

# Administration of Unclaimed Estates in Malaysia: The Peculiarities of Unclaimed Money, Undistributed Fund and *Bona Vacantia*

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## Abstract

Issues relating to the complexities of unclaimed estates have become a national concern and a major recurring problem as the value of such estates is growing annually. However, despite the constant reports on the increasing value of unclaimed estates, it is very unfortunate that the exact types of unclaimed estates remain hitherto uncertain and not specifically identified. Hence, this paper aims to examine the peculiarities of unclaimed estates in the administration of the deceased's estate in Malaysia. The main focus is to analyse the position of the unclaimed money, the undistributed fund and the case of *bona vacantia* for the estate of a person dying intestate and leaving no heir to inherit accordingly. The discussion adopts the doctrinal analysis by examining the existing primary and secondary materials including statutory provisions, case law and other legal and non-legal literatures. The paper finds that the existence of various laws that governs different types of unclaimed estates has led to the distinctive methods in the administration and management of such estates. Hence, it is highly important that these types of estates together with legal and procedural mechanisms relating to the administration of such estates are clearly identified so that productive elements of such estates would be activated to the advantage of the rightful beneficiaries.

**Keywords:** Unclaimed estates; Unclaimed money; Undistributed fund; *Bona vacantia*; Malaysia.

**Jel Classification:** G11; G12; G21.



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## 1. Introduction

In a globalised world, estate administration has become more complex and challenging with the emigration and relocation of families. It is thus not uncommon for a person to have properties and investments in many countries that are left unclaimed even after his death. In some cases, the whereabouts of the deceased's beneficiaries are not known and the estate remains undistributed upon the conclusion of estate administration. Eventually, the deceased might not even leave anyone to inherit his estate. In such cases, the estates would be categorised as unclaimed estates and could not be dealt with until and unless the existence of the rightful beneficiaries are ascertained.

Issues relating to unclaimed estates also arise due to the ignorance of the beneficiaries relating to estate administration procedures that need to be followed, while some of the beneficiaries consider the process of estate distribution as being slow, expensive and inconvenient, causing the deceased's estates to be frozen, thus leaving the estates idle and unmanaged. The unofficial ownership status of the unclaimed estates has resulted in unlawful claims by the fraudsters. In such cases, productive elements of the estates would be deactivated to the disadvantage of the beneficiaries who are losing out on potential benefits or utilities that they could derive from the ownership of the estates.

Hence, this paper aims to examine the peculiarities of unclaimed assets in the distribution of the deceased's estate in Malaysia. The main focus is to analyse the position of the unclaimed money, the undistributed fund and the case of *bona vacantia* together with the distinctive statutory provisions that govern the administration of each and every type of the unclaimed estates so that the rightful beneficiaries could be ascertained and ownership of such estates could be transferred accordingly. The discussion adopts the doctrinal analysis by examining the existing primary and secondary materials including statutory provisions as provided by inter alia the Unclaimed Money Act 1965, Probate and Administration Act 1959, Small Estates (Distribution) Act 1955, Public Trust Corporation Act 1995, Civil Law Act 1956, Distribution Act 1958, National Land Code 1965 and State Enactments, case law and other legal and non-legal literatures.

## 2. Methodology

Due to the nature and scope of the study, this paper adopts a qualitative doctrinal analysis method. Doctrinal analysis is done by examining materials including statutory provisions in Malaysia as provided by the Probate and Administration Act 1959, Small Estates (Distribution) Act 1955, Public Trust Corporation Act 1995, the Unclaimed

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Money Act 1965, Civil Law Act 1956, Distribution Act 1958, National Land Code 1965, State Enactments, and case law as well as other legal and non-legal literature such as textbooks, articles, newspapers clippings, conference proceedings and seminar papers. A review of relevant literature on issues pertaining to the unclaimed estates also entails significant time spent on library research through a content analysis method. It will look into the distinctive statutory provisions in Malaysia that govern the administration of each and every type of the unclaimed estates so that the rightful beneficiaries could be ascertained and ownership of such estates could be transferred accordingly.

### 3. Research Question

This paper aims to examine what are the peculiarities of unclaimed assets in the distribution of the deceased's estate in Malaysia. The main focus is to analyse what are the current position of the unclaimed money, the undistributed fund and the case of *bona vacantia* in Malaysia.

