

# REVIEW ON ISSUES AND CHALLENGES IN ISLAMIC INHERITANCE DISTRIBUTION IN MALAYSIA

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©Ontario International Development Agency ISSN: 1923-6654 (print)

ISSN 1923-6662 (online). Available at <http://www.ssrn.com/link/OIDA-Intl-Journal-Sustainable-Dev.html>

**Abstract:** This paper addresses issues and challenges clients face in claiming rights to Islamic inheritance in Malaysia. After independence, Muslims witnessed changes in the legal system of Malaysia that affected the administration and distribution of Islamic inheritance. The administration of *Syariah* courts is bound by Islamic Laws that were placed in the State List of the Federal Constitution. Constitutional amendments are called for; they may simplify the processes involved, but not without conflict. The Muslims' need to abide by *Syariah*-compliant principles has also not been able to push for the construction of one single complete system that can handle the whole management and distribution process of Islamic inheritance. Over the years, claim processes were very costly and time-consuming. This paper acknowledges that there exists a low awareness among clients of processes and procedures to follow in order to complete a claim submission process, and identifies lack of guidelines to be the main cause of the problem. This paper is a part of an on-going study that proposes to use a new network flow programming model as an alternative solution to issues and problems associated with the administration and distribution of Islamic inheritance in Malaysia.

**Keywords:** Constitutional Amendments, Islamic Laws, Network Flow Programming, State List, *Syariah*- Compliant

## INTRODUCTION

This paper is a part of an on-going study on the development of alternative solutions to issues and problems associated with the administration and distribution of Islamic inheritance in Malaysia. There has been an increasing trend in volumes of unclaimed inheritance over the years (BERNAMA, 2010; *Dewan Rakyat Parlimen Kedua Belas Penggal Ketiga Mesyuarat Pertama Bil. 11*, 2010; *Rakyat Guides 3*, 2010; Salam, 2006). The accumulation of unclaimed inheritance is a serious problem and needs to be addressed.

The legal system of Malaysia was affected by British colonization. As a result, Malaysian Muslims face constitutional issues related to Islamic inheritance distribution. In addition, they also incurred expensive cost and lengthy time before realizing their claims to estates left behind by a deceased person.

In order to consolidate the affected legal system to the needs of the multi-racial clients in Malaysia, four institutions were initially authorized to manage Islamic inheritance. They were Amanah Raya Berhad (ARB), Civil High Courts, *Syariah* Courts and Office of Land and Mines (Land Office) (Mahamood, 2006c). However, British colonization has limited the jurisdiction of the *Syariah* courts, thus they do not have the authority to distribute Islamic inheritance (Ahmad Bustami, 2007; Buang, 2006a). Muslim clients would like to be assured of a *Syariah*-

compliant Islamic administration and distribution of Islamic inheritance. However, the limitations of the legal system and the need to abide by *Syariah*-compliant principles put together have not been able to produce one single complete system at present that can handle the whole management and distribution process of Islamic inheritance (Abdul Rahman, 2008; Awang, 2008; Mohamad Cusairi @ Khushairi, 2003; W. A. H. Wan Harun, 2009).

The plight of the Muslim clients is not over. It has been observed that Muslims were also handicapped to with no clear guidelines on the processes to follow to claim rights to Islamic inheritance. Due to this, they have over the years endured spending lots of time and money before they are able to realize their rights to the estates (Abd Ralip, 2011; S. G. Abdul Rahman, 2006; Kurang faham punca pengagihan harta lewat," 2010; Mahamood, 2006a; W. A. H. Wan Harun, 2009; Yaacob, 2006).

Constitutional amendments can help simplify some of the processes clients have to through to claim rights to inheritance. About 40 amendments were made in between 1957 and 2010 to the Malaysian constitution (Faruqi, 2011). However, these amendments do not come without conflicts, for example, Article 121 (1A) (Ahmad Bustami, 2007; Mahamood, 2006b; Marican, 2004; Mohamad, 2008; Shuaib, 2003, 2007). Thus, they would not provide the most practical solution to the problem.

#### FOCUS OF PAPER

This study sets out to find other practical alternative solutions to the problem. The administration and distribution process can be modeled as a network, thus this study proposes the use of Network Flow Programming to minimize the time and cost involved in the Islamic inheritance administration and distribution process. However, this paper will only focus on describing the most prominent issues and challenges faced by clients and will centre its attention on Islamic inheritance classified as Small Estates. At present, if the inheritance involves Small Estates, clients can claim their rights to the estates by submitting completed forms to the Land Office. They can opt to self-apply, to contract the services of lawyers, or to apply via ARB (Abdul Rahman, 2008; Lee, 2008; Mahamood, 2006a; W. A. H. Wan Harun, 2009).

