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Parents' transfer to children: Study on the impact of '*Pindah Milik Tanah 1 Hari*' (Land transfer ownership in one-day) by the Malaysian Land Office

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Abstract

Parents' transfer will assist children economic condition, reward their children services and prevent inheritance avoidance. Currently, Malaysia Land Office promotes a program that is known as '*Pindah Milik Tanah 1 Hari*' (PMT1HARI)(Transfer Land Ownership in One-Day) to encourage parents to transfer land ownership to their children. Thus, this study aims to explore the impact of PMT1HARI program to the parents and land office. This study employs qualitative approach in which data is collected through semi-structured interviews with three Land Office officers. There are three main findings from this study. Firstly, after the program was launched, the rate of land ownership transfer at land offices has increased. Secondly, there is a misconception on the program because parents think 'one-day' means a complete transaction, starting from the application until the registration process. Thirdly, the occurrence of a lot of minor errors in the transaction process. Hence, the additional information regarding to the meanings of PMT1HARI concept should be detailed in order to avoid misunderstandings among parents. At the same time, the quality of land transfer

management at Land Office should be enhanced to decrease the potential errors in carrying out transfer transactions.

Keywords: *Parents' transfer, Transfer land ownership, Land Office, PMT1HARI, Inter vivos*

Introduction

The role of intergenerational transfer has received increasing attention from economists and sociologists nowadays. The transfer of wealth from parents to children may be in the form of bequest or inter vivos (Olivera, 2017). There is a growing body of literature that recognises the importance of underlying motives to this transfers either altruistic or selfish. Parents with altruistic behaviours emphasize their children well-being (Barro 1974; Becker 1974). They transfer their wealth because the children face unstable financial position and economic constraints (McGarry 2016). Thus, the transfer or assistance from parents offsets the children's financial shortage compared to other siblings (Olivera 2017).

Parents also incline to provide transfers to children who take care more of them compared to the ones who do not look after them (Bernheim, Shleifer and Summers 1985; Cox 1987; Cox and Rank 1992). Children's care can be in the form of either living near or with parents (Fu 2018; Horioka, Gahramanov, Hayat, and Tang 2018) or provide financial assistance to parents (Olivera 2017). The purpose of parents' giving is to reward or pay children's care and assistance particularly when parents are unhealthy and need additional care from them. In fact, it is a form of parents' encouragement by offering reward to children to take care of them (Horioka et al. 2018). So, the children will look after their parents and compete with other siblings to receive parents' wealth.

In Malaysia context, based on 2016 statistics, unclaimed inheritance wealth is approximately RM60 billion ("Harta pusaka tidak dituntut mencecah angka RM60 billion," 2016). Hence, most of the previous studies recommend the practice of inter vivos during life time to avoid inheritance wealth management problems (Abdul Rashid and Ahmad 2013; Abdul Rashid, Hassan and Yaakub 2013, 2014; Ahmad, Ab Majid, Abdullah, Noor Minhada and Ismail, 2017; Othman, Mohamed Said, Muda and Nor Muhamad 2017; Said and Saad 2016; Suhaimi and Sulong 2014). As a result, the Malaysian Land Authority promotes a program which is known as '*Pindah Milik Tanah 1 Hari*' (PMT1HARI) (Transfer Land Ownership in One-Day) which provides opportunities for parents to transfer wealth especially land or real estate during their life time (Jabatan Ketua Pengarah Tanah dan Galian Persekutuan, 2018). This program promotes land owners to transfer their land ownership to new owner during lifetime instead of distribute that land after the death of land owners.

However, to date, the major gap of this study is there are very few published research that explain the impact of this program even though this program has been initiated since 2013. Most of the previous study merely focus on Islamic and civil discussion towards parents transfers such as Abdul Rashid et al. (2013), Awang and Abd Rahman (2014), Azhar, Hussain, Badarulzaman and Mohd Noor (2014), B. Ibrahim (2017), B. H. Ibrahim (2009), Mohamed Said, Awang and Mohd Nor (2010, 2012), Mohamed Said, Awang, Mohd Nor, Muda, and Mohama (2013), Mujani, Wan Hussain, Yaakub and Abdul Rashid (2011), Nor Muhamad (2010, 2012, 2009) and Suyuno (2017) Therefore, this study gives an account of potential problems related to this program, particularly to identify the impact to the public and land administrator. This study may demonstrate potential problems of this program, thus Malaysia Land Office should take initiatives in improving the efficiency and effectiveness of the operation.

The remainder of this paper is organized as follows; in Section 2, we discuss current literature regarding to land transfer in Malaysia, then Section 3 explains the research approach and design, data collection and data analysis, while Section 4 presents our results and discuss the implication of this program and lastly in the final section, we conclude this paper.

