

## **Unraveling Legal Complexities: Muslim and non-Muslim Estate Administration Process in Malaysia and Brunei**

**Muhammad Amrullah Drs Nasrul\***

International Islamic University Malaysia

**Siti Azizah A Alihan**

Sultan Sharif Ali Islamic University

**Aimi Atiqah Abdul Hamid**

Sultan Sharif Ali Islamic University

**Benny Sultan**

Universitas Islam Negeri Yogyakarta

\* Corresponding author: [amrullah@iium.edu.my](mailto:amrullah@iium.edu.my)

Received: 13-11-2024

Revised: 28-12-2024

Published: 30-12-2024

### **Abstract:**

Estate administration involves managing and distributing a deceased individual's assets to beneficiaries, as well as managing the liabilities. This process comprises legal, financial, and administrative tasks that ensure assets are transferred based on the deceased's wishes and in accordance with the law. In Southeast Asia countries such as Indonesia, Malaysia and Brunei where Muslims represents the majority of population, the Islamic law plays an integral part in the inheritance management as the process to be in line with the Islamic teachings and principle. The role of the syariah authority namely the syariah courts is prevalent and therefore, abidance to the rule under the syariah legal system in these countries is a must to ensure smoothness and legal compliance. In this with statement, the paper explores inheritance management in Malaysia and Brunei through a comparative legal study, highlighting the distinct frameworks under the common law, Islamic law and customary practices. The study employs a comparative legal research methodology, utilising library-based research by drawing the primary and secondary sources, including statutory provisions, case law, academic literature, and official reports, to examine the legal frameworks, key issues, and recent developments in both jurisdictions. Findings reveal that the highlighted occurring issues require a careful and systematic approach to resolving them to avoid unwanted delay, which prevents the completion of the inheritance management and denies the entitlement of the beneficiaries.

**Keywords:** inheritance; beneficiaries; legal system; administrative bodies.

## Introduction

Administration of estate deals with the management of deceased's estate, starting from the time of his death until the distribution of the estate to his beneficiaries, subjected to the remnants of the estate. In this context, the management takes into account the amount of assets and liabilities owned by the deceased where settlement of such liabilities takes priority before distribution of the remaining assets could take place. Also known as inheritance management, administration of estate represents the technical part in the succession matter which involves legal and procedural rules that need to be complied with. These stipulated rules apply not only to those who administer estates but also to the deceased's family members who receive from the remaining of the estate as beneficiaries. However, knowledge regarding estate administration is not known to every member of society due to its complex nature, causing a variety of problems to occur during the administration.<sup>1</sup>

The discussion on the evolution of inheritance management needs to be attributed to the presence of the legal system of the country by giving emphasis on the aspects of the legal system which provides the source of authority over the said subject matter. The development of the legal system in Malaysia and Brunei for example is considered as unique in its own sense. The uniqueness of the Malaysian and Brunei legal system is the pluralism of several categories of laws combined into a single and comprehensive legal system and implemented in a multi-racial country.<sup>2</sup> The legal system in both countries has gone through modifications before achieving the present state. Such changes affected every division of the law including inheritance law. The present inheritance law which falls under the branch of civil law and syariah law in both Malaysia and Brunei is a product of the evolution of the laws, applicable to the society.

As a country that comprises of multiple ethnic groups, the law followed by the people were originally based on their personal and customary laws that had undergone substantial changes during the arrival of the British who introduced the English Common Law and the English court system.<sup>3</sup> However, the personal laws and customs by these various ethnic groups including the Malays and Chinese are still followed until today and managed to stay true to their root of origin and social beliefs. The feature within the present legal system is a triangulation between the elements of common law, religion, and customary practices. It is, therefore, safe to

---

<sup>1</sup> Muhammad Amrullah Drs Nasrul et al., "An Overview of the Inheritance Legal System in Malaysia and Indonesia: Issues Faced by Both Countries," *Journal of Shariah Law Research* 6, no. 2 (December 8, 2021): 181–200.

<sup>2</sup> A. Mohaimin Ayus, "The Probabilities of Integrating and/or Islamizing Law and Shar'ah Learning or Vice Versa," *AR-RĀ'IQ* 6, no. 1 (June 29, 2023): 115–46, <https://doi.org/10.59202/riq.v6i1.675>; Muzammil Quraishi, "The Malaysian Criminal Justice System: History Context and Development," in *Towards a Malaysian Criminology: Conflict, Censure and Compromise*, ed. Muzammil Quraishi (London: Palgrave Macmillan UK, 2020), 5–27, [https://doi.org/10.1057/978-1-37-49101-5\\_2](https://doi.org/10.1057/978-1-37-49101-5_2).

<sup>3</sup> Ronald J. Daniels, Michael J. Trebilcock, and Lindsey D. Carson, "The Legacy of Empire: The Common Law Inheritance and Commitments to Legality in Former British Colonies," *The American Journal of Comparative Law* 59, no. 1 (January 1, 2011): 111–78, <https://doi.org/10.5131/AJCL.2010.0015>.



say that present law is not a total reflection of the English law.<sup>4</sup> Though it retains a substantial part of the English law features, there are certain laws which are being enacted and amended to include the Malay customary law and Islamic law such as in inheritance and land tenure.<sup>5</sup>

The Malay customary law and Islamic law have been part of the Malay's civilisation, even before the arrival of the British. The importance and relevance of these laws were recognised by the previous and the current government administration. The recognition of these laws led various efforts being made in order to empower their application. This is also supported by the enforcement of the Syariah laws and the introduction of the Syariah Courts system which exist in parallel with the civil laws in Malaysia. In matters pertaining to inheritance, the role of Syariah Courts is vital in ensuring that the process not only complied with the legal procedures provided, but also to ensure it is in line with the Islamic teachings which mark the integral position and the status of the Syariah law in Malaysia and Brunei.

The practice of estate administration in Malaysia and Brunei is subjected to several complexities including the jurisdictional overlaps between civil and syariah courts, technical issues arises from the existence of multiple administrative bodies and occurrence of family disputes where each of these issues will be discussed in the later chapters of this paper.<sup>6</sup> Taking into account the comparison between the two legal systems that governs the matter on inheritance, the objective of this study is to address the core problem of understanding how legal frameworks in Malaysia and Brunei impact the efficiency of the management of estates. Additionally, it aims to explore specific issues such as jurisdictional disputes, family disagreements, and procedural bottlenecks that delay estate administration and distribution to rightful beneficiaries.

There are few previous studies that covers on the comparison of inheritance legal system between Malaysia and Brunei. Intajalle et al. for instance highlighted on the position of the Islamic inheritance law, or *faraidh*, as a fundamental aspect of Syariah law which is deeply rooted in historical and cultural contexts Brunei, Indonesia and Malaysia.<sup>7</sup> The development of these laws in Southeast Asia reflects the region's Islamisation process, which dates back to the 14th century. Notably, Islamic principles were integrated into local governance structures during pre-colonial times and become part of the nation legal system for the mentioned countries. Another study which is related to the Muslim in Southeast Asia is by authored by Zaini Nasohah who discussed on the evaluation of the foundational principles of Shariah in relation to the family law and their capacity to address

---

<sup>4</sup> Edzan N. N, "Malaysian Legal Sources: Print," *Malaysian Journal of Library and Information Science* 5, no. 1 (July 1, 2000): 19–36.

<sup>5</sup> Inche Ahmad Ibrahim, "The Muslims in Malaysia and Singapore: The Law of Matrimonial Property," in *Family Law in Asia and Africa* (Routledge, 1968).

<sup>6</sup> The dual legal system refers to the simultaneous existence of civil law and the Islamic law as well as the civil and the Syariah Court system. In matters pertaining to inheritance, it is being governed by both legal systems, covering different aspects of the said matters.

<sup>7</sup> Feirul Maliq Intajalle et al., "Islamic Inheritance Law among Muslim Minority Countries in Southeast Asia," *Middle East Journal of Scientific Research* 12, no. 1 (2012), <https://doi.org/10.5829/idosi.mejsr.2012.12.1.1675>.



contemporary societal and legal challenges.<sup>8</sup> The aspects of the inheritance law is highlighted from the perspective of women and children.