### 4. Literature Review

The reported issues of unclaimed estates in Malaysian local newspapers have spurred alerting message to the public and the authority concerned that some efforts should be done to resolve the problem. Recently, it has been reported that since 1977 there are about RM 5.8 billion of unclaimed moneys in the possession of Accountant General's Department of Malaysia (Farhana, 2017). Back then, local newspapers had also reported that in 2006, there were more than million inheritance cases worth approximately RM38 billion left unclaimed (Abdul, 2006). It was also reported that the actual figure could be much higher, as it did not include unclaimed monies in various agencies and financial institutions. The figure had increased to RM40 billion in 2007 until 2010 (Patrick, 2010) and RM42 billion in 2011 (Hakimi, 2011). Owing to the rise in property values and increasing inheritance claims made by heirs, as well as those with interest on deceased's estates, the figure was reported to increase drastically to RM52 billion in 2013 (Badrul Hafizan Mat Isa, 2013) and further up to RM66.6 billion in the same year (Zaain, 2013). The latter was based on the statistic from the Department of Islamic Judiciary of Malaysia (Ilah, 2016). However, recently, in a number of local dailies, RM60 billion was reported to be the latest value of the unclaimed estates in West Malaysia (Rusnadewi and Noor, 2010) thus lesser than what had been reported back in 2013. Although there are no official reports or statistics that could be found specifically on the said matters except for some uncorroborated and anecdotal evidence reported in newspapers, such data has been referred to and cited as an authority by many writers (Akmal and Nor, 2016) in their discussions relating to the value of unclaimed estate.

Interestingly, most of the findings of the studies show that problems on unclaimed estates occur as a result of several contributing factors which include, undermining the importance of Islamic estate planning especially among Muslims and ignorance of the beneficiaries relating to the procedures that need to be followed, while some of the beneficiaries are said to be apathetic in claiming their rights due to lack of time, the high expenses incurred and an inconvenient bureaucratic process (Ahmad, 2008). Another factor that contributes to the increasing number of unclaimed estate is the rising of income levels and asset possession of Malaysian year-on-year (Abdullah, 2007). Hence the rising of income will subsequently increase the value of deceased's estate and if it is not properly administered, it will result in the increasing number of unclaimed estates. Furthermore, Abdullah stressed that the reported amount does not include cash and movable property which are still in the safe keeping of financial institutions and other government agencies such as Amanah Raya Berhad, Employees Provident Fund and Malaysian Treasury Department (Nor and Fairul, 2016). In addition, it was also reported that since the establishment of Amanah Raya Berhad until January 2016, there is RM 233 million of money that waiting to be administered (Farhana, 2017).

From the review of the above literatures, it could be seen that reference to unclaimed estates has always been made in general and none of the literatures has specifically identified and distinguished the types of unclaimed estates in forms of unclaimed money, undistributed fund and also *bona vacantia*. Hence the time is ripe to clarify the distinctive features of unclaimed estates so that the position of each type of such estates could be properly identified to the advantage of the potential estate beneficiaries.

### 5. Peculiarities of Unclaimed Estates

Unclaimed estates can generally be classified into three types namely, unclaimed money, undistributed fund and *bona vacantia*.

#### 5.1. The Peculiarity of Unclaimed Money

Issues on unclaimed moneys have currently becoming a public eye in Malaysia. As of recently reported, a staggering RM5.779 billion remains unclaimed by Malaysians, all the way from 1977 up to June 30 this year (Akmal, 2016). The unclaimed money is mainly made up of inactive bank accounts, unclaimed fixed deposits that have expired, insurance pay-outs and interests. The sum is being held in trust by the Registrar of Unclaimed Moneys in the Accountant-General's Department.

Moneys in the entity's savings will only be unclaimed moneys if the moneys is payable under the law but is still not paid within the specified period of time according to the provisions of the Unclaimed Moneys Act 1965. By referring to Section 8 of the Act, unclaimed moneys in Malaysia are statutorily classified into three specific categories. The first categories is all sums of money which are legally payable to the owner and have remained unpaid for a period of not less than one year after they have become payable. The second category is all sums of money to the credit of an account that has not been operated in whatever manner by the owner for a period of not

less than seven years. The last category is all sums of money to the credit of a trade account which has remained dormant for a period of not less than two years. Each category is illustrated in the following Table 1:

**Table-1.** Categories of Unclaimed Moneys in Malaysia

Categories	Types of unclaimed moneys
First category	<ul style="list-style-type: none"> <li>• salaries, wages, bonuses, commissions and other payments due to employees,</li> <li>• dividend</li> <li>• Profits declared for distributions;</li> <li>• Insurance claims which have been approved for payment;</li> <li>• Bank draft, cashier's order and other documents of similar nature which validity period have lapsed;</li> <li>• Fixed deposits (without automatic renewal instructions) which have matured;</li> <li>• Tender deposits for which the intended purpose has been fulfilled;</li> <li>• Sundry creditors or sundry debtors with credit balance.</li> </ul>
Second category	<ul style="list-style-type: none"> <li>• Saving account;</li> <li>• Current account;</li> <li>• Fixed deposit (with automatic renewal instructions).</li> </ul>
Third category	<ul style="list-style-type: none"> <li>• Trade creditors account</li> <li>• Trade debtors account with credit balance.</li> </ul>

