

## The Process of Claiming Asset in Bahagian Pembahagian Pusaka (BPP)

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### Abstract

As of year 2020, Malaysia's frozen assets were MYR70 billion. Numerous challenges and issues are raised by this phenomenon and it has become incredibly challenging to solve. There are many agencies and bodies that handle the claims, queries and applications related to estate administration in Malaysia, for instance, the Department of Director General of Lands and Mines (JKPTG) through the Bahagian Pembahagian Pusaka (BPP), Amanah Raya Berhad (ARB), and The High Court (HC). However, more than 70 % of these claim applications was received and conducted by the Bahagian Pembahagian Pusaka (BPP). Thus, this study aims to investigate the processes of claiming asset specifically in (BPP). This research is qualitative research, through reviewing and identifying on existing related literatures in inheritance asset in Malaysia, and websites from JKPTG to understand the processes. This study acknowledges several reasons that cause heirs to be unable to proceed with their claim of the assets which causes an increasing number of unclaimed assets. The distribution process will move swiftly once people understand how the BPP claims process operates.

**Keywords:** Frozen Asset, Islamic Estate Planning, Islamic Inheritance, Qualitative

### Introduction

Muslims in Malaysia are now more aware of the *faraid*, however the numbers of unclaimed assets keep on rising each year. As reported by Harian Metro (2020), the unclaimed assets of which the majority belongs to Malays have increased from MYR60 billion in the year 2016 to MYR70 billion in four years. Moreover, an estimated 10.9 million members out of a total of 14.5 million registered members were not nominated, according to the Employee's Provident Fund, EPF (Kosmo, 2016). The total value of deposit contributors who do not make this nomination is around MYR232.7 billion (Shafie et al., 2016).

In Malaysia there are three agencies and bodies that handle the claims, queries and applications related to estate administration under specific act, namely, the Department of Director General of Lands and Mines or Jabatan Ketua Pengarah Tanah dan Galian (JKPTG)

through the Estate Distribution Section or Bahagian Pembahagian Pusaka (BPP), Amanah Raya Berhad (ARB), and The High Court (HC). For estates worth more than MYR600,000, regardless of how the dead person passed away (intestate or testate), the High Court must be chosen. Amanah Raya Berhad (ARB) has the authority to administer the movable estate for which the value is not more than MYR600,000.

According to a former Director of (BPP) Hasiah Kasah, the agency processes most of the inheritance distribution cases in the nation, which is about 70%, amongst the three agencies (Chew, 2018). Therefore, this study concentrates on the BPP and aims to explore the processes related to the claim of assets amongst users. BPP was created on 1<sup>st</sup> March, 1974 and the creation of the section is to implement the requirements of the Ninth Schedule, List 1, Article 4(e)(i), of the Federal Constitution which places small inheritance matters under the responsibility of the Federal Government. The main function of the section is to manage all small inheritance distribution applications valued at less than MYR2 million that contain immovable property in whole or in part. This division has also done several times to strengthen staffing in line with the increase in the jurisdiction of estate management. Starting with 11 units in 1974, there are now 32 units throughout the Peninsula (JKPTG, n.d.).

Applications involving estate distribution and management lose effectiveness because users occasionally are not sure where they should start with them (Noordin et al., 2012; Kamarudin & Muhamad, 2018; Chew, 2018; Abdullah et al., 2020). As a result, estate management systems and distributed applications lose some of their effectiveness because users are occasionally uncertain of where to begin an application. These challenges may make people less motivated to share and inherit properties (Al-Bakri, 2011).

Much of the current literatures on estate planning pay particular attention to the fundamental, managerial, and Islamic perspective of estate planning instruments such as those by Alma'amun (2008) and Kamarudin et al. (2015). Most studies focus on the viewpoints of the heirs in general but none on the institutions or agencies responsible for handling Islamic inheritance matters (Shafie et al., 2016; Abdullah et al., 2020; Abd Wahab et al., 2021). Thus, this study aims to contribute to this growing area of research by exploring the processes involved in the claim of assets at the targeted agency where statistics have indicated that more than 70 per cent of the distribution of claim applications were received and conducted by the Bahagian Pembahagian Pusaka (BPP), JKPTG (Chew, 2018).

### **Literature Review**

The Department of Director General of Lands and Mines or Jabatan Ketua Pengarah Tanah dan Galian (JKPTG) is a department under the Ministry of Natural Resources, Environment and Climate Change which has a unit of inheritance or estate distribution in each state. Any application of inheritance property must be registered at JKPTG depending on the location of the property or land. JKPTG is in charge of managing Federal Government lands in accordance with the Federal Lands Commissioner Act 1957.