In addition, Zulhija Yanti Nasution, Syadidul Kahar and Muhammad Irsan Barus emphasised on the wife's income and asset position through comparison between Indonesia, Malaysia, Türkiye and Brunei.<sup>9</sup> This study covers partly on the aspects of inheritance through the entitlement of a wife, during the marriage and after the divorce. The comparison study conducted, despite covers on the position in Malaysia and Brunei, are absent in terms of coverage on the legal system in relation to the inheritance. Seilla Nur Amalia Firdaus, Siah Khosyiah and Murni Rossyani provides an analysis of Islamic family law reforms in Brunei Darussalam and Malaysia, focusing on their historical evolution and legislative frameworks.<sup>10</sup> Emphasis on the the inheritance law is minimal as the study focuses on the aspects of marriage, polygamy and divorce. A study by Mohammad Arif Sabtu and Siti Mashitoh Mahamood focuses on the method of *takharrij* which is believed that this concept provides the very ideal and the best way to the heirs in solving the problem of distribution of inheritance in an amicable way.<sup>11</sup> Based on the mentioned references, this study distinguishes itself from past research by offering a comparative analysis of the issues in both jurisdictions, emphasising the recent and specific administrative practices in Malaysia and Brunei. Based on the mentioned literature, comparison between the two countries in terms of the inheritance legal issues are very few in terms of the literature, which suggests the implementation of this study since not only it offers a highlight on the two legal system, but it also provides the recent position regarding the inheritance legal system in both Malaysia and Brunei.

Furthermore, it highlights emerging trends in inheritance law influenced by demographic changes and community needs, offering viable recommendations over the addressed issues arising from the inheritance practice. As both countries are regarded as Muslim majority countries, this study also highlights the integral position of the Islamic law by looking at the inheritance process that is partly governed under the syariah courts in respective countries. At the same time, this study contributes to the field by providing an analysis of legal process surrounding estate administration within legal systems in Malaysia and Brunei by comparing its features and sources of law. Since there is a rampancy of incomplete estate administration cases in both countries, there is a high urgency to address the relevant issues that occur within the

<sup>8</sup> Zaini Nasohah, "Dynamics of Islamic Family Law in Facing Current Challenges in Southeast Asia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (January 6, 2024): 1, <https://doi.org/10.22373/sjhk.v8i1.16553>.

<sup>9</sup> Zulhija Yanti Nasution, Syadidul Kahar, and Muhammad Irsan Barus, "Wife's Income and Asset Position: A Comparative Study of Indonesia, Malaysia, Türkiye and Brunei Darussalam," *Syarah: Jurnal Hukum Islam & Ekonomi* 13, no. 2 (December 16, 2024): 225–49, <https://doi.org/10.47766/syarah.v13i2.4991>.

<sup>10</sup> Seilla Nur Amalia Firdaus, Siah Khosyiah, and Murni Rossyani, "Pembaharuan Hukum Keluarga Islam: Studi Perbandingan Hukum Keluarga Di Brunei Darussalam Dan Malaysia," *Zaaken: Journal of Civil and Business Law* 5, no. 2 (June 23, 2024), <https://doi.org/10.22437/zaaken.v5i2.35264>.

<sup>11</sup> Mohammad Arif Sabtu and Siti Mashitoh Mahamood, "Kaerah Muafakat Dalam Pembahagian Harta Pusaka Orang Islam: Kajian Di Mahkamah Tinggi Syariah Negara Brunei Darussalam: Consensual Agreement Method in Muslim Estate Distribution: A Study in the Shariah High Court Brunei Darussalam," *Journal of Shariah Law Research* 2, no. 1 (May 18, 2017): 21–36, <https://doi.org/10.22452/http://doi.org/10.22452/JSLR.vol2no1.2>.



process. Hence, it could offer insights for legal practitioners to navigate the procedural aspects of estate administration in an efficient manner, avoiding the issues which could adversely hamper the overall process of estate administration. By employing library-based research, this study makes a reference to the list of statutory laws, case analyses, and academic sources in narrating the legal and procedural practices of inheritance management in both countries.

## Method

The primary objective of this comparative analysis is to examine the inheritance management practices in Malaysia and Brunei, with a focus on identifying significant differences and common issues within their legal frameworks. This study aims to highlight the unique legal, procedural, and cultural aspects that affect estate administration in each country, providing insights for developing more efficient and equitable inheritance systems. This research employs a comparative legal research methodology to achieve these objectives, utilising a library-based approach that relies on both primary and secondary sources. Primary sources include key statutory provisions including the Malaysian Probate and Administration Act 1959, the Wills Act 1959, and relevant Syariah enactments, as well as the Intermediate Courts Act and Syariah Court Act from Brunei. These statutes were selected as it covers the statutory provision regarding the inheritance from both countries, hence, are essential for understanding the relevant laws governing inheritance. The inclusion of the statutes mentioned in this writing focuses on the general comparison, where each statute represents the highlighted area of law within the ambit of inheritance matters. Judicial decisions from both civil and Syariah Courts in Malaysia and Brunei are also reviewed, providing practical insights into the application and interpretation of these laws. The rationale behind the reference over these case laws is to provide the reference of the laws being applied by the courts and to provide the context on principle of inheritance laws that are being applied by the court. These primary sources are accessed through official legal databases and university libraries.

Secondary sources on the other hand, are selected based on their focus on inheritance law, dual legal systems, and the impact of cultural practices on estate management in both countries. These include academic literature, policy papers, and legal commentaries that provide context and analysis of procedural challenges, jurisdictional overlaps, and cultural influences. Selection will prioritise sources that offer comprehensive insights into procedural and jurisdictional issues affecting estate administration. The comparison framework in this study focuses on four key areas to understand inheritance practices in Malaysia and Brunei, namely the legal frameworks, jurisdictional scope, cultural and religious influences as well as the procedural challenges. Through this framework, the study aims to provide a general understanding of inheritance laws and practices in Malaysia and Brunei. Through such comparison, the study aims to highlight the common issues that occur in both countries and offer recommendations to improve the overall estate administration process.

## Result and Discussion

### Overview of the Estate Administration

The inheritance legal framework in Malaysia governs both Muslim and non-Muslim subjects under different sets of laws, which run parallel to each other.



However, there are certain sets of laws which govern both at the same time. For the non-Muslims for example, inheritance matters are governed by civil law, under the purview of several statutes including, but not limited to the Probate and Administration Act 1959, Wills Act 1959 and the Distribution Act 1958 that provides the legal framework of the estate administration. On the other hand, Muslims in Malaysia are subject to both civil and Syariah laws in inheritance matters, reflecting the practice of a dual legal system that operates simultaneously.<sup>12</sup> This duality legal system concept is not only a reflection of Malaysia's commitment in accommodating its diverse religious and cultural demographics but also a proof that the status of Islamic law remains and is being preserved for the benefit of the Muslim society in the nation.<sup>13</sup>

The practice of a dual legal system in inheritance arises from the different authorities each possesses in multiple aspects of inheritance. For example, the civil High Court holds authority in matters pertaining to the issuance of Grant of Probate, a court document which is essential for validating a will and appointing executors. Probate is a legal process that gives the executor the authority to manage the deceased's estate according to the terms of the will. This includes paying any debts and liabilities and distributing the remaining assets to the beneficiaries. Meanwhile, the Syariah Court is exclusively authorised to issue *farāid* certificates, which determine the rightful heirs and their respective shares according to Islamic law. Since the two jurisdictions cover different parts of inheritance management, it is not a matter of choice, but to adhere to the specific administrative bodies based on their scope of authority.<sup>14</sup>

The key composition in Islamic law of inheritance, which is the *farāid*, is a fundamental aspect of Islamic law that specifies specific shares for heirs of the deceased, although not absolute since it can be subjected to customised portions according to the mutual agreement between heirs. This law ensures that the distribution of the estate is conducted fairly and according to the syariah principles. The application of *farāid* is mandatory for Muslims, and the Syariah Court's role is crucial in certifying the rightful heirs and their entitlements. The dual legal system ensures that Muslims can adhere to their religious obligations while also respecting the civil legal framework.<sup>15</sup> It is important to note that the estate administration process under syariah court will then be subjected to other administrative bodies, including the civil court for the purpose of applying for letters of representation.

Another layer of complexity in Malaysia's inheritance system is the involvement of multiple administrative bodies responsible for estate administration. These bodies include the Civil High Court, Amanah Raya Berhad, the Estate

---

<sup>12</sup> In both Malaysia and Brunei, Islamic law, coupled with the elements of Malay Customary Law serves as the foundational framework in the Muslim inheritance system. However, due to the provision of the Federal Constitution which states that inheritance matters would be governed under the civil law system, certain parts of the process requires the Muslim subject to apply from the civil courts, especially on the application of the letters of representations.