In line with this focus, this paper will present its views from five perspectives: i) *Syariah*-compliant principles of Islamic inheritance distribution, ii) History and its impact on inheritance distribution, iii) Time, cost and constitutional issues in the present Islamic inheritance distribution process, iv) Analysis of current approaches to the problem, and v)

Unawareness of clients. This is followed by significances of discussions and then conclusion.

#### **Syariah-compliant principles of Islamic inheritance distribution**

Muslim clients would like to be assured of a *Syariah*-compliant Islamic distribution in the administration and distribution process of Islamic inheritance. *Syariah*-compliance demands that four claims on the total inheritance of the deceased must be fulfilled, namely, i) funeral expenses i) payment of debts owed by the deceased, iii) execution of a valid will, and iv) distribution of estates among inheritors (Abdul Hai 'Arifi, 2000; Awang, 2008; Bakar, 2006; Zuhaili & Ali Shabuni, 2010).

To comply with these four claims, clients have to go through two processes in order to claim rights to inheritance. At the end of these processes, clients submit a completed claim form to the respective institution. In particular, distribution of Small Estates will only take place once the claim form (Form A or Form P) along with all the required certified documents are submitted for processing at the Land Office (*Buku Panduan Permohonan Pusaka Kecil, n.d.; Small Estates (Distribution) Act 1955 (Act 98) & Regulations, 2007*).

Islam governs the transfer of wealth upon death from a deceased person to living heirs in the form of money, land, or other rights as required by *Syariah*. It rules that at least two third of the estate can be inherited by various categories of relatives and permits one third to be bequeath in a will (Ahmad Bustami, 2007; Ali Al-Shabuni, 2006; Bakar, 2006; Powers, 2006; Zuhaili & Ali Shabuni, 2010). This transfer will only take place upon fulfilling compulsory obligations to the dead, by settling the first three listed claims on the inheritance (Abdul Hai 'Arifi, 2000; Ali Al-Shabuni, 2006; asy-Syafi'i, 2009; Bakar, 2006; *Inheritance (Family Provision) Act 1971 (Act 39) & Distribution Act 1958 (Act 300)*, 2010; A. Muhammad, 2009; *Small Estates (Distribution) Act 1955 (Act 98) & Regulations, 2007*; W. A. H. Wan Harun, 2009). The completion of these tasks marks the success on the first process.

The second process involves activities where clients validate three types of documents (W.A.H. Wan Harun, 2011). Muslims are required to comply to the principles of *al-muwarrith* (determination of the type of death by the deceased), *al-warith* (certification of an existing list of heirs and sharers), and *al-mauruth* (confirming the existence of estates), respectively (Abdul Rahman, 2008; Awang, 2008; Zuhaili & Ali Shabuni, 2010). The legal process involves certifying all documents related to these principles (Abdul Rahman, 2008; Mahamood, 2006b; W.A.H. Wan Harun, 2008, 2011).

These processes seemed easy to follow. However, over the years, both these processes have proven to be difficult for majority of clients to handle. They have to incur spending lots of time and money before their claims are realized (Abdul Rahman, 2008; Bakar, 2006; W.A.H. Wan Harun, 2011; Yaacob, 2006).

### **History and its impact on inheritance distribution**

The paper will take a look at history to understand the impact of British colonization on the legal system of Malaysia. Before independence, the British administrative policies managed to displace some Islamic laws and “marginalized the *Syariah* courts” (Shuaib, 2003). Although Islam was listed as the religion of the federation after independence, this endorsement was not able to place Islamic laws in the Federal list of the Federal Constitution (Abd. Majid, 1997; Nasohah, 2004).

Islamic inheritance distribution is very much dependent on the legal system. The following sections will describe seven major changes brought about by British colonization that affected not only the administration and distribution process of Islamic inheritance but also the heirs of Islamic inheritance.

### **Dual system of courts**

The legal system of Malaysia functions on two court system: a civil court and a *Syariah* court. practices a dual system of courts. Civil courts were set up under article 121 of the Malaysian Constitution and command the larger portion of the constitution, thus all Malaysians are subject to this jurisdiction (Shuaib, 2003). On the other hand, *Syariah* courts were set up by the States and these courts administer Islamic law only on Muslims (N. Abdul Rahman, 2006; Mohamed Ibrahim, 2000; Z. Zakaria, 2006).