As a pioneer for the national land administration and management, JKPTG is tasked with the amendment or improvement of any provision of land law and legislation regarding land administration. It's also responsible for the management of records of the Federal Government's land property, JKPTG handles the acquisition of alienated lands for federal project purposes, tenancy, and enforcement of the Federal Government's land property.

The department is divided into two main divisions, which include the Management and Legal Advancement Sector and the Coordination and Operations Sector (JKPTG, 2023). Each of these divisions is responsible for a specific aspect of the department's operations and has its

own set of functions and responsibilities. The departments included Land Administration Department, Land Development Department, Land Enforcement Department, Land Information Department, Land Conservation Department, and Land Planning Department. Amongst all the divisions under JKPTG, most important division is the one that manages moveable and immovable property, including landed and non-landed buildings, farms, and estates with a value of not more than MYR2 million; that is the Estate Distribution Division or Bahagian Pembahagian Pusaka (BPP).

#### *Bahagian Pembahagian Pusaka (BPP)*

There are 32 BPP units in Peninsular Malaysia as of right now (see Table 1). The application will be handled by BPP in accordance with Islamic Shariāh laws, albeit with the existence of special or unique customary laws for some states in Malaysia.

Table 1

*List of Bahagian Pembahagian Pusaka (BPP) in Malaysia*

| <b>Bahagian Pembahagian Pusaka, (BPP)</b>                                 | <b>States</b>   | <b>Bahagian Pembahagian Pusaka, (BPP)</b>                                  | <b>States</b> |
|---------------------------------------------------------------------------|-----------------|----------------------------------------------------------------------------|---------------|
| BPP Perlis                                                                | Perlis          | BPP Melaka                                                                 | Melaka        |
| BPP Alor Setar<br>BPP Sungai Petani                                       | Kedah           | BPP Johor Bharu<br>BPP Muar<br>BPP Kluang<br>BPP Batu Pahat<br>BPP Segamat | Johor         |
| BPP Pulau Pinang                                                          | Pulau Pinang    | BPP Kuantan<br>BPP Temerloh<br>BPP Raub                                    | Pahang        |
| BPP Ipoh<br>BPP Tapah<br>BPP Kerian<br>BPP Kuala Kangsar<br>BPP Taiping   | Perak           | BPP Kuala Terengganu<br>BPP Dungun<br>BPP Besut                            | Terengganu    |
| BPP Klang<br>BPP Bangi<br>BPP Banting<br>BPP Kuala Selangor<br>BPP Gombak | Selangor        | BPP Kota Bharu<br>BPP Machang<br>BPP Pasir Mas                             | Kelantan      |
| BPP Seremban<br>BPP Kuala Pilah                                           | Negeri Sembilan | BPP Kuala Lumpur                                                           | KL            |

Source: JKPTG (n.d)

BPP Division, JKPTG, was established on 1<sup>st</sup> March, 1974, due to the awareness and sensitivity of the Malaysian Government to the difficulties faced by the people in resolving estate management and whose total property value does not exceed MYR2 million. At the beginning of its establishment, its role was focused on assisting with the tasks that were carried out by the administration of the District Land Office. The role then expanded to full responsibility when JKPTG decided to increase the number of its divisions from 11 to 32 throughout

Peninsular Malaysia. The objective of this Division is to ensure that the management of small estate division is fair, quick, and efficient. This is achieved through strategies to increase the complete applications ability and spread awareness amongst the heirs of the immediate application for the small estate division.

### 2.1.1 Small Estate (Distribution) Act 1955

The Small Estates (Distribution) Act 1955 (previously known as the Small Estates Ordinance 1955) is the main law that is used for the management of small estates. As mentioned, the formulation of the Section is to implement the requirements of the Ninth Schedule, List 1, Article 4(e)(i) of the Federal Constitution which places small inheritance matters under the responsibility of the Federal Government. Since its commencement until now, several reviews and amendments have been done. Overall, this Act explains the definition of small estates, jurisdictional power, and workflow which starts from the petition for the distribution of estate, hearing, order-making to the appeal process at the High Court.

In determining the distribution, *faraid* law is used when it involves a Muslim's estate, while the Distribution Act 1958 is used when it involves non-Muslims. The foundation of *faraid* law is based on the Qur'an and Hadith, amongst which are verses 11, 1, and 176 of Surah An-Nisa'.

يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلِيلَةِ ۚ إِنْ أَمْرٌ أَمْرُؤًا هَلَكَ لَيْسَ لَهُ وَلَدٌ وَوَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ ۚ وَهُوَ يَرِثُهَا إِنْ لَمْ يَكُنْ لَهَا وَلَدٌ ۚ فَإِنْ كَانَتَا أُثْنَتَيْنِ فَلَهُمَا الثُّلُثَانِ مِمَّا تَرَكَ ۚ وَإِنْ كَانُوا إِخْوَةً رِجَالًا وَنِسَاءً فَلِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَتَيْنِ ۗ يُبَيِّنُ اللَّهُ لَكُمْ أَنْ تَضِلُّوا ۗ وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ  
(Al-Qur'an. An-Nisa' 4:176)

"They ask you for a ruling, O Prophet. Say, "Allah gives you a ruling regarding those who die without children or parents." If a man dies childless and leaves behind a sister, she will inherit one-half of his estate, whereas her brother will inherit all of her estate if she dies childless. If this person leaves behind two sisters, they together will inherit two-thirds of the estate. But if the deceased leaves male and female siblings, a male's share will be equal to that of two females. Allah makes this clear to you, so you do not go astray. And Allah has perfect knowledge of all things". (Al-Qur'an. An-Nisa' 4:176)<sup>1</sup>

### Previous Studies on The Claim of Assets Process

Although there is minimal study or research, if any, on the process of claiming assets through BPP, a number of studies have provided results and findings in their examination of the claim of assets in general. These studies either indicated few details or none whatsoever on the problems faced by heirs in claiming assets with JKPTG. Nevertheless, the literature has revealed several problems in relation to the claim of assets cases, which will be discussed further in the following sub-sections.

### Complicated Process

Presumably, heirs to inheritance avoid the inheritance or estate management process because they perceive that inheritance management is a complex process that involves various agencies (Noordin et al., 2012). According to Md. Azmi and Mohammad (2011), the law and the process of claiming estates are viewed by many people as procedures because of

<sup>1</sup> All Qur'anic translations in this writing are based on Dr. Mustafa Khattab's *The Clear Quran*. Translations from other sources will be cited accordingly.

the numerous regulations and involvements of several bodies in their distribution process. On top of this, the complexity has led to the overlapping powers and responsibilities of these entities. As a result of the complex law and procedures, the heirs of the deceased may possibly be left confused.

#### Time Consuming

It is also important to note that the nature of estate administration which requires the parties to deal with individuals, groups, and agencies makes it complicated and thus may be prolonged or time consuming (Md. Azmi & Mohammad, 2011). Referring to Md. Azmi and Mohammad (2011) and Noordin et al. (2012), the unclaimed estates may be a result of the empowerment of two courts under substantive law and the complex procedures to be followed which make the process lengthy and costly. For example, the High Court is empowered to grant a Probate in testate cases under Section 3 of the Probate and Administration Act 1959, and a Letter of Administration in intestate cases according to Section 18 of the Probate and Administration Act 1959. The period for securing a Letter of Administration is longer than the Probate for testate estates. Therefore, it may take up to four years to settle the case. Instead of concerns about the period taken to resolve the process, the prominent issue concerning Court appearance is secured property (Abdullah, 2018).

#### Legalities

Muslims are required to comply with the principles of *al-muwarriith* (determination of the type of death by the deceased), *al-warith* (certification of an existing list of heirs and sharers), and *al-mauruth* (confirming the existence of estates), respectively (Abdul Rahman, 2008; Awang, 2008; Zuhaili & Ali Shabuni, 2010). These processes seemed easy to follow, however, over the years, both these processes have proven to be difficult for the majority of clients to handle.

In relation to the Islamic law that applies to the law of inheritance, Muhamad Asni and Sulong (2016) point out that unstandardised Islamic laws have led to uncertainties in the implementation of legislation and injustice. From the legislative perspective of law, the existence of contrary fuqaha' opinions directly result in some disputes and for the matter of execution, it is hardly implemented. Furthermore, in the administration of law and the enforcement of fatwa, only one opinion should be selected for inclusion as the adopted opinion to ensure consistency in the implementation of the law (Muhamad Asni & Sulong, 2016).

#### Cost

Analysis from past research shows that the requirement to deal with multiple bodies complicates Muslims as they have to make additional effort in terms of physical, time and monetary commitment, unlike non-Muslims who deal with a single body (Md Said et al., 2021). According to Zulkafli and Ahmad (2016), among the factors that contribute to the rising trend of unclaimed inheritance or estate is the high fees for the management process. Apparently, the estate management and distribution processes require a substantially high cost (Md. Azmi & Mohammad, 2011).