<sup>13</sup> Jurisdiction of the Syariah Court covers Muslim subjects as stated in the Federal Constitution under Ninth Schedule, List II.

<sup>14</sup> Mohd Shahril Ahmad Razimi, "Concept of Islamic Inheritance Law (Faraid) in Malaysia: Issues and Challenges," *Research Journal of Applied Sciences* 11, no. 12 (2016): 1460–64.

<sup>15</sup> Nasrul et al., "An Overview of the Inheritance Legal System in Malaysia and Indonesia."



Distribution Division and the previously mentioned Syariah Court, being the list of administrative bodies where each possesses its own set of jurisdictions. Each of these institutions plays a crucial role in the administration process by issuing specific authorisation letters and orders. References to these administrative bodies are subject to the following criteria, namely type of asset, value of asset, the religious background of the deceased and the fact whether the deceased died testate or intestate. The administrative bodies ensure that the process of estate administration is regulated and that only authorised individuals manage and distribute the estate. This regulation is vital to prevent fraudulent management or misrepresentation of the deceased's wishes. The authority to administer the estate is granted through letters of representation. These documents serve as legal proof that the holder has the right to manage the deceased's assets. However, applying to the wrong administrative body or for the incorrect type of letter can lead to significant delays in the estate administration and distribution process. Although the multiplicity of administrative bodies helps ensure that estate administration is handled efficiently and in accordance with the relevant legal frameworks, it sometimes leads to confusion among the public as to which authority they need to go to. It is therefore essential for the applicants to understand the specific requirements and jurisdictional boundaries of each administrative body to avoid such delays.

In Brunei, inheritance and estate administration are governed by distinct legal frameworks tailored to cater to the Muslim and non-Muslim communities, similar to Malaysia's dual system. For Muslim estates, the Syariah Court holds exclusive jurisdiction, particularly for cases where assets do not exceed a certain threshold.<sup>16</sup> The process typically begins with the issuance of a *farāid* certificate by the Syariah High Court, which, as in Malaysia, specifies heirs and their Islamic-law-based shares. This certificate is then presented alongside other probate documents to initiate estate administration.<sup>17</sup> For Muslims in Brunei, if an estate exceeds the Syariah Court's jurisdictional value threshold or if a significant legal dispute arises, the case may escalate to the Syariah High Court. Any appeals from the Syariah Subordinate Court's decisions are heard by the Syariah High Court or the Syariah Appeal Court,<sup>18</sup> thus ensuring adherence to Islamic inheritance law at multiple judicial levels. For non-Muslim subjects, the Supreme Court of Brunei presides over the probate process, issuing grants of probate for testate estates and letters of administration for intestate estates. Similar to Malaysia, Brunei's Supreme Court requires the submission of a detailed application, including beneficiary affidavits and estate inventories, to process these grants.

In terms of the administrative bodies, there are more institutions in Malaysia that governs the inheritance matters as compared to Brunei. However, the determination of the administrative bodies is mostly dependent on the religious affiliation of the deceased. For example, the Syariah Court is to exclusively govern the cases involving Muslim subjects. But in Malaysia, the Muslim subjects is required to deal not only with the syariah courts, but potentially the civil courts or other institutions which involves additional task to the applicants and related parties. It is

<sup>16</sup> Nasrul et al.

<sup>17</sup> Sabtu and Mahamood, "Kaedah Muafakat Dalam Pembahagian Harta Pusaka Orang Islam."

<sup>18</sup> E. Ann Black, "Brunei Darussalam: Ideology and Law Malay Sultanate," in *Law and Legal Institutions of Asia: Traditions, Adaptations and Innovations*, ed. Gary F. Bell and Ann Black (New York: Cambridge University Press, 2011).



suggested that the syariah courts in Malaysia is being given exclusive jurisdiction in this matter as part of the effort to further elevate the position of the Syariah Courts in Malaysia.

### **Summary Process of the Estate Administration**

The estate administration process typically begins with the identification and valuation of the deceased's assets. This step is crucial for determining the appropriate administrative body and the type of authorisation required. The assets may include both movable properties, such as bank accounts and investments, and immovable properties, such as land and buildings. Accurate valuation ensures that the estate is managed effectively and in accordance with legal requirements. Apart from assets, it is equally important to identify the liability of the deceased. In fact, settlement of liability ranks higher than the distribution of estate, which is subject to the remaining amount, after the settlement took place. Once the assets are identified and valued, the next step involves applying for the necessary letters of representation. The choice of administrative body depends on various factors, as discussed above. In testate cases for example, where a will is present, the process typically involves applying for a grant of probate. In intestate cases, where there is no will, the process involves applying for letters of administration.

Regardless of whether it involves an executor or administrator, their role resembles each other, which is to administer the estate to its completion. This is why the involvement of multiple administrative bodies is important as it ensures that estate administration is handled by the appropriate authorities with the relevant expertise. This division of responsibilities helps streamline the process and ensures that the deceased's wishes are respected and the beneficiaries receive their rightful shares. However, it also requires careful navigation and understanding of the legal landscape to ensure compliance with all relevant laws and regulations. After the issuance of letters of representation, the personal representative will proceed with the accumulation and execution of assets.<sup>19</sup> Assuming that the liabilities have been settled, the remaining assets will be subjected to either process namely transmission, transfer or distribution of the estate. Transmission, a process which changes the ownership from the deceased to the personal representative and finally to the beneficiary is relevant in cases involving motor vehicles and real estate, is an indication of the authority possessed by the personal representative.

### **Jurisdiction of the Administrative Bodies in Malaysia**

Estate administration in Malaysia involves multiple administrative bodies, each with specific jurisdictional powers and responsibilities. These bodies include the Civil High Court, Amanah Raya Berhad, and the Estate Distribution Division. Additionally, the Syariah Court plays a unique role in issuing *farāid* certificates for

---

<sup>19</sup> Maimanah Maimanah et al., "Delay in the Division of Inheritance: A Theoretical Review within Legal System Framework in Indonesia," *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (June 1, 2024): 241–57, <https://doi.org/10.18592/sjhp.v24i1.12916>.



Muslim estates.<sup>20</sup> Understanding the jurisdiction and functions of each body is crucial for efficient estate administration.

The Civil High Court has the broadest jurisdiction in inheritance matters, encompassing a wide range of powers and responsibilities. One of the court's primary functions is to grant letters of representation, which are essential for administering the estate of a deceased person. There are two main types of letters of representation: the grant of probate and letters of administration. The grant of probate is issued when the deceased has left a valid will. This document authorises the executor named in the will to administer the estate according to the deceased's wishes. The grant of probate, issued exclusively by the civil High Court, is a crucial instrument as it unlocks the deceased's assets, allowing the executor to manage and distribute them.<sup>21</sup> The process of obtaining a grant of probate is generally straightforward and non-contentious, as the executor's role is already defined in the will, minimising disputes over who should manage the estate. The executor is responsible for collecting the deceased's assets, paying any debts and taxes, and distributing the remaining assets to the beneficiaries as specified in the will. This process ensures that the deceased's wishes are honored and the estate is managed according to their intentions.

In contrast, letters of administration are issued in cases where the deceased did not leave a will (intestate) or when the will does not name an executor. The letters of administration authorise an appointed administrator to manage and distribute the estate according to the law. Applying for letters of administration can be more complex than obtaining a grant of probate, as the beneficiaries must agree on an administrator. Additionally, the applicant must provide two sureties, which can be challenging for high-value estates. The sureties must possess a similar or higher value in assets compared to the deceased's estate, which can be difficult to secure. The administrator's role is similar to that of an executor, but they must follow the rules of intestacy, which dictate how the estate should be distributed among the beneficiaries. This process can be more time-consuming and complex, as it requires the agreement of all beneficiaries and compliance with legal requirements.

The Civil High Court's jurisdiction is comprehensive, covering all types of assets, regardless of their value. However, in practice, cases involving assets valued at more than two million ringgit are typically heard by the High Court. The introduction of court-annexed systems and e-filing has streamlined the application process for letters of representation, reducing the time required from application to the issuance of the sealed grant to two or three months in non-contentious probate proceedings. These technological advancements have made the process more efficient and accessible, reducing delays and improving the overall administration of estates.

The High Court also has the authority to hear disputes related to inheritance matters.<sup>22</sup> This includes resolving conflicts over the validity of a will, the

<sup>20</sup> Nasrul Hisyam Nor Muhamad, "Wasiat Sebagai Instrumen Perancangan Harta Islam: Prosedur Dan Pelaksanaan," *Jurnal Hadhari* 9, no. 1 (2017): 17–32.