\*Source: Accountant General's Department of Malaysia, 2017

The Registrar of Unclaimed Moneys who is responsible for carrying out the obligations and functions vested under Part II of the Unclaimed Moneys Act 1965 is also empowered to act as trustee to unclaimed securities belonging to the public. These unclaimed securities consist of shares, bonds and other financial instruments which are transferred to the Government in the name of Minister of Finance and Accountant General under the various Acts such as Section 14, 29 and 30 of Securities Central Industry Depositories Act 1991 (SICDA), Section 65 Trustee Act 1949, Section 36 Trust Companies Act 1949 and Section 353 Companies Act 1965. Although these securities are transferred to the Minister of Finance or the Accountant General, the Government still maintains the record of original owners for the sole purpose of returning these securities/proceeds thereof to the owners/their heirs sometime in the future. All proceeds due to the unclaimed securities in the form of dividends, interest and proceeds from the sale of securities are firstly accrued in the records to the owner before the money is lodged with the Registrar of Unclaimed Moneys where it will be subjected to Unclaimed Moneys Act 1965. There is no limitation of period with regards to this matter and therefore its owner can recover the moneys from the Registrar in accordance with the provisions of Part II of the Act at any time as he wishes.

In the event where the owner has died, his personal representative by Section 8 of the Act (where the section define owner to include personal representative namely executor or administrator), can step into the owner's shoes to recover the moneys from the Registrar on behalf of the deceased's estates. The personal representative must provide sufficient proof of identification to proof his locus standi and to validate the claim. In this case the procedure of estate administration as provided by Probate and Administration Act 1959 or Small Estates (Distribution) Act 1955 will be applicable as no person will have legal authority whatsoever to institute any action or to act on behalf of the deceased's estate until he or she had applied to the respective administrative bodies for letters of representation (Probate and Administration Act 1959). The documents may include Grant of Probate or Letters of Administration in the case of non-small estates as provided under Probate and Administration Act 1959 or Form E or Form F for small estates under the Small Estates (Distribution) Act 1955.

## 5.2. The Peculiarity of Undistributed Fund

There are cases where the estate remains undistributed upon the conclusion of the estate administration. Eventually, the remaining of the estates would be considered as undistributed fund and may be passed to the Corporation (Amanah Raya Berhad). This is clearly provided by section 86(1) of Probate and Administration Act 1959 that states that "Where upon the conclusion of the administration of the estate of a person dying testate or intestate, there remain in the hands of any personal representative funds of which he is unable to dispose immediately by distribution in accordance with law by reason of the inability of the person entitled to give discharge, through lack of legal capacity or otherwise, or by reason of any cause which to the Corporation ([Section 6\(1\)\(j\) of the Distribution Act 1958](#)) shall appear sufficient, the personal representative may, if the Corporation consents to accept the same, pay the funds to the Corporation which shall not be required to make any inquiry whether the administration has been conducted in accordance with law, but may accept the same for the benefit of that person and may for the purpose exercise all the powers conferred on the Corporation under section 19 of the Public Trust Corporation Act 1995".

Similarly, section 16 of the Small Estates (Distribution) Act 1955 relating to the procedure after hearing particularly on the distribution order made by the Land Administrator also provides for the administration of undistributed funds. The section states that the Land Administrator shall deposit a sum of money which is payable to any person with the Corporation under or by virtue of distribution order in cases where the whereabouts of the deceased's beneficiaries are not known, or due to the inability of the person entitled to give discharge through lack of legal capacity, or for any other reason it is not practicable to pay such sum of money to such person.

The provision for undistributed funds is also provided by section 20 of the Public Trust Corporation 1995 which states: "Where, upon the conclusion of the administration of the estate of a person dying testate or intestate, there remains with the Corporation funds of which it is unable to dispose immediately by distribution in accordance with law by reason of the inability of the person entitled to give discharge, through lack of legal capacity or otherwise, or by reason of any other cause which to the Corporation appears sufficient, the Corporation may apply the same for the benefit of that person and may for the purpose exercise all the powers under section 19".

Once the money has been deposited with the Corporation, it shall hold such sum as trustee for the person entitled to it, and may apply the same for the benefit of that person, or may pay the said sum to that person if he makes a claim thereto in writing and the Corporation is satisfied as to his identity, entitlement and legal capacity to receive it.