Dispute amongst Heirs

Abdul Rahman and Hassan (2019) cautioned that the understanding of the Muslim society in Malaysia in relation to inheritance is still far behind and more efforts should be taken towards increasing their knowledge about Islamic inheritance law. On the other hands, early research provided by quantitative data showed that the majority of the respondents (60.62%) cited family disputes and disagreements as the reason that the transfer process fell through.

The disagreements frequently cause heirs, who are often siblings, to feud among themselves for ownership of the land (Mohamad et al., 1998). For instance, one of the issues with hibah is the dissatisfaction of the beneficiary with the distribution of properties (Ahmad et al., 2017). In addition, the negative personal attitude displayed by the heirs interrupted the smooth process of estate administration (Nasrul & Mohd Salim, 2018). Majority of these studies concentrated on the problems and issues faced by the heirs but less discussion on the process itself.

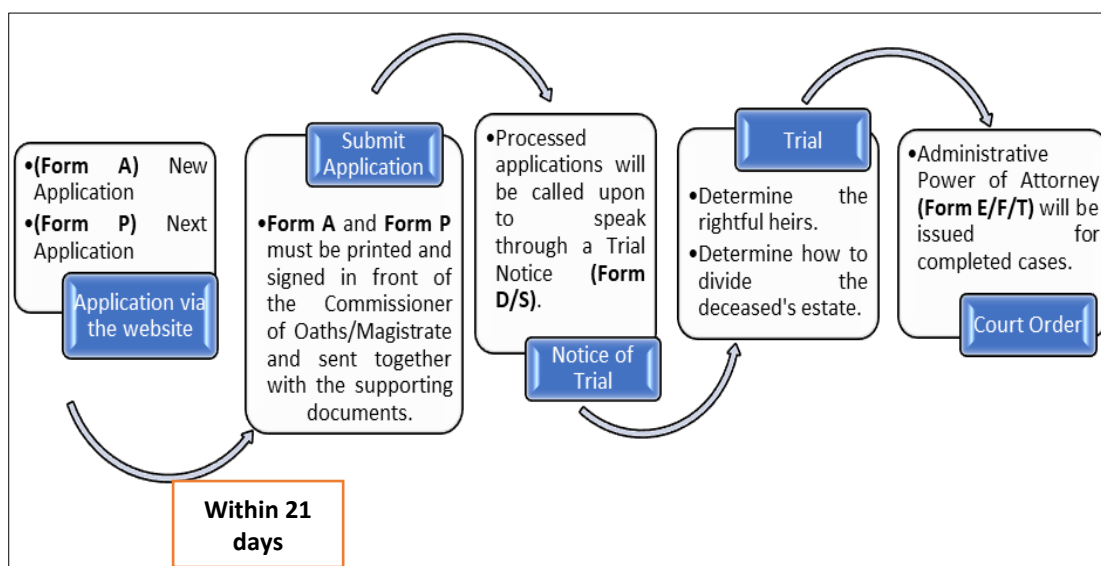
**Methodology of Research**

The research methodology for this paper is through reviewing existing related literatures on inheritance assets and also websites from the Bahagian Pembahagian Pusaka, Department of General of Lands and Mines, JKPTG which is a department that manages the administration and distribution of a small estate (pusaka kecil) in Malaysia. In addition, the author reviewed earlier studies on managing inherited assets in Malaysia from a variety of perspectives, encompassing legal, Islamic, and conventional studies.

**Findings and Discussion**

Several processes have been dictated for the heir to claim their estate starting from the online application, and submission of related form in BPP until the hearing or trial session. There is also an effective mechanism or tool to be practiced by the heir to distribute the inheritance properties wisely after the death.

*The Process of Claiming Asset*



Source: JKPTG (n.d.)

Figure 1: The Claim Process of Small Estates

In order to register their claims, claimants are required to complete an online application on the agency's website for any application of inheritance property management. This online application is intended for the claimant to open any file regarding inheritance property with JKPTG easily. Before the application is accepted by JKPTG, the applicant seeking to apply for the inheritance property management must ensure that all documentation is prepared and complete. This is because any incomplete documentation will be returned and rejected. According to JKPTG (n.d.), there are two types of applications under the Small Estates (Division) Act 1955 which are application under Section 8 (Form A) and application under Section 17 (Form P).

Form A is meant for new applications. An applicant makes use of Form A when no application has been previously filed in the name of the deceased. In this case, the application must be submitted using Form A according to the Small Estate (Distribution) 1955 regulations. The form can be obtained at any unit or subdivision of inheritance or downloaded via the JKPTG website. The law applicable for the distribution to the heirs in Islam is the *faraid*, while for non-Muslims, the applicable law is based on the Distribution Act 1958, or the parties agree to distribute by consensus or mutual agreement (JKPTG, n.d.).