<sup>21</sup> Based on Section 24 of the Court of Judicature Act 1964, the subordinate courts have no jurisdiction to hear probate cases. Apart from the High Court which have the original jurisdiction over the matter, the Federal Court and the Court of Appeal are authorised to hear appellate cases relating to contested cases.

<sup>22</sup> Cross-reference between Article 74 and the Ninth Schedule under the Federal Constitution states that matters involving succession, testate and intestate, probate and letter of administration fall under the exclusive power of the civil courts.



interpretation of its terms, and the distribution of assets. The court's decisions in these matters are crucial in ensuring that the estate is administered fairly and in accordance with the law. The High Court's role in resolving disputes helps maintain the integrity of the inheritance process and ensures that the rights of all parties involved are protected. In addition to granting probate and letters of administration, the High Court also plays a significant role in supervising the administration of estates. This includes overseeing the actions of executors and administrators to ensure that they fulfil their duties properly and in accordance with the law. The court can intervene if there are allegations of misconduct or mismanagement, ensuring that the estate is managed in the best interests of the beneficiaries. This supervisory role is essential in maintaining transparency and accountability in the administration of estates.

Amanah Raya Berhad (ARB) operates under a more limited jurisdiction compared to the Civil High Court and the Estate Distribution Division.<sup>23</sup> ARB is authorised to grant letters of representation for estates consisting only of movable property valued at less than RM 600,000. The authority granted to ARB under the Public Trust Corporation Act 1995 allows it to issue declarations or direction orders to the beneficiaries for the distribution of the estate. ARB's role is particularly important for smaller estates, where the value of the assets may not justify the involvement of the High Court.<sup>24</sup> Despite its limited jurisdictional capacity in issuing letters of representation, ARB plays a crucial role in estate administration, particularly for smaller estates.<sup>25</sup> However, the restriction on the value of estates it can issue letters of representation on leads to delays in administering estates valued between RM 600,000 and RM 2,000,000. There have been calls to increase ARB's jurisdictional limit to RM 2,000,000, aligning it with the monetary jurisdiction of the Estate Distribution Division. Such an increase would address the legal loophole and ensure more efficient administration of estates within this value range. Expanding ARB's jurisdiction would also reduce the burden on the High Court and allow for more streamlined processing of smaller estates.

In addition to its role in granting letters of representation, ARB can act as a personal representative on behalf of the deceased's beneficiaries. This appointment can be made by the testator, the court, or upon request by all beneficiaries. Acting as a personal representative, ARB provides valuable assistance in managing the estate, especially for beneficiaries who may lack knowledge of the procedural and technical aspects of estate administration. ARB's expertise ensures that the estate is managed efficiently and in compliance with legal requirements, providing peace of mind to the beneficiaries. ARB's involvement in estate administration also includes providing advisory services to beneficiaries. This includes guidance on the legal and procedural aspects of estate administration, as well as assistance in navigating the complex legal

---

<sup>23</sup> Akmal Hidayah Halim\*, Nor Azlina Mohd Noor, and Azhani Arshad, "Administration of Unclaimed Estates in Malaysia: The Peculiarities of Unclaimed Money, Undistributed Fund and Bona Vacantia," *The Journal of Social Sciences Research*, 2018, 1075-1079:6.

<sup>24</sup> Not only Amanah Raya Berhad is statutorily capable in awarding the grant of representation, but it is also capable to act as a personal representative, either as an administrator or executor.

<sup>25</sup> The Declaration and Direction issued by the Corporation is regarded as part of letters of representation as the effect of these letters is that it serves as self-appointment of the Corporation as the personal administration in administering the deceased's estate. See Section 17 of the Public Trust Corporation Act 1995.



landscape. ARB's advisory role is particularly valuable for beneficiaries who may be unfamiliar with the legal requirements and processes involved in estate administration. By providing expert advice and support, ARB helps ensure that the estate is managed effectively and in accordance with the deceased's wishes. ARB also plays a role in educating the public about estate planning and administration. This includes conducting seminars, workshops, and other educational programs to raise awareness about the importance of proper estate planning and the legal requirements involved. By promoting awareness and understanding of estate administration, ARB helps individuals and families prepare for the future and ensure that their estates are managed according to their wishes.

### **Estate Distribution Division**

The Estate Distribution Division, part of the Department of Director General of Lands and Mines under the Ministry of Natural Resources and Environment, focuses on intestate cases involving small estates.<sup>26</sup> Defined by the Small Estate (Distribution) Act 1955, small estates include those valued at not more than RM 2,000,000, comprising either immovable property or a combination of immovable and movable assets. The division's role is crucial in managing the distribution of small estates, ensuring that the assets are distributed fairly and in accordance with the law.<sup>27</sup> The Estate Distribution Division has seen its role enhanced through various amendments to the Act, including an increase in the value threshold for estates it can handle from RM 600,000 to RM 2,000,000. The division is statutorily empowered to issue letters of representation, known as letters of administration in this context. These letters authorise the appointed administrator to collect the deceased's assets, pay any debts, and distribute the remaining estate to the entitled heirs. The division's expanded jurisdiction ensures that a larger number of estates can be managed efficiently and in accordance with legal requirements.

In normal cases, the land administrator may grant a Distribution Order (Form E) instead of letters of administration.<sup>28</sup> The distribution order has immediate effects on both immovable and movable assets. For immovable assets, such as land, the beneficiaries' portions are registered in the land title. For movable assets, presenting a copy of Form E to the relevant institution allows the beneficiaries to obtain their entitled shares. This streamlined process ensures that small estates can be administered quickly and efficiently, reducing delays and providing timely resolutions for beneficiaries.

<sup>26</sup> Fazira Shafie, Wan Yusoff Wan Zahari, and Syed Muhammad Dawilah al-Edrus, "Islamic Real Estate Management:Review on Issues and Challenges in Managing Inheritance Property in Malaysia," in *7th IRERS 2014 Proceedings* (International Real Estate Research Symposium 2014, Kuala Lumpur, 2014), [https://www.researchgate.net/publication/263083792\\_ISLAMIC\\_REAL\\_ESTATE\\_MANAGEMENT REVIEW\\_ON\\_ISSUES\\_AND\\_CHALLENGES\\_IN\\_MANAGING\\_INHERITANCE\\_PROPERTY\\_IN\\_MALAYSIA](https://www.researchgate.net/publication/263083792_ISLAMIC_REAL_ESTATE_MANAGEMENT REVIEW_ON_ISSUES_AND_CHALLENGES_IN_MANAGING_INHERITANCE_PROPERTY_IN_MALAYSIA).

<sup>27</sup> Generally, intestate cases involving small estates fall under the jurisdiction of the Estate Distribution Unit. For testate cases involving small estates, such will be under the jurisdiction of the civil High Court. Refer to section 5 of the Small Estates (Distribution) Act 1955.

<sup>28</sup> Distribution Order will be issued by the Land Administrator subject to the condition of the deceased's asset. For example, the land owned by deceased must not possess outstanding loan before such land can be transferred to the entitled beneficiaries. See Order 13 of the Small Estates (Distribution) Act 1955.



The Estate Distribution Division's streamlined processes and increased jurisdictional capacity have significantly improved the efficiency of estate administration for small estates. By ensuring that all necessary documentation is attached and using the correct forms, the division can expedite the administration process, providing timely resolutions for beneficiaries. The division's focus on efficient and fair distribution of small estates is essential in maintaining public confidence in the inheritance system and ensuring that the rights of beneficiaries are protected. The Estate Distribution Division also plays a role in resolving disputes related to the distribution of small estates. This includes mediating conflicts between beneficiaries and ensuring that the distribution process is conducted fairly and in accordance with the law. The division's involvement in dispute resolution helps maintain harmony among beneficiaries and ensures that the estate is administered according to legal requirements.

In addition to its role in administering small estates, the Estate Distribution Division also provides guidance and support to beneficiaries. This includes assistance with the application process, advice on legal requirements, and support in navigating the complexities of estate administration. The division's advisory services are particularly valuable for beneficiaries who may be unfamiliar with the legal and procedural aspects of estate administration. By providing expert advice and support, the division helps ensure that small estates are managed efficiently and in accordance with legal requirements. The division also collaborates with other administrative bodies and institutions to ensure a coordinated and efficient approach to estate administration. This includes working with the Civil High Court, Amanah Raya Berhad, and the Syariah Court to address overlapping jurisdictions and ensure that the estate administration process is streamlined and efficient. By fostering collaboration and coordination among administrative bodies, the division helps ensure that estates are administered in a fair and efficient manner.

