryani et al., 2022; Daud & Azahari, 2019; Nasution, 2019). These different systems provide guidelines for the division and distribution of assets in the event of a frozen estate.

The western inheritance law system is based on the Burgerlijk Wetboek (BW) civil law, also known as Kitab Undang-undang Hukum Perdata (Daud & Azahari, 2019). This system is influenced by Dutch colonial law and provides a framework for the division of assets according to civil law principles.

The customary inheritance law system is based on traditional customs and practises that vary across different regions of Indonesia (Nurmala & Koni, 2022). This system considers local customs and traditions in determining the division of assets in a frozen estate.

The Islamic inheritance law system, based on Islamic law (Shariah), is another applicable system in Indonesia (Nasution, 2019). This system follows the principles outlined in Islamic jurisprudence and provides guidelines for the distribution of assets according to Islamic principles.

These different inheritance law systems in Indonesia may lead to variations in the division and distribution of assets in frozen estates. It is important for individuals and families to understand the applicable laws and seek legal advice to ensure a fair and proper distribution of assets.

4. Results and Discussion

In Malaysia, the study discovered that non-administered estates can be categorised into movable and immovable estates. However, movable non-administered estates, which are classified as unclaimed moneys held by the Registrar of Unclaimed Moneys, are not considered frozen estates.

The immovable non-administered estates can be further divided into temporary and perpetual frozen estates. Perpetual frozen estates refer to freehold land where the beneficiaries are still required to pay the estate's annual rent.

Based on this, the proposed types of non-administered estates are as follows:

- i. Leasehold and freehold land where the annual rent is not paid, and the government has the right to forfeit the land.
- ii. Leasehold and freehold land where the annual rent is payable by someone who has no legitimate claim to the land. If discovered by the State Authority, the land can be forfeited.
- iii. Leasehold land where the annual rent is paid by the heirs. This is considered a temporary frozen estate. However, after the lease expires, the land reverts to the State Authority.
- iv. Freehold land where the annual rent is paid by the heirs. This is a perpetual frozen

estate, where the beneficiaries cannot exercise ownership rights until the estate is administered. Such non-administered estates are difficult to trace (Yusoff, 2019).

Apart from that, the impact of non-administered estates from a legal perspective can be seen in terms of reversion, forfeiture, multiple death, and non-exercisability of owner's rights. This is based on the National Land Code 1965, Land Acquisition Act 1960 (Act 486), Town and Country Planning Act 1976 (Act 172), and other relevant statutes.

Non-administered estates by beneficiaries after the death of the deceased can cause the reversion of the land by the State Authority, as stated in Section 46 (1) of National Land Code 1965. Next, by not administering the estates, normally the annual rent of the estates is also not being paid. By non-payable annual rent, the land is subject to forfeiture by the State Authority as provided in Section 100 of National Land Code 1965.

By not administering the estates, the beneficiaries cannot exercise the owner's rights provided in Section 92(2) of the National Land Code 1965. In addition, the beneficiaries cannot develop the land without planning permission under the Town and Country Planning Act 1976 (Act 172). Section 19(1) of the Act provides that no person, other than a local authority, shall commence, undertake, or carry out any development unless planning permission regarding the development has been granted.

Multiple deaths occur when the land remains not administered when the owner dies, followed by the death of the beneficiaries. The problem arises in cases where there are multiple deaths and when the portion of land is small, but there are many beneficiaries (Rashid & Yaakub, 2010). An obvious example of non-administered estates due to multiple deaths is the situation in Kampong Bharu, Malaysia (Malek, 2023).

In this research, it was found that there are numerous non-administered estates that cannot be traced or detected, apart from the cases in Kampong Bharu. The gross value of non-administered estates in Kampong Bharu alone is RM61.23 billion. Therefore, it is estimated that the value of perpetual frozen unclaimed estates in West Malaysia exceeds RM60 billion (Yusoff, 2019).

Therefore, the study concludes that there is a need to establish a Non-Administered Estate Division that can manage existing and prevent future non-administered estates by monitoring and initiating administration for estates that remain unadministered after a six-month period from the date of the deceased's passing.

Regarding the issue of Kampong Bharu, Malaysia frozen estates, Nabila Ayuni (2023) proposed several mechanisms to unlock the administration of non-administered real estate in Kampong Bharu. The proposed mechanisms are through the implementation of the Land Acquisition Act 1960, a need for the beneficiaries to set up a family cooperative or subsidiary company, bolster the effort of spreading wide information, strengthen the function of Kampong Bharu Development Corporation (KBDC), and the Public Trust Corporation must be able to trace the non-administered estates.

As opposed to Indonesia, there is a phenomenon known as “tanah warisan” or “unclaimed

land,” which refers to land that remains non-administered or unclaimed by heirs after the owner’s death. This situation can occur because of factors such as the absence of a will, unclear inheritance laws, disputes among heirs, or the heirs’ inability to manage or maintain the land.

To address this issue, the Indonesian government has implemented various measures, including the Agrarian Law, which provides regulations and procedures for land administration and inheritance. The aim is to ensure proper land distribution and prevent the accumulation of unclaimed land. The government also encourages heirs to resolve land inheritance matters through the legal system and provides assistance in resolving disputes.

Local land offices and authorities play a crucial role in identifying and managing unclaimed lands in Indonesia. They conduct surveys and investigations to determine the rightful heirs and facilitate the transfer of land ownership. In some cases, unclaimed lands may be taken over by the government for public purposes or redistributed to local communities.

Transparency in local government is an important factor in the management of non-administered estates (Adiputra et al., 2018). Transparency can help ensure accountability and effective governance in handling such estates. By promoting transparency, the government can provide clear information on the status and management of non-administered estates, which can facilitate their resolution.

In addition, effective management practises are crucial in addressing the issue of non-administered estates (Abdullah et al., 2011). The government can implement appropriate asset management practises to ensure that non-administered estates are identified, documented, and appropriately managed. This may involve conducting regular audits, establishing clear procedures for estate administration, and engaging with relevant stakeholders.

5. Conclusion

In conclusion, it is important to acknowledge that non-administered estates result in losses for both beneficiaries and the country. Multiple parties are affected by these estates, including orphans, widows, family members, beneficiaries, and even the deceased individual himself, as their outstanding debts remain unsettled. Despite numerous reports highlighting the increasing value and significant impacts of unclaimed and non-administered estates, no comprehensive mechanism has been established by the government to address this ongoing issue. Therefore, it is the responsibility of relevant parties to take proactive and progressive steps to ensure the liquidation of these estates, ultimately benefiting the rightful beneficiaries, the country, and the public.

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