Meanwhile, Form P is meant for the "Next Application" in which an application for a small inheritance under Section 8 has been previously made and completed. Form P is entered in the event that there is some property left in the previous application, or to appoint an administrator or a new trust holder, to revoke the Administrator or Trustee, to make a direct distribution to the heirs, and to withdraw the Registrar's Caveat (JKPTG, n.d.).

Regardless of which of the two forms are used, those that have been filled in and completed online must be printed and signed in front of a Commissioner of Oaths or a Magistrate and sent together with the required supporting documents to the relevant BPP within 21 days of the application being made online. According to Shafie et al. (2016), it is recommended for the applicant to get to know who is the officer or the person at the counter they are dealing with. For every officer the average workload ratio per day is about 3 cases that must be covered and settled (Shafie et al., 2016). Thus, the recommendation would offer an extra aid and indirectly ease the officer to trace the claim.

Applications that have been processed in full will be called upon to speak through a Trial Notice. For this purpose, either Form D or Form S is used. Form D is a Notice of Petition and Hearing – Section 8, whereas Form S is the Trial Notice "Next Application" – Section 17. The purpose of the trial is to determine the rightful heirs, to ensure that the claimed property belongs to the deceased, and to determine how to divide the deceased's estate. Form E and T: Distribution Order and Form F: Administrative Power of Attorney will be issued for finalised cases (JKPTG, n.d.). According to Muhamad Asni & Sulong, (2016), procedure-wise, applicants can bring two rightful heirs only during the trial session. This is to avoid any contradiction between the final submission of the application and unintended consequences during the session. Previous studies have reported that there were some cases where the heirs had contested during the session although they had a consensus right before the session.

The final step in all the processes and procedures is that once the claimant or the heir has received the Distribution Order and Administrative Power of Attorney, the applicant shall bring the forms to the relevant agency for the execution of inheritance or assets purposes (Shafie et al., 2016).

*Charges Applicable*

When making an inheritance application, several payments need to be settled. These payments include the registration fees, post-trial fees and additional fees if there is an appeal to the High Court. The details are as follows:

1. Free registration fee for new applications (Form A) and applications next (Form P).
2. Post-trial payments (Order Fees) are based on the most recent assessment estate of the deceased. The payment schedule is as follows:

| Asset Valuation     | Order Payment                              |
|---------------------|--------------------------------------------|
| RM 1.00 – RM 1000   | RM 10.00                                   |
| RM 1001 – RM 50,000 | RM 30.00                                   |
| RM 50,001 and above | Calculated from 0.2% of the property value |

Source: JKPTG (n.d.)

3. In the event of an appeal to the High Court:
  - a. RM 50.00 for the appeal fee.
  - b. RM 1500 for deposit payment to the court.
  - c. Fees for providing copies of trial records and other documents which amount to as much as RM 5.00 per folio of one hundred words or part thereof for the first copy and RM 2.50 for subsequent copies.
  - d. Fees for obtaining copies of records of hearings and other documents which amount to as much as RM 5.00 per folio of one hundred words or part thereof for the first copy and RM 2.50 for subsequent copies.

**Conclusion**

The findings indicate that heirs must fulfill various processes before they are eligible to assert their inheritance. The initial process involves an online application through the agency's website, specifically using Form A for new applications or Form P for subsequent applications. All required documentation must be prepared and completed before submission, and sent to the BPP within 21 days. After processing, a Trial Notice is issued for a hearing session, either Form D or Form S applications. The trial aims to identify rightful heirs, confirm property ownership, and determine estate division. Once the Distribution Order and Administrative Power of Attorney are received, the heir must bring the forms to the relevant agency for execution. There are several charges associated with each application. According to the findings, some heirs find these processes to be lengthy, involving costs, and consuming a significant amount of time. This study also sheds some light on the possible reasons that cause heirs to be unable to proceed with their claim of the assets. The problems with frozen assets brought on by heirs are a result of their attitude, including their lack of time for estate management, ignorance of the administration and distribution processes, and many other things. The property accumulated has to be managed properly, and inheritance planning for their beloved beneficiary or beneficiaries should be done in advance to avoid any problems arising after the death of the property owner (Kamarudin & Muhamad, 2018). Although there are some challenges in the process of claiming asset in BPP, the claimant or the rightful heirs may overcome them with constructive planning ahead. Comprehension of the claiming process in BPP will speed up the process of distribution.

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