### **Jurisdiction of the Inheritance Law and Its Practice in Brunei**

When delving into the discourse surrounding the allocation of estate administration in Brunei Darussalam, it becomes imperative to ascertain the specific court vested with jurisdiction to preside over and adjudicate on matters pertaining to the deceased's assets and liabilities. This determination plays a pivotal role in ensuring the orderly and equitable distribution of the deceased's estate in accordance with the pertinent legal provisions and regulations. In Brunei Darussalam, the jurisdictional framework is different for both Muslim and non-Muslim, with the purpose to cater to the different needs of both Muslim and non-Muslim communities. In situations where the deceased individual is a Muslim, the appointed executor, as designated in the will, must visit the probate office under the jurisdiction of the Supreme Court of Brunei Darussalam to obtain the grant of probate. In instances where no executor is specified in the will, or if the deceased passed away without a will (intestate), the appointed administrator must secure letters of administration from the Probate Office under the purview of the Supreme Court.

During this process, several documents will need to be submitted to initiate the application for the grant of probate or letters of administration. Nevertheless, in the case of a Muslim individual, the executor is required to initially procure the original



inheritance certificate (*farāid*) from the Syariah High Court of Brunei Darussalam. This certificate must then be presented to the Probate Officer along with the requisite documents. Upon completion of this process, the petition for grant of probate or letter of administration will be approved, provided that all necessary documentation has been furnished and there are no caveats lodged against the petition. Once the grant of probate or letter of administration has been issued, the respective executor or administrator will then have the authority to administer the estate and distribute the asset in accordance with the *farāid* distribution.<sup>29</sup>

In general, the Syariah Court holds exclusive jurisdiction over cases concerning the estate administration of Muslims. The Brunei Syariah Subordinate Court is empowered to hear and determine all actions and proceedings where the amount or value of the estate does not exceed \$500,000 or is not capable of estimation in terms of money.<sup>30</sup> Any appeal shall be made to the Syariah High Court if there is any dissatisfaction in the decision made by the Syariah Subordinate Court. Similarly, the Syariah High Court has the jurisdiction to hear and determine all actions and proceedings relating to the decision of inheritance of property for both testate and intestate.<sup>31</sup> If there is dissatisfaction with the decision made by the Syariah High Court in the exercise of their original jurisdiction, an appeal can be made to the Syariah Appeal Court.<sup>32</sup>

In the event that the deceased is a non-Muslim and he died while leaving a will behind, the designated executor mentioned in the will shall first obtain the grant of probate from the Supreme Court of Brunei Darussalam in order to administer the deceased's estate according to the direction contained in his will. On the occasion when the deceased died intestate, the appointed administrator must apply to the Supreme Court of Brunei Darussalam for a letter of administration. Any family member of full age and sound mind are qualified to apply to be the appointed administrator for the deceased. The law gives privileges to certain family members over others based on the deceased's marital status. If the deceased person was a bachelor, his surviving parents shall take precedence over his siblings as administrators. On the other hand, if he was married, his spouse would be prioritised over the children to be his administrator. It is statutorily mentioned in Section 28(5) of the Probate and Administration Act (Chapter 11) that quotes:

*“The provisions of this section shall not apply where the deceased person was a Muslim domiciled in Brunei Darussalam...”*

It should be noted that these rules are exclusively for the non-Muslim. This position indicates the extent of the duality of laws being practiced in Brunei.

### **Categorisation of Assets under Inheritance**

Following the grant of probate or letter of administration, the deceased's assets will be distributed. It was separated into two categories: assets related to immovable and movable assets. The process of distribution of the asset is different according to

<sup>29</sup> Nor Azlina Mohd Noor and Ahmad Shamsul Abd Aziz, “Empowering Personal Representatives’ Statutory Duties in Administration of Deceased’s Estates,” *Environment-Behaviour Proceedings Journal* 7, no. SI11 (December 20, 2022): 15–20, <https://doi.org/10.21834/ebpj.v7iSI11.4167>.

<sup>30</sup> Section 16 (1)(b), Syariah Courts Act (Chapter 184).

<sup>31</sup> Section 15 (b)(viii), Syariah Courts Act (Chapter 184).

<sup>32</sup> Section 20 (1), Syariah Courts Act (Chapter 184).



the religion and ethnicity of certain groups. For Muslim, if he wanted to divide the land, the administrator must get an assent from the Syariah High Court Judge. Similarly, when the beneficiary decides to forego his portion, he must notify the Syariah High Court Judge. As for the Chinese, his administrator has to consult the “*Kapitan Cina*” who will ascertain the beneficiaries of the estate, *Yang Berhormat Pehin Kapitan Lela Diraja Dato Paduka Goh King Chin* is the recent ‘*Kapitan Cina*’ in Brunei Darussalam. Lastly, for the other indigenous group, the administrators need to consult with the village head or ‘*Ketua Kampung*’ for determining and confirming the beneficiaries of the estate. Only after receiving the aforementioned can the Land Offices consider any application to transfer ownership of land to the beneficiaries.<sup>33</sup> If the asset in question is relating to the asset other than land, the executor or administrator will be dealing with several relevant institution bodies such as the bank, Tabung Amanah Pekerja (TAP), Takaful and insurance company. In their dealing with the respective bodies, the Probate and Letter of Administration must be shown to the relevant authority and photocopy of the Probate or Letter of Administration be extended to them.

### **Clashes of Jurisdiction between Civil Court and Syariah Court in Malaysia**

The study of estate administration in Malaysia and Brunei reveals several legal and administrative challenges, which have significant implications for the efficiency of the inheritance process. In Malaysia, the dual legal framework involving both civil and Syariah Courts, creates jurisdictional complexities, particularly in cases involving individuals who convert to Islam. The issues arises from the state of this duality of laws if not properly addressed, can lead to conflicts over which legal system should prevail, especially when the estate includes both Muslim and non-Muslim beneficiaries. The need for clear guidelines and better coordination and efforts to harmonise between the civil and Syariah law is evident to prevent these conflicts and ensure the smooth administration of estates. Additionally, the multiplicity of administrative bodies, such as the Civil High Court, Amanah Raya Berhad, and the Estate Distribution Division, adds another layer of complexity. These bodies each have specific jurisdictions based on the type and value of the estate, which can lead to confusion among the public that could potentially cause delays in the administration process. Such delays can prevent beneficiaries from accessing their inheritance in a timely manner, resulting in financial hardship to the affected family members.

In Brunei, estate administration faces significant challenges, with substantial implications for the effective management of estates. The insufficient information and resources available to the public lead to a lack of practical exposure to estate administration, resulting in a limited understanding of the processes involved. This issue is caused by the lack of educational resources and public awareness initiatives. The implications may lead to beneficiaries making uninformed decisions, leading to mismanagement of estates. Additionally, family disputes over inheritance, especially in cases where the deceased died intestate, are also prevalent. These disputes often revolve around the appointment of administrators and breaches of fiduciary duty,

<sup>33</sup> Black, “Brunei Darussalam: Ideology and Law Malay Sultanate.”



leading to further delays in estate administration. Such conflicts can erode family relationships and result in lengthy and costly legal proceedings.

Despite the practice of dual legal systems in inheritance matters, the coexistence of civil and Syariah laws sometimes also brings about significant legal and technical challenges. One of the critical issues is determining which legal system should prevail in cases involving both Muslim and non-Muslim subjects. For instance, the estate of a *muallaf* (a convert to Islam) who leaves behind non-Muslim family members can spark disputes over which legal framework should govern the inheritance. These situations can be particularly complex, as the conversion of a family member to Islam introduces new legal considerations that must be balanced with the existing rights of non-Muslim relatives. In the case of *Permohonan Perisyiharan Status Agama si mati Mohammad Abdullah @ Moorthy a/l Maniam* for example, the deceased's wife and children were not entitled to the estate except for the deceased's elder brother, Sugumaran who is a Muslim convert.<sup>34</sup> Under the Islamic law, he was considered as the only surviving heir who was entitled to the whole estate. In this case, however, the elder brother waived his rights over the estate and passed it to the deceased's wife instead. As the non-converted family members lose their right over the deceased's asset due to his conversion, this alone is sufficient to create tension among the parties which may end up in dispute.