### 5.3. The Peculiarity of *Bona Vacantia*

Where a deceased dies intestate (without leaving a valid will) and there is no available next of kin, his immovable estate escheats to the State Government as *bona vacantia* (ownerless goods). For non-Muslims, however, the law anticipates any custom which may subsist and divide the remainder of the estate in accordance with the provisions of the Distribution Act 1958. The scheme of distribution of the intestacy is provided by section 6 of the Distribution Act 1958. If no person takes an absolute interest under (Section 6(1)(j) of the Distribution Act 1958), then the Government of Malaysia will be entitled to the whole of the personal estate as *bona vacantia* (Sihombing, 2012). This is also provided by section 24 of the Civil Law Act 1956:- When a right to the personal estate of any person who dies intestate without next of kin has accrued to the Government, the personal estate or the proceeds thereof shall form part of the Consolidated Fund and shall be appropriated as part of the Fund to such public purposes as the Yang di-Pertuan Agong from time to time thinks proper and directs: Provided that the Yang di-Pertuan Agong may by warrant order the transfer of the whole or any part of such personal estate or the proceeds thereof to any person who shall establish to the satisfaction of the Yang di-Pertuan Agong any equitable or moral claim thereto.

As for ownerless immovable estate, section 351 of the National Land Code 1965 has clearly stipulated that such land will revert to the respective State Authority. However, the position of ownerless land was rather different in the case of *Re Soo-Hoo Hem Leng* (1963) MLJ 38. In this case, the administrator to the estate of the deceased took out court proceeding to ascertain whether the deceased died leaving any ascertainable next of kin and if there were none whether his estates accrued to the Government of the Federation of Malaya (as it was then). It was held that although the deceased's immovable properties were situated in Penang and Perak, the law applicable in Penang in 1942 was English law and due to the result of constitutional changes, the Government of the Federation of Malaya was entitled to the property as *bona vacantia*.

In relation to the reversion of the alienated land to the State Authority under section 351 of the National Land Code 1965, it is to be noted that it does not take immediate effect upon the death of the deceased. The application by way of originating summons must firstly be made to the court to ascertain who are entitled to the estate of the deceased. The land will thereafter revert to the State Authority within 1 year or any time limit extended by the court (Hooker, 1986). Upon reversion of such land, it reverts as state land and will become available for re-alienation in accordance with state policy.

Nevertheless, the reversion will not proceed in cases where there is any party entitled to seek probate, letters of administration or distribution of a small estate applies to do so or where the former proprietor namely the deceased had executed an instrument of dealing with regard to the land or its share.

*Bona vacantia* is also applicable where there is an intestacy as to the residuary estate (construction of the will lack of residuary clause) and the testator has no next of kin, or where the deceased who is entitled to a pecuniary legacy under a will has died without next of kin. In *Re Will of Samuel Emily, deceased* [2001] SGHC 299, the court ordered that in an intestacy as to the residuary estate of the testatrix, the residuary estate should be paid to the State after all gift and expenses have been paid out, without the need to place any moneys with the Public Trustee for any period of time.

In considering the same issue but with reference to Muslim law, the law of *faraid* provides that the residue of the estate shall go to *Baitulmal*. The term *Baitulmal* refers to the public treasury in an Islamic state. It is a body constituted under the State Administration of Islamic Law enactments and operates under the State Islamic Council. Amongst its function is to administer the residue of the Muslim deceased estate in accordance with the Shariah principle. Thus, when a Muslim dies leaving no residuary heirs, his estate will devolve upon the *Baitulmal*.

The entitlement of the *Baitulmal* to the residuary portion of the deceased's estate has been recognized by the court in the case of *Itam binti Saad v Chik binti Abdullah* [1974] 2 MLJ 53. In this case, the deceased died leaving a surviving spouse or widow and a daughter (without any male issue). The Judge held that in accordance to Shariah law of distribution, the daughter was entitled to 7/16 shares, the widow 2/16 shares and the remaining 7/16 shares of the land of the deceased went to *Baitulmal*. Similarly, in *Re Mutchilim @ Ashrhin, Deceased; Ji Mawar v Attorney General* (1960) MLJ 25, it was held that where a deceased died leaving a widow but no next-of-kin, the widow was entitled to a quarter-share and the remaining three-quarter would go to the State Treasury. This principle also governs the estate of the deceased who had converted to Islam leaving non-Muslim heirs. This is established in *Re Timah binti Abdullah, Deceased* (1941) MLJ 51 and *Majlis Agama Islam, Wilayah Persekutuan v Lim Ee Seng & Ors* [2000] 2 CLJ 597.