The Federal Constitution cannot be used to determine the authority of the *Syariah* courts to issue judgments. However, there are no provisions in the State laws to issue judgments on some cases, thus the functions of the *Syariah* courts cannot be properly executed, such as cases involving a non-Muslim. Due to this, clients have to process their inheritance cases through both Civil and *Syariah* Courts which will cost time and money (Buang, 2006b; Shuaib, 2003, 2007).

### **Clause (1A) to article 121**

Clause (1A) was added to article 121 after Parliament passed the Constitutional (Amendment) Act 1988. LRB (2009) displays the provision of this clause as “The courts referred to in Clause (1) [High courts and inferior courts] shall have no jurisdiction in respect of any matter within the jurisdiction of the *Syariah* courts.”

Prior to 1988, many decisions made by the *Syariah* courts were overturned by the civil courts (Ahmad Bustami, 2007; Buang, 2006a; Marican, 2004; Shuaib, 2003, 2007). The inclusion of Article 121 (1A) to the Constitution did not guarantee total non-interference from the civil courts. There were instances where *Syariah* courts were not conferred the jurisdiction to preside over the case (Ahmad Bustami, 2007; Marican, 2004; Shuaib, 2003, 2007). Although civil courts have the power to decide which court has the jurisdiction to adjudicate a particular case, judges of both courts have the responsibility to promote the general legislative intent behind any provision in order to save time and cost on unnecessary proceedings, as seen in the handling of the *Jumaaton vs Raja Hizaruddin* case (Ahmad Bustami, 2007; Mohamad, 2008; Shuaib, 2003).

### **Placement of inheritance laws in the State List**

The Federal Constitution has three lists: Federal List, State List and Concurrent List. The Federal and State Lists can only be amended by the Parliament and the Legislative Assembly respectively while the Concurrent List can be amended by both Parliament and the Legislative Assembly (*Rakyat Guides 3*, 2010). In particular, Islamic laws on succession, testate and intestate have been placed in the State List (Ahmad Bustami, 2007; Buang, 2006a; *Federal Constitution*, 2009; Mohamed Ibrahim, 2000; Sulaiman, 2006). Thus, only Legislative Assemblies can draft and then enact State laws to amend these Islamic Laws.

The judgments on some civil cases indicate that the *Syariah* courts cannot issue orders within their jurisdiction because there are no provisions in the State Laws that would levy the power to do so (Ahmad Bustami, 2007; Buang, 2006a). In particular, it would of great advantage to the Muslims [in terms of time and money] if the State Laws could draft and enact separate laws on probate and administration for the *Syariah* courts (Ahmad Bustami, 2007; Mohamad Cusairi @ Khushairi, 2003).

### **No total authority over the administration and distribution of Islamic inheritance**

Islamic laws are State Laws, but this does not provide that *Syariah* courts have total authority to handle Islamic inheritance cases. Section 50 of Act 505 stipulates that “If in the course of any proceedings relating to the administration and distribution of the estate of a deceased Muslim, any court or authority, other than the *Syariah* High Court or a *Syariah* Subordinate Court, ..., the *Syariah* Court may on the request of such court or authority, or on the application of any person claiming to be a beneficiary or his representative and on payment by him of the prescribed fee, certify the facts found by it

and its opinion as to the persons who are entitled to share in the estate and to the shares to which they are respectively entitled" (Akta Pentadbiran Undang-Undang Islam (Wilayah-Wilayah Persekutuan) 1993 (Akta 505) dan Kaedah-Kaedah & Administration of Islamic Law (Federal Territories) Act 1993 (Act 505) and Rules, 2010).

This clearly indicates that Federal Constitution has provided the Civil Courts with the jurisdiction to deal with the procedural aspects of the administration of Muslim estates (Abdul Rahman, 2008; Ahmad Bustami, 2007; Mahamood, 2006b; Marican, 2004; Mohamed Ibrahim, 2000; Shuaib, 2003, 2007; *Small Estates (Distribution) Act 1955 (Act 98) & Regulations*, 2007). The civil jurisdiction of the *Syariah* courts only entitles them to hear and determine actions and proceedings dealing with subject matters with a value not exceeding RM50000 (*Administration of Islamic Law (Federal Territories) Act 1993 (Act 505) & Rules*, 2006), which is less than the value of Small Estates.