The tension is understandable in cases involving spouses, for example where both have had a matrimonial relationship and by right, the living spouse should feel that she or he deserves portions of the deceased's estate. The conversion does not break the ties of social unification between the two, at least not under the civil law. According to Section 51(1) of the Law Reform (Marriage and Divorce) Act 1976, conversion to Islam by one of the spouses does not lead to the automatic dissolution of marriage but serves only as one of its grounds. This clashes rulings by the Islamic law and the civil law in Malaysia. From the syariah point of view, such conversion itself dissolves the marriage but not under the civil law. Section 50 of the Law Reform (Marriage and Divorce) Act 1976 merely states that conversion to Islam as a ground for divorce which is still subjected to filing of petition for divorce by the parties. This situation could be an argument between the civil court and the syariah court. Despite ongoing discussions among academics and researchers about efforts to harmonise the dual legal systems, such complexities remain a contentious issue. The need for clear guidelines and better integration of the two legal systems is crucial to avoid conflicts and ensure smooth administration of estates.<sup>35</sup>

### **Confusion as to the Existence of Multiple Administrative Bodies in Malaysia**

The complexity of estate administration is also apparent from the presence of multiple administrative bodies, each with distinct jurisdictions and responsibilities. This situation often results in confusion among the public, who may be unsure of which authority to approach for specific estate cases. The administrative bodies involved in this process include the Civil High Court, Amanah Raya Berhad and the Estate Distribution Division, each with its own set of jurisdictions. For instance, the Civil High Court holds authority in inheritance matters, including the issuance of

<sup>34</sup> *Permohonan Perisyiharan Status Agama si mati Mohammad Abdullah @ Moorthy a/l Maniam* (2006) JH XXI/II 210.

<sup>35</sup> Article 121(1A) of the Federal Constitution states that the civil courts shall have no jurisdiction in respect of any matter within the jurisdiction of the syariah courts.



grants of probate and letters of administration. Amanah Raya Berhad, on the other hand, is restricted to estates comprising movable property valued below RM 600,000 while the Estate Distribution Division handles small estates valued at not more than RM 2,000,000. This division requires individuals to navigate carefully to ensure they engage the appropriate administrative body, as applying to the wrong body can lead to substantial delays in the estate administration process.

The existence of multiple administrative bodies is intended to enhance the efficiency of the estate administration process by ensuring that estates are managed by the most relevant authority. However, this arrangement also introduces several challenges. A significant issue is the lack of clarity regarding which body holds jurisdiction over a particular estate, especially when the estate includes both movable and immovable properties, or when its value approaches the jurisdictional thresholds of different bodies. From the perspective of the public, this confusion is also apparent in cases involving both Muslim and non-Muslim subjects, necessitating coordination between the civil and Syariah Courts. The dual legal system, which separates civil law and Syariah law but somehow shares the jurisdiction over the same matter, further complicates the process, thus often resulting in administrative delays and frustration among beneficiaries. As a general comparison, the position in Brunei is rather definite as the selection of the institution to govern the case is partly based on the status of the deceased, that is whether he died as a Muslim or non-Muslim. The lesser number of administrative bodies may provide more clarity in determining the jurisdiction for each institution, a point which may need to be considered in improving the position in Malaysia.

### **Insufficient Information and Knowledge Gaps in Estate Administration Practices in Brunei**

Challenges arise in Brunei Darussalam regarding estate administration, particularly due to insufficient information and resources available concerning the deceased's estate, heirs, processes, and required documentation. This lack of access contributes to a limited understanding and exposure in this domain. In Brunei Darussalam, while students receive education on inheritance and estate administration, it remains largely theoretical. Broader society lacks exposure to the practical application of estate administration within the country as the curriculum may not prioritise practical application or real-world scenarios, leaving gaps in understanding for broader society members. In addition, there is a lack of readily available materials such as books, articles, and online resources specifically addressing estate administration within the context of Brunei Darussalam. This scarcity makes it difficult for individuals to access comprehensive information and guidance on the topic. On top of that, estate administration is not a topic commonly discussed and or emphasised within the cultural and societal norms in Brunei Darussalam. Consequently, there is less awareness and understanding of the processes involved in managing estates and inheritance. The evidence can be seen from the practice of the society in implementing the concept of *takharuj*.

This concept is widely practiced as a cultural norm which is recognised by Syara' within the society of Brunei Darussalam. Following the original rule, the estate of the deceased should be distributed in accordance with the *farāid* mandate.



However, this concept demonstrates that the estate left by the deceased is usually managed and divided according to discussions and agreements among family members, rather than according to the laws stipulated in the law of *farāid* for Muslim and respective laws governing the estate administration of non-Muslim. As of 2014, there are 12 cases pertaining to *farāid* distribution while there are 126 cases with regards to consensus distribution method.<sup>36</sup> Evidence of this lies in the decisions made by certain family members to relinquish their shares, opting instead to allocate them to other relatives, while others found themselves excluded entirely from the distribution of the estate, despite being rightfully entitled to a portion. From this, it can be drawn that the lack of exposure and understanding of estate administration among the people of Brunei Darussalam has caused them to opt for the estate to be distributed solely in accordance with the discussion and decision of the family members.

In addition, estate administration also often faces significant challenges stemming primarily from insufficient information about the deceased's estate and heirs. This issue is exacerbated by limited awareness which, as a result, causes individuals to fail to adhere to established procedures for managing their estates effectively. Furthermore, inadequate cooperation with administrative entities such as banks, Tabung Amanah Pekerja (TAP), and insurance companies further complicates the process of assessing the full extent of the deceased's assets. These factors collectively contribute to the complexities encountered in estate administration within the country. Navigating the process and understanding the required documentation for estate administration can indeed be challenging, especially in countries where such information may not be readily available or well-documented. This is owing to the fact that the beneficiaries assumed that after the deceased died, they would undoubtedly receive their share of the inheritance, while in fact the situation would be different if the deceased died intestate. Furthermore, the procedure to obtain the letter of administration or grant of probate will vary depending on whether the deceased is Muslim or non-Muslim. Some people may not simply grasp this type of concept or how the system works because the information is not widely distributed enough to the community. Brunei is a Muslim-majority country with 82.1% of its population. As a result, matters pertaining to Muslim might be more common to be dealt with in court compared to those non-Muslim such as Chinese who must deal with both state and customary law. Due to the difficulties in obtaining information about estate administration, the procedure of distribution and appointment of administrators was delayed. For instance, in the case of *Che Sung Kiaw & Anor v Lau Lan Hwa & Anor*,<sup>37</sup> the deceased died intestate and letters of administration, naming the 1st Plaintiff, the 4<sup>th</sup> Plaintiff, Mr Low Kok Liong and the 2<sup>nd</sup> Defendant as administrators of the estate were only applied for and granted on 8th July 1999, nearly 17 years later.

### **Family Disputes Pertaining to Inheritance in Brunei**

While estate administration in Brunei is not extensively practised, there are some cases that provide valuable insights. From these cases, it becomes evident that a prevalent issue arising in estate administration involves family disputes, particularly

<sup>36</sup> Sabtu and Mahamood, "Kaedah Muafakat Dalam Pembahagian Harta Pusaka Orang Islam."

<sup>37</sup> [2016] No. 103.



concerning disagreements over the appointment of administrators and breaches of fiduciary duty. Such conflicts typically arise in cases where the deceased has died intestate. The failure of the beneficiaries to reach an agreement on the appointment of an administrator resulting in delays or laches in estate administration. Particularly, this prevents the transfer of the deceased property to the purchaser and hinders development efforts as the administrator needs to sign and submit documentation to appropriate authorities. This typically occurred when the deceased possessed a complex asset.