The right of *Baitulmal* in the deceased's estate has also been statutorily acknowledged in the proviso to section 13(1) of the Small Estates (Distribution) Act 1955. The sub-section stipulates as follows:



“At the conclusion of the hearing the Land Administrator shall by his order make provision for the payment out of the estate of the estate duty, if any, and of the funeral expenses and debts of the deceased, wherever arising, and for the repayment to any person of any fees paid by that person under this Act and may, if necessary, direct the whole or such part of the estate as he may specify to be sold and the expenses, debts, fees and duty to be paid from the proceeds of the sale and subject thereto and to the following provisions of this section shall distribute the residue of the estate according to their respective shares and interests among the beneficiaries but subject to section 15:

Provided that where there is in force any written law relating to *Baitulmal* the Land Administrator shall before distributing any part of the estate of a deceased Muslim satisfy himself that any share of the estate which is due to the *Baitulmal* has been duly paid or proper provision made for the payment thereof.”

## 6. Conclusion

Whilst all the unclaimed assets may form part of the deceased's estate, they are of different types and governed by different law and procedure. There are generally three types of unclaimed estates namely, the unclaimed money that is put under the custody of the Registrar of the Unclaimed Money, the undistributed fund that is held on trust by the Corporation and the case of *bona vacantia* whereby personal estate of the deceased accrues to the Government and the real estate reverts to the State Authority, with the exception to the rights of *Baitulmal* in the deceased Muslim's estate. Undeniably, the existence of various laws that govern different types of unclaimed estates has led to the distinctive methods in the administration and management of such estates.

Since the type of estates left by the deceased may come in form of immovable and movable which are governed by various law and distinctive rules, it is thus crucial that these types of estates together with legal and procedural mechanisms relating to the administration of such estates are clearly identified so that productive elements of such estates would be activated to the advantage of the rightful beneficiaries particularly when there are no proactive efforts on part of the authorities to trace the rightful beneficiaries, thus resulting in a fast growing numbers of unclaimed estates.

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## References

- Abdul, H. Y. (2006). *RM38b Pusaka Belum Dituntut*. Berita Harian.
- Abdullah, M. (2007). *Ke Arah Penyelesaian Harta Pusaka Kecil Yang Lebih Bersepadu Cekap Dan Cemerlang*. Konvensyen Perwarisan Harta Islam 2007: Kuala Lumpur.
- Ahmad, H. B. (2008). Appreciation of Syari'ah Principles in Property Management in Contemporary Malaysia Society. *Shariah Journal*: 16.
- Akmal, H. H. (2016). *The Law of Wills and Intestacy in Malaysia*. 2nd edn: Mashi Publication Sdn Bhd.: Selangor.
- Akmal, H. H. and Nor, A. M. N. (2016). Fiduciaries in the Administration of the Deceased's Estate, The Two Distinct Capacities of Personal Representatives and Trustees. *Current Law Journal*, 8: 1-10.
- Badrul Hafizan Mat Isa (2013). *Harta Pusaka Tertunggak RM52b*. Utusan Malaysia.
- Farhana, S. N. (2017). *More than RM5 Billion remain unclaimed by Malaysian*. New Straits Times.
- Hakimi, I. (2011). *Harta Pusaka RM42b Dibeku*. Utusan Malaysia.
- Hooker, M. B. (1986). Malaysian legal essays, A collection of essays in honour of professor emeritus datuk Ahmad Ibrahim. *Malayan Law Journal Sdn Bhd.*:
- Ilah, H. A. (2016). RM60b Harta Umat Islam Tidak Dituntut, Estates worth RM60 bil Left Unclaimed.
- Nor, A. M. H. and Fairul, A. M. P. (2016). *RM233j Tependam Tunggu Tuntutan*. Harian Metro.
- Patrick, S. (2010). *RM40 Billion Waiting to be Given to Heirs, 21 January 2007, Raja Shahrir Abu Bakar, Pewaris Aset RM40b dicari*. New Sunday Times: Utusan Malaysia.
- Rusnadewi, A. R. and Noor, I. Y. (2010). Masalah Kegagalan dan Kelewatan Pengagihan Harta Pusaka di Malaysia. *Jurnal Intelek*, 5(2):
- Section 6(1)(j) of the Distribution Act 1958:
- Sihombing, J. (2012). The annotated statutes of Malaysia on national land code. *Malayan Law Journal Sdn. Bhd.*, 7:
- Zaain, Z. (2013). *RM66 Bilion Tidak Dituntut*. Utusan Malaysia.