#### **No uniformity between Islamic laws in all states**

Since Islamic Laws are State Laws, they are not uniformly similar in all states (Buang, 2006a; Sulaiman, 2006). Consequently, there is also no uniformity in the administration of the *Syariah* Courts in all states. Because of this, inheritance claim is confined within the state in which most of the assets are located (Mahamood, 2006b; *Small Estates (Distribution) Act 1955 (Act 98) & Regulations*, 2007). It is really troublesome for a client to claim his inheritance outside the boundaries of the state within which he resides. Thus, the uniformity in the administration of the Islamic Laws across the states is very much welcome.

#### **Limitations of the Faraid Certificates**

*Syariah* courts have limited jurisdiction with regards to Islamic inheritance. *Syariah* courts have the authority to issue *Faraid* certificates that can be used to confirm the list of legal inheritors and their proportionate allocations to the inheritance, and certify a will, if one is present. However, these *Faraid* certificates do not provide the person obtaining them the authority to distribute the inheritance. It is the person who obtains the Letter of Administration from the Civil High Courts that has the power to do that (Mahamood, 2006a; Marican, 2004; *Small Estates (Distribution) Act 1955 (Act 98) & Regulations*, 2007).

#### **No authority to distribute Islamic inheritance**

*Syariah* courts are not authorized to issue an Order for Distribution (Abdul Rahman, 2008; Buang, 2006b; *Federal Constitution*, 2009; Mahamood, 2006a). Although four institutions were originally set

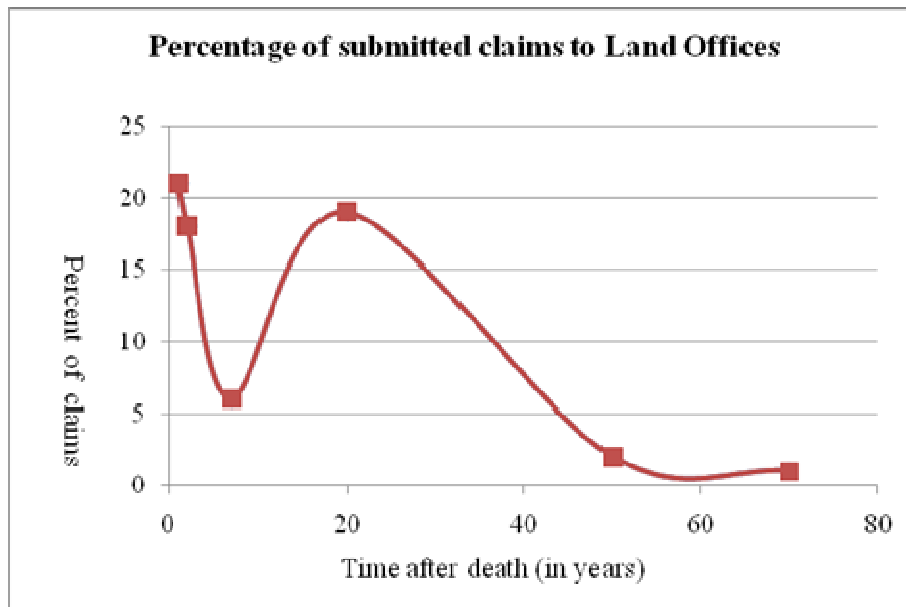
up to administer Islamic inheritance in order to overcome the limitations of the legal system, clients can only claim to distribute inheritance at the other three institutions (Mahamood, 2006a; W. A. H. Wan Harun, 2009). In particular, clients claiming rights to Small Estates can do so at the Land Offices (Abdul Rahman, 2008; Mahamood, 2006a; W. A. H. Wan Harun, 2009).

Using the directives within the Ministerial Functions Act 1969, the deputy managers at the Land Offices are qualified second class magistrates, thus are able to issue *Faraid* certificates (Abdul Rahman, 2008). Hence, Land Offices can now issue their own *Faraid* certificates using the *e-Faraid* software which was embedded into their *e-Tapp* system since 1999 ("USM Plans to Export Software," 2002). There is no necessity for client to go *Syariah* Courts for the *Faraid* certificates if they are submitting their claim forms at the Land Offices but clients still do that (Abdul Rahman, 2008; Mahamood, 2006a).