In Brunei, when delay occurs exceeding the period of 12 months, the authority is given in the hands of the Probate Officer. Specifically, the Probate Officer has broad discretion to take out administration of the estate of a deceased person who died intestate if no one has obtained administration of the estate within 12 months of the person's death. Furthermore, if the issue of non-appointment persists beyond this period, the Probate Officer can appoint anyone he deems to be fit to be the administrator of the deceased's estate. If the deceased was a Muslim, the Probate Officer is required to distribute the estate in accordance with Muslim law, referring the matter to the Syariah High Court and acting upon its advice regarding the division of the estate and the identification of the rightful beneficiaries, as stipulated in section 71 of the Probate and Administration Act.<sup>38</sup>

The case of *M-Come Enterprise & MCDC Sdn Bhd v The Probate Officer*,<sup>39</sup> explicitly mentioned the consequences if delays exceed 12 months and no appointment of an administrator is made. The deceased and the 1st Applicant had made a deed dividing Lot 40831 into thirteen subdivided plots and some of the houses had been sold to their respective purchasers. Additionally, the deceased sold Lot 4243 to the 2nd Applicant, who then intended to develop it. The Probate Officer, represented by Hjh Badariah binti Hj Yahya of the Attorney General's Chambers, agrees to appoint the 1<sup>st</sup> Applicant and 2<sup>nd</sup> Applicant as the administrator in relation to Lot 40831 and Lot 4243. Unfortunately, the beneficiaries of the deceased's estate disagree with the appointment. As a result, no appointment of administrator for 12 months since the deceased died. This left the Applicants and purchasers of the subdivided plots in a tight spot and is clearly unfair to them. The state of uncertainty cannot be allowed to persist and therefore the court intervene to provide relief by appointing the Probate Officer to take over administration of the deceased's estate in order to provide justice to both applicants and the beneficiaries. Section 20(1)(c) of the Probate and Administration Act (Cap 11) provides that:

*"The Probate Officer may himself take out administration when a person dying intestate, whether in Brunei Darussalam or elsewhere, has left property situate in Brunei Darussalam and no person has, within 12 months after the death of such person, obtained administration of his estate."*

Furthermore, the case of *Hjh Monica binti Haji Mahadi v Hjh Nipah binti Haji Sukaim*,<sup>40</sup> also proves that the main challenge in estate administration in Brunei is the inability of the beneficiary to agree with the appointment of the administrator. Hajah

<sup>38</sup> Probate and Administration Act (Chapter 11).

<sup>39</sup> [2020] No. 84.

<sup>40</sup> [2022] No. 2.



Monica, the applicant applied to revoke the Respondent as Administratrix of the deceased's estate. However, her application was dismissed by the court due to the wrong mode of proceedings to initiate her claim. Hence, the failure of the beneficiaries to agree on the appointment of the administrator has led to additional challenges emerging in Brunei causing delay in the estate administration process. Due to this, the Probate Officer is lawful to take out administration of the deceased's estate and distribute them in accordance with Muslim law upon the advice of the Syariah High Court provided that the deceased was a Muslim.

In Brunei, where estate administration practices are less prevalent, certain cases highlight recurring challenges in managing estates of deceased individuals. A notable issue arises post-appointment of an estate administrator, specifically, allegations of breach of fiduciary duty. This problem commonly surfaces when the beneficiaries express concerns over the administrator's management of assets. Instances include claims of mismanagement, conflicts of interest, or neglect toward beneficiaries, leading to disputes within families regarding estate distribution. For example, in the case of *Re Estate of Tan Kow Quee (alias Tan How Quee)*,<sup>41</sup> defendants were accused of misappropriating estate assets, breaching trust, embezzling funds, making unauthorised property transfers, and using estate funds for property development without proper authorisation. Similarly, in *Leong Siew Fung v Leong Siew Nam*,<sup>42</sup> disputes arose over the adequacy of the amount distributed by the administrator, who happened to be the eldest brother. While some allegations may not be substantiated due to lack of evidence, these cases underscore the potential for administrators to breach their fiduciary duties in the management and distribution of estates. They highlight the importance of rigorous oversight and adherence to legal standards to ensure equitable and lawful estate administration practices in Brunei.

As this paper heavily emphasises the state of the legal system governing the inheritance matter, the coordination between the civil and Syariah legal systems is a crucial aspect of Malaysia's inheritance framework, specifically and in Brunei generally. This duality ensures that the diverse needs of the population are met, but it also requires careful navigation to avoid conflicts and ensure fair administration of estates. The Syariah Court's role in issuing *farāid* certificates is an example of how the two systems operate in parallel. The *farāid* certificate identifies the rightful heirs and their shares according to Islamic law, but it does not grant authority to administer the estate. The actual administration, including the collection and distribution of assets, is handled by the civil administrative bodies, such as the Civil High Court or the Estate Distribution Division, depending on the value and nature of the assets.

This separation of roles helps ensure that the religious obligations of Muslim heirs are respected while also complying with the civil legal requirements. However, it also necessitates effective communication and coordination between the Syariah Court and the civil administrative bodies to avoid delays and ensure that the estate is administered smoothly. For non-Muslims, the process is more straightforward, as the entire administration is handled under the civil legal framework. The Civil High Court plays a central role in granting probate and letters of administration, ensuring that the estate is managed and distributed according to the deceased's will or the rules of intestacy. The involvement of multiple administrative bodies in the estate

<sup>41</sup> [2016] No. 103.

<sup>42</sup> [1991] No. 195.



administration process reflects Malaysia's commitment to accommodating its diverse population. However, it also requires careful navigation and understanding of the legal landscape to ensure compliance with all relevant laws and regulations. The coordination between the civil and Syariah systems is further complicated in cases involving mixed marriages, where one spouse is Muslim and the other is non-Muslim. These cases require careful consideration of both legal systems to ensure that the rights of all parties are protected. This often involves joint efforts by the civil and Syariah Courts to reach a resolution that respects both sets of laws. Efforts to improve the coordination between the civil and Syariah legal systems are ongoing. This includes initiatives to enhance communication and collaboration between the different administrative bodies and the courts. By fostering a more integrated approach, these efforts aim to streamline the estate administration process and reduce the potential for conflicts and delays.

The differences in inheritance law between Malaysia and Brunei are reflected in the administrative bodies involved, the estate administration procedures, relevant statutes and the challenges encountered by both countries as stated in Table 1.

**Tabel 1.** Differences in inheritance law between Malaysia and Brunei

No.	Differences	Malaysia	Brunei
1	Administrative bodies	i. Civil High Court ii. Amanah Raya Berhad iii. Estate Distribution Division iv. Syariah Court	i. Supreme Court ii. Syariah Subordinate Court iii. Syariah High Court
2	Relevant Statutes/Law	i. Probate and Administration Act 1959 ii. Small Estate (Distribution) Act 1959 iii. Public Trust Corporation Act 1995 iv. State Syariah Enactments	i. Supreme Courts Act (Chapter 5) ii. Syariah Courts Act (Chapter 184) iii. Probate Administration Act (Chapter 11) iv. Intermediate Courts Act (Chapter 162)
3	Process	i. Apply for letter of administration or grant of probate from administrative bodies, namely the Civil High	i. Apply for the grant of probate or letter of administration from the probate office under the



		Court, Amanah Raya Berhad and Estate Distribution Division, subject to their jurisdiction.	jurisdiction of the Supreme Court.
	ii.	For Muslims, it is important to consider applying for a <i>farāid</i> certificate.	In the case of a Muslim individual, the executor is required to obtain the original inheritance certificate ( <i>farāid</i> ) from the Syariah High Court.
	iii.	Upon issuance of Letter of Administration or grant of probate, the administrator then may proceed with execution, transfer and distribution of estate.	Upon issuance of Letter of Administration or grant of probate, the administrator then may proceed with execution, transfer and distribution of estate.
4	Challenges	i. Clashes of jurisdiction between Civil Court and Syariah Court. ii. The existence of multiple administrative bodies could lead to confusion among the public.	i. Insufficient information and knowledge gap among the society. ii. Family disputes among the deceased's beneficiaries.

Based on the table above, it can be seen that there are additional institutions that governs the administration of estate in Malaysia that exist in form of private corporations and government agency, contrary to the position in Brunei which only consists of civil and syariah judiciary bodies. The establishment of the Estate Distribution Division is meant to cater cases involving small value of immovable estate, known as small estate which at the same time, offers a small fee for its administration, as compared to civil High Courts. On the other hand, ARB is a former government agency that has been privatised that focuses on the handling of estate cases in its capacity of personal representative yet possesses certain jurisdiction in issuing letters of representation. While the civil High Courts and the Syariah Courts handle the cases based on their respective jurisdictions. Although the original objective of these multiple administrative bodies is to provide ease to the public in dealing with estate cases, its existence may have cause confusion to the public, especially to the Muslim subjects who needs to deal with more than one institution. While the laws applied are exclusive to each country, the process is rather similar since both apply to the same system, that is via the application and issuance of letters



of representation. The concept is a blueprint from the English common law system which was retained and modified accordingly. There are ongoing efforts being made to increase the jurisdiction of the Syariah Courts in Malaysia in a way that it can issue its own letters of representation, similar to the civil courts. This effort should be the paramount objective in elevating the status and position of the Syariah Courts in Malaysia to a higher level and on par with its civil courts counterparts.