Literature Review

Historically, the first court case involving the issue of inter vivos or transfer was *Kiah v Som* in 1953. This case demonstrates the practice of inter vivos had occurred prior to Malaysia's independence in 1957. Nowadays, inter vivos practices have evolved from the traditional method which through Form 14A at Land Office to the latest method through living trust or documentation (Abdul Rashid and Yaakub 2010b; Ahmad et al. 2017; Alma'amun 2010; Ariff and Rosly 2011; Azhar 2017; Azhar et al. 2014; Noordin, Ismail, Abd Rahman, Haron and Abdullah 2016; Nor Muhamad 2008, 2011). However, living trust or documentation requires higher costs for the document preparations and legal fees. Consequently, transfer during life time through Form 14A is the best alternative (Ishak, 2017) as accordingly to Taha, Sulong and Ayub (2015), land transfer in Malaysia through Form 14A demonstrates increasing trend year by year.

Transfers at the Land Office must be enforced via Form 14A instruments under Section 215(1) and (2), National Land Code 1965.

215. Form, and effect generally, of transfer of land.

(1) The transfer under this Act of any alienated land shall be effected by an instrument in Form 14A.

(2) The title of the transferor shall pass to and vest in the transferee upon the registration of any such transfer, together also with the benefit of any registered interests then enjoyed with the land.

The practice of transfer at the Land Office covers one aspect of carrying out transfer transaction, which is the existence of 'actual possession' (Ibrahim 2009; Mohamed Said et al. 2010; Muhamad Asni and Sulong 2016; Nor Muhamad 2009). This 'actual possession' exists when the name of the land title has changed to a new name. This matter refers to the court decision in the case of *Nik Noor Hazlini Nik Abdul Hamid v Nik Noor Hazrinda bt Nik Abdul Hamid & Ors* [2014] 3 SHLR 73, the judge dismissed the gift validation due to lack of evidence of transfer through Form 14A at the land office and without any pronouncement which states the 'give' and 'acceptance'. However, there are some cases that indicate that although the ownership transfer does not apply, the transfer is still valid if the pillars and conditions of transfer have been fulfilled (Abdul Rashid 2013). For an example, there is a case of actual possession disputes in the case of *Poolimahee Rajeswary @ Fatimah Baba v Meah Hussain* [2005] 1 JH 164. In that case, the court decided, even if the transfer did not go through Form 14A, the transfer remains valid because the pillars and conditions have been fulfilled.

Transfers by changing original owner to the new one will cause the new owner to have absolute ownership of the land and he or she is protected by the law. Based on Torrens System practised in Malaysia, the name registration over an ownership demonstrate their legal right (Abdul Rashid 2013; Muhammad Serji 2014; Sulong, Taha and Ayub, 2014) Proof of ownership could facilitate any land-related transactions such as transfers, sales and leases (Zulkafli and Ahmad 2016).

The new owner has an indefeasibility of title under Section 340, National Land Code 1965. 'Indefeasibility of title' demonstrate the right of owner is protected by law and cannot be revoked unless there are elements of fraud and misrepresentation (Abdul Rashid and Yaakub 2010a; Harun, Hassim and Hamid 2013)

340. Registration to confer indefeasible title or interest, except in certain circumstances.

(1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.

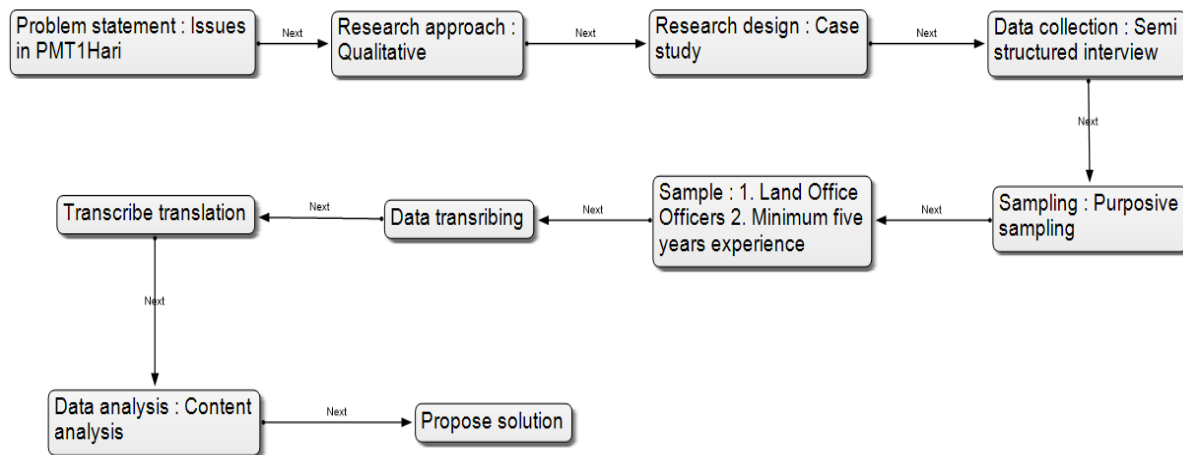
(2) The title or interest of any such person or body shall not be indefeasible-

- (a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or
- (b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or
- (c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law

Research Methodology

This study is a qualitative study and data are collected through semi-structured interviews with officers who are responsible to carry out land transfer process. A major advantage of semi-structured interview is it enables researchers to gain more in-depth information on the issues raised. The sampling method is 'purposive sampling'. The eligibility criteria requires land officers who have served more than five years at the Land Office. Three informants from three different Land Offices have been chosen. They were asked to provide feedback on PMT1HARI program. Interviews are conducted in Malay and are recorded for transcribing purposes. The transcribe is translated by a language specialist to ensure that the meanings of informants' words do not change. Next, content analysis is conducted to identify the problems that arise in PMT1Hari program.