#### **Time, cost and constitutional issues in the present islamic inheritance distribution process**

Unclaimed inheritance poses a serious problem to the country. There was an increasing trend in the number of unsettled inheritance cases beginning 2005 onwards (Ahmad & Laluddin, 2010). Almost one million land title deeds still belonged to the deceased (Salam, 2006). The gravity of this problem was felt by the nation when it was recently announced in Dewan Rakyat that the number of estates left to be claimed until February 2010 was worth RM72 million. This value will increase to RM38 billion, if these assets are converted to liquidities (BERNAMA, 2010; *Dewan Rakyat Parlimen Kedua Belas Penggal Ketiga Mesyuarat Pertama Bil. 11*, 2010). This paper acknowledges the seriousness of the problem. It will address this problem by discussing three main issues affecting the distribution and inheritance process of wealth of a deceased. They are time, cost and constitutional issues.

The 2007 statistics of number of inheritance claims to Land Offices based on year of death indicated that the percentage number of claims submitted to the Land Offices was still very small (W.A.H. Wan Harun, 2011). This paper observed some interesting patterns in the findings, as displayed in Figure 1. Land Offices in 2007 witnessed that only about 21% of claims were made in the year of death. This percentage dropped until it reached the seventh year after death, then rose back until it reached the peak at twenty years after death. Then the percentage decreased continuously until it reached the 1% for deaths that took place seventy years back.



**Figure 1:** Observed Pattern in Percentage of Submitted Claims to Land Offices

**Table 1:** Amendments to the Small Estates(Distribution) Act 1955

DATE	AMENDMENT MADE TO ACT	SUPPORTING DOCUMENT
May 14 1974	The value of estate increased from RM10000 to RM25000	Federal Government Gazette No. PN. PJ2
June 9 1977	The value of estate increased from RM25000 to RM50000	Act 399 Amendment to Act 98
February 22 1982	The value of estate increased from RM50000 to RM300000	Act A 533 Amendment 1982
January 1 1989	The value of estate increased from RM300000 to RM600000	Act A 702
September 1 2009	The value of estate increased from RM600000 to RM2 million	Act A1331

Source: Abdul Rahman (2008)(2008); Yang (2008); Varughese (2009) & “List of Bills” (*List of Bills*, 2007)

**Table 2:** Suggestions and Recommendations from Previous Works

ITEM NO.	CHRONOLOGY OF AUTHOR ACCORDING TO YEAR	SUGGESTIONS FOR IMPROVEMENTS
1.	Mohamed Ibrahim (2000) Mohamad Chusairi @ Khusairi (2003) Buang (2006) Abdul Rahman (2006) Mahamood (2006) Ahmad Bustami (2007) Shuaib (2007) Awang (2008) Disa (2009) Muda (2009) Wan Harun (2009)	Amending certain laws, or drafting and enacting new laws or statutes to improve the functions of the <i>Syariah</i> courts and to expand the jurisdiction of the <i>Syariah</i> Courts such as Probate and Administration Act, <i>Faraid</i> Act, Hibah Act, or Wasiyyah Act.
2.	Mohamad Cusairi @ Khushairi (2003) Abdul Rahman (2008) Wan Harun (2009)	Centralize all institutions handling Islamic inheritance in the form of "Mahkamah Pusaka" [translated as "Inheritance Court"].
3.	Buang (2006) Abdul Rahman (2008)	Encourage heirs to set up family holdings for land with shared deeds and forming a fund to buy nearby lands that can undergo development
4.	Shuaib (2003) Ahmad Bustami (2007) Shuaib (2007)	Promote general legislative intent behind any provision
5.	Mohamad (2008)	Harmonizing common law and <i>Syariah</i>
6.	Ahmed & Laluddin (2010)	Promote wasiyah and al-wisoyah to manage and disseminate wealth before death to eligible heirs over <i>Faraid</i>

**Table 3:** Efforts to Improve Islamic Inheritance Distribution

EFFORTS	YEAR STARTED
Technical committee headed by Tan Sri Ahmad Ibrahim failed in their effort to set up "pusaka" (inheritance) enactment (Mohamad Cusairi @ Khushairi, 2003).	1989
The bill to restructure the <i>Syariah</i> courts passed on July 3 1993 led to the formation of the <i>Syariah</i> Judiciary Department Malaysia ( <i>JKSM Profile</i> , n.d.)	1998
The <i>e-Faraid</i> software was successfully built by three Universiti Sains Malaysia lecturers to simplify the distribution process according to <i>Faraid</i> ("USM cipta sistem maklumat faraid berkomputer," 1998).	1999
The <i>e-Faraid</i> software was embedded into the JKPTG system (Hussain, 2007).	2000
The seventh e-government project called E- <i>Syariah</i> was set up to form electronic networks between the <i>Syariah</i> courts and other government departments in Malaysia (N. Zakaria, 2004).	2001