### **Conclusion**

The study of estate administration in Malaysia and Brunei reveals differences and similarities in their legal frameworks which are influenced by civil law, Islamic law, and customary laws. The dual legal system in Malaysia for example, involves both civil and Syariah Courts that govern the needs of its diverse population. Similarly, Brunei also distinguishes between Muslim and non-Muslim inheritance through civil and Syariah law but operates under a more unified jurisdictional framework. This distinction influences the involvement of various administrative bodies where Malaysia relies on multiple administrative bodies namely the Civil High Court, Amanah Raya Berhad, and the Estate Distribution Division, whereas in Brunei, the system primarily involves the Probate Office and the Syariah High Court. The study also identifies several key issues in the estate administration practices of both Malaysia and Brunei and offers recommendations to address these challenges. In Malaysia, issues about conflicts between civil and Syariah Courts, particularly in cases of conversion to Islam require coordination from both to create harmonisation of laws as well as positive, consistent processes between the two legal systems. In addition, boosting public awareness through educational programs can bridge the knowledge gap among beneficiaries and family members, reducing delays and misunderstandings. Also in Malaysia, the existence of multiple administrative bodies which causes confusion can be addressed through streamlining the procedures and clearly defining the jurisdictions of each body, making the process more efficient.

As Brunei also encounters similar problems with insufficient information and knowledge gaps among beneficiaries, comprehensive public education initiatives and accessible resources can help the family members to understand the process better and this will not only be able to reduce the occurrence of family disputes, but also minimise the delays in estate administration cases. To conclude, addressing these challenges requires active involvement from policymakers, legal practitioners, and the broader society. Policymakers can enhance the coordination between civil and Syariah legal systems while legal practitioners should also participate in educating the public and guiding them through the overall complex estate administration process. This community-based educational initiative can empower the society to understand and navigate the process better and more effectively. By working together, stakeholders and society can create a more integrated and efficient inheritance management system in both Malaysia and Brunei, addressing current challenges and ensuring transparency and fairness in the process.

### **Acknowledgement**

This article is funded by the International Islamic University Malaysia (IIUM).



**Bibliography:**

Ahmad Razimi, Mohd Shahril. "Concept of Islamic Inheritance Law (Faraid) in Malaysia: Issues and Challenges." *Research Journal of Applied Sciences* 11, no. 12 (2016): 1460–64.

Ayus, A. Mohaimin. "The Probabilities of Integrating and/or Islamizing Law and Sharī'ah Learning or Vice Versa." *AR-RĀ'IQ* 6, no. 1 (June 29, 2023): 115–46. <https://doi.org/10.59202/riq.v6i1.675>.

Black, E. Ann. "Brunei Darussalam: Ideology and Law Malay Sultanate." In *Law and Legal Institutions of Asia: Traditions, Adaptations and Innovations*, edited by Gary F. Bell and Ann Black. New York: Cambridge University Press, 2011.

Daniels, Ronald J., Michael J. Trebilcock, and Lindsey D. Carson. "The Legacy of Empire: The Common Law Inheritance and Commitments to Legality in Former British Colonies." *The American Journal of Comparative Law* 59, no. 1 (January 1, 2011): 111–78. <https://doi.org/10.5131/AJCL.2010.0015>.

Halim\*, Akmal Hidayah, Nor Azlina Mohd Noor, and Azhani Arshad. "Administration of Unclaimed Estates in Malaysia: The Peculiarities of Unclaimed Money, Undistributed Fund and Bona Vacantia." *The Journal of Social Sciences Research*, 2018, 1075-1079:6.

Ibrahim, Inche Ahmad. "The Muslims in Malaysia and Singapore: The Law of Matrimonial Property." In *Family Law in Asia and Africa*. Routledge, 1968.

Intajalle, Feirul Maliq, Luqman Haji Abdullah, Abdul Karim Ali, and Mohd Roslan Mohd Nor. "Islamic Inheritance Law among Muslim Minority Countries in Southeast Asia." *Middle East Journal of Scientific Research* 12, no. 1 (2012). <https://doi.org/10.5829/idosi.mejsr.2012.12.1.1675>.

Maimanah, Maimanah, M. Fahmi al-Amruzy, Arni Arni, and Siti Faridah. "Delay in the Division of Inheritance: A Theoretical Review within Legal System Framework in Indonesia." *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (June 1, 2024): 241–57. <https://doi.org/10.18592/sjhp.v24i1.12916>.

N, Edzan N. "Malaysian Legal Sources: Print." *Malaysian Journal of Library and Information Science* 5, no. 1 (July 1, 2000): 19–36.

Nasohah, Zaini. "Dynamics of Islamic Family Law in Facing Current Challenges in Southeast Asia." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (January 6, 2024): 1. <https://doi.org/10.22373/sjhk.v8i1.16553>.

Nasrul Hisyam Nor Muhamad. "Wasiat Sebagai Instrumen Perancangan Harta Islam: Prosedur Dan Pelaksanaan." *Jurnal Hadhari* 9, no. 1 (2017): 17–32.

Nasrul, Muhammad Amrullah Drs, Zati Ilham Abdul Manaf, Syafwendi Syafril, and Moh Fathurrohman. "An Overview of the Inheritance Legal System in Malaysia and Indonesia: Issues Faced by Both Countries." *Journal of Shariah Law Research* 6, no. 2 (December 8, 2021): 181–200.

Nasution, Zulhija Yanti, Syadidul Kahar, and Muhammad Irsan Barus. "Wife's Income and Asset Position: A Comparative Study of Indonesia, Malaysia, Türkiye and Brunei Darussalam." *Syarah: Jurnal Hukum Islam & Ekonomi* 13, no. 2 (December 16, 2024): 225–49. <https://doi.org/10.47766/syarah.v13i2.4991>.

Noor, Nor Azlina Mohd, and Ahmad Shamsul Abd Aziz. "Empowering Personal Representatives' Statutory Duties in Administration of Deceased's Estates."



*Environment-Behaviour Proceedings Journal* 7, no. SI11 (December 20, 2022): 15–20. <https://doi.org/10.21834/ebpj.v7iSI11.4167>.

Nur Amalia Firdaus, Seilla, Siah Khosyiah, and Murni Rossyani. “Pembaharuan Hukum Keluarga Islam: Studi Perbandingan Hukum Keluarga Di Brunei Darussalam Dan Malaysia.” *Zaaken: Journal of Civil and Business Law* 5, no. 2 (June 23, 2024). <https://doi.org/10.22437/zaaken.v5i2.35264>.

Quraishi, Muzammil. “The Malaysian Criminal Justice System: History Context and Development.” In *Towards a Malaysian Criminology: Conflict, Censure and Compromise*, edited by Muzammil Quraishi, 5–27. London: Palgrave Macmillan UK, 2020. [https://doi.org/10.1057/978-1-37-49101-5\\_2](https://doi.org/10.1057/978-1-37-49101-5_2).

Sabtu, Mohammad Arif, and Siti Mashitoh Mahamood. “Kaedah Muafakat Dalam Pembahagian Harta Pusaka Orang Islam: Kajian Di Mahkamah Tinggi Syariah Negara Brunei Darussalam: Consensual Agreement Method in Muslim Estate Distribution: A Study in the Shariah High Court Brunei Darussalam.” *Journal of Shariah Law Research* 2, no. 1 (May 18, 2017): 21–36. <https://doi.org/10.22452/http://doi.org/10.22452/JSLR.vol2no1.2>.

Shafie, Fazira, Wan Yusoff Wan Zahari, and Syed Muhammad Dawilah al-Edrus. “Islamic Real Estate Management:Review on Issues and Challenges in Managing Inheritance Property in Malaysia.” In *7th IRERS 2014 Proceedings*. Kuala Lumpur, 2014. [https://www.researchgate.net/publication/263083792\\_ISLAMIC\\_REAL\\_ESTATE\\_MANAGEMENTREVIEW\\_ON\\_ISSUES\\_AND\\_CHALLENGES\\_IN\\_MANAGING\\_INHERITANCE\\_PROPERTY\\_IN\\_MALAYSIA](https://www.researchgate.net/publication/263083792_ISLAMIC_REAL_ESTATE_MANAGEMENTREVIEW_ON_ISSUES_AND_CHALLENGES_IN_MANAGING_INHERITANCE_PROPERTY_IN_MALAYSIA).