Figure 1: Research Methodology Flowchart



Result and Discussion

PMT1Hari program campaign is seen to have a positive impact on parents to transfer their wealth to children. Furthermore, a short period of time in conducting this transaction could encourage parents to transfer their wealth. Prior to this program, the transfer process takes several months. Thus, parents feel that the long period of making the transfer is troublesome.

“Campaigns to transfer on the internet (PMT1HARI program) also give an impression (increasing in transfer rate). Before this (the implementation of PMT1HARI), if we ask the Land Office to transfer the ownership, it will take several months. With the campaign, they could transfer (ownership) in one day.....”(Inf1)

Inf2 also agrees that PMT1HARI program has attracted the public to make transfers. However, there is problem that has arisen among the public on the promotion. They assume that all the transactions, from filling up Form 14A until the change of name on title ownership is within one-day. Inf2 confirmed that one-day transfer is only when to change the name on title ownership after completing the payment at *Lembaga Hasil Dalam Negeri* (LHDN) (Inland Revenue Board of Malaysia), and is not for ‘Testimony’ or ‘Consent’ (permission to transfer) of transfer at the Land Office. To address this problem, this study recommends that promotions on the website should be corrected and include more detailed information. Based on the authors’ observations, the promotion only provides an exception to ownership transfers for the lands with restrictions. It is possible that the public does not understand the true concept of restrictions in land ownership.

“Indeed, the program (PMT1HARI) encourages the public to transfer the ownership. But most of them, come to the Land Office with the wrong understanding of the one-day transfer concept. They think that, when they apply (for transfer), from the date they applied for ‘Consent’ (permission to transfer), within one-day we can approve (change the name in title of ownership). They think it is like that. But, actually the PMT1HARI concept is that after completing stamp duty payment. After completing the payment (stamp duty), he/she should come to the Land Office, then it will only take one-day for us to register (change the ownership). That is actually the concept. Not the one-day concept, he/she applies and it will be approved within one-day.....” (Inf2)

Inf3 opined that one-day transfer promotion has positive impact on parents in which it could save time to do transfers to children. At the same token, the promotion has a negative impact on transfer management at the Land Office. This is because the short period of transfer process leads to a lot of minor mistakes. Inf3 also suggested that for transactional matters it requires at least two weeks to ensure that the transfers take place perfectly.

The campaign on that website (PMT1HARI program), gives parents a good impression (easy to transfer). But it affects us (negatively). It will cause many minor mistakes that occur (during the transfer process). For me, transfer in one-day is good for the public. Definitely. But transfers in one-day lead to mistakes that should not be happening. Ideally, the period for registration (transfer) is two weeks for a transaction. Two weeks are great time to get a perfect return (registration)....”(INF3)

To ensure the transfer transaction could be carried out in a short period of time, this study suggests that the quality of management at the Land Office should be enhanced. It can be done by improving land registration system at Land Office and increasing a sufficient well-trained number of workforce in order to smoothen land transfer transactions (Delery and Gupta, 2015; Jiang and Liu 2015). At the same time, Land Office efficiency could be improved by placing emphasis on leadership and personality aspects of employers and employees (Ashley and Tuten 2015), and changing working climate and culture (Glisson 2015) and knowledge (Dang, Le-Hoai and Kim 2018). This study agrees with Sufian and Mohamad (2015) recommendation to strengthen transfer transactions by using computerised registration. The use of computers could streamline any transactions and registration of land transfers. From the other point, this registration could also prevent the occurrence of frauds or misrepresentations.

Conclusion

Wealth transfer is one of the methods that parents do to assist the children financial position, repay children's services and avoid the inheritance distribution problems after their death. In order to transfer lands, it could be done at the Land Office. Presently, Land Office has promoted PmT1HARI program to attract parents to transfer their wealth in one-day. This study discovers that the program has received encouraging responses from parents. However, there are two main problems that have arisen; misconceptions about the transfer process and minor mistakes in transactions. One-day transfers mean that the registration process of the new owner's title after completing the stamp duty at LHDN, rather than the process of obtaining permission to do the transfer transactions. To address this problem, this study suggests that the program campaigns need to be explained in details on matters pertaining to the one-day transfer. Since transactions are conducted in a short period of time, it contributes to a lot of minor mistakes. Hence, this study recommends that the quality of land transfer management at the Land Office should be enhanced by increasing the workforce, leadership competency and technology usage. As such, future studies need to add the number of informants to obtain diverse information. In addition, the future studies should focus on transactional issues related to management, parents and children.

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