Inheritance cases have been left unclaimed for many reasons. Yaacob (2006) reported that it may take up from three to ten years to complete a claim process and there were cases that prolonged to more than twenty years. Clients have also to endure the financial burden associated with the processes that took too long.

The previous section discussed the effects limited jurisdiction of the *Syariah* courts and associated constitutional issues regarding the jurisdiction have on time and money a client spent to claim their inheritance. In particular, for Small Estates cases, this paper believes that had clients known about these effects, they would have submitted their claims at the Land Offices from the start.

The following paragraphs will proceed to look at the Small Estates (Distribution) Act 1955. It is an act used as reference for the administration and distribution process of Small Estates. Amendments have been made to this act from its inception. Table 1 describes the change this act has undergone up to 2009.

Observe in the last two highlighted rows that there was a lapse of more than 20 years between the last two amendments. Although the last bill was passed in 2007, it only took effect on September 1 2009 (Varughese, 2009). This paper stands by the opinion that constitutional amendments can help improve the inheritance distribution process, but there is so much time taken to pass a constitutional amendment and there is added time to get it to be implemented. Thus, constitutional amendment is not the most practical solution to the inheritance distribution problem.

The amendment which took effect on September 1 2009 redefined the term "Small Estates" in the Small Estates Distribution Act of 1955. The words "six hundred thousand ringgit" in Subsection 3(2) of the principal Act were substituted with the words "two million ringgit." Thus, the current definition of the term "Small Estates" includes all assets worth not more than RM2 million (Sittamparam, 2009; *Small Estates (Distribution) (Amendment) Bill 2007*, 2007; W. A. H. Wan Harun, 2009).

This change led to a migration of cases fitting the definition from the High Courts to the Land Offices, causing a 30% increase in the number of claims to Land Offices ("Redistribution of small estates made easier," 2010). Majority of cases are now handled by Land Offices (Sittamparam, 2009). This has brought about a positive change in that majority of clients do not have to allot unnecessary money and time waiting in line for their cases to be heard at the High Court which adheres to the bigger portion of the constitution.

The Land Office was able to resolve 87% of all cases submitted as of December 31 2009, meeting the ministry's KPI which was set at 80%. However, it was only able to settle 40.4% of all new applications within six months, a difference of 5.6% from the original KPI of 50% (*Pencapaian Piagam Pelanggan bagi suku tahun ke Empat 2010 (Oktober - Disember)*, n.d.; Redistribution of small estates made easier," 2010). This paper applauds the proposal to increase number of computerized work stations at all Land Offices beginning 2011 to help fasten delivery services by increasing number of immediate registration of cases. However, the processes involve only cases with completed claim forms and do not include incomplete claim forms. Incomplete claim forms constitute the theme to the issues of time and cost in the distribution and inheritance problem.

### Analysis of current approaches to the problem

It was the intention of the e-government in Malaysia to transform the way government operates as well as how it delivers services to the public. IT advancements were also made to ease the problems of delay in the management of inheritance, such as *e-Shariah* portal ("E-Syariah making courts efficient," 2007; N. Zakaria, 2004), USM's *e-Faraid* software (Abd Majid & Mt Piah, 2005; S. Hamzah, 2002) and e-Tapp system.

In the past before the advance of IT, calculations for the *Faraid* certificates depended on manual calculations. Now, to help produce the *Faraid* certificates, the *Syariah* courts are using the current *e-Syariah* portal ("E-Syariah making courts efficient," 2007; N. Zakaria, 2004) while the Land Offices use the USM's *e-Faraid* software which is embedded in the e-Tapp system (Hussain, 2007). In particular, for Small Estates, there is no denying the fact that e-*Faraid* has helped to simplify the distribution process at Land Offices and has some impact on lessening the process time (Hussain, 2007; *Pencapaian Piagam Pelanggan bagi suku tahun ke Empat 2010 (Oktober - Disember)*, n.d.). However, Hussain (2007) reported there were some inaccuracies between the solutions provided by e-*Faraid* and e-*Syariah*, thus this paper questions the *Syariah*-compliance and the applicability of the system.

In addition, public managers have also testified that e-*Shariah* has helped to reduce the number of backlogs and improve time taken to complete a trial (M. R. Muhammad, 2009), and reduce time to solve some backlog cases on Islamic inheritance. However, amidst these enhancements, the number of unclaimed inheritance cases kept increasing (Ahmad & Laluddin, 2010; *Dewan Rakyat Parlimen Kedua Belas Penggal Ketiga Mesyuarat Pertama Bil. 11*, 2010), thus time reduction attributed to e-*Faraid* and e-*Syariah* is minimal.

Previous studies in this area have presented various perspectives and views on Islamic inheritance distribution and offered suggestions to improve the situation. Table 2 below summarizes the suggestions and recommendations from some of these studies. Some of these suggestions, with the exception of Item No. 2, have been carried out to some extent. Item No. 6 may not be acceptable to some people for the simple reason that appreciation of wealth may occur over time and the decision to divide wealth will still have to be agreed upon after death has taken place.

There were also efforts in the past by individual or group of individuals or the government to improve the administration and distribution process of Islamic inheritance. Table 3 lists out efforts taken by individual or group of individuals or the government to improve the Islamic inheritance distribution.

#### **Unawareness of clients**

This section describes the degree of unawareness among clients of processes and procedures to claim their rights to inheritance. This paper acknowledges that the issue of unawareness has to be dealt with in the best possible manner.

Majority of clients have problems compiling documents to complete the claim form. They are just confused; they do not know where to start, how to proceed and where to go to process a claim to inheritance (Abd Ralip, 2011; Abdul Rahman, 2008; Kurang faham punca pengagihan harta lewat," 2010; Mahamood, 2006a; W. A. H. Wan Harun, 2009; Yaacob, 2006).

At present, it is normal to see a client doing a formal search of the databases or request a copy of the death certificate at the National Registration Department one minute and the next minute the same client is seen at the High court or in front of a Commissioner for Oaths trying to produce a Form of Declaration in place of an untraceable death certificate (Mahamood, 2006a; W.A.H. Wan Harun, 2011). Sometimes documents go missing and cannot be traced. To overcome this, copies of lost documents must be traced at different agencies and these processes take time (Abdul Rahman, 2008; Mahamood, 2006a; W. A. H. Wan Harun, 2009; W.A.H. Wan Harun, 2011).

Not only do clients have to endure lengthy process time, they will also feel the bane in dealing with ARB or lawyers when they have to pay hefty fees. For Small Estates, ARB charges around two to three percent on the value of estates while lawyers polled by the New Straits Times charge between one and 1.5 percent on the value. Not many are aware that it's cheaper to process a claim at the Land Offices (Lee, 2008). Small Estates cases can be easily settled at the Land Office for a fee as low as RM10 and as high as

0.2% of the value of the estates (*Pembahagian Harta Pusaka Kecil*, n.d.).

Not many are aware that in some cases, there is a necessity to appoint a lawyer, for example, for cases to be handled by a High Court. However, a lawyer is not that important to appoint if the submission of claims are through ARB (Abdul Rahman, 2008).

#### **SIGNIFICANCE OF DISCUSSION**

Unclaimed inheritances are accumulating in numbers over the years. This paper acknowledges the seriousness of the problem and the need for it to be addressed. This section will highlight the conclusions that can be drawn from the previous discussions.

Firstly, inclusion of Article 121 (A) into the Federal Constitution was set up to avoid conflicting orders by both courts over similar matters (Mohamad, 2008). However, there still existed many areas where conflicts may arise (W. A. Hamzah & Bulan, 2003; Mohamad, 2008; Mohamed Ibrahim, 2000). There is a need to revise the Constitution and the State Laws in order to eradicate these conflicts. However, amending laws takes a long time. Thus, constitutional amendments would not be a practical and tangible solution to the problem at hand. In the absence of a revision process, Mohamad (2008) suggested harmonizing processes between the court systems would work well to settle cases involving matters under the jurisdiction of both courts. However, he pointed out that there will always be added delays and additional costs to incur.

Secondly, the redefinition of Small Estates in the Small Estates Distribution Act 1955 managed to save majority of the clients from having to spend money and time waiting in line for their cases to be heard at the Civil High Courts (*Pencapaian Piagam Pelanggan bagi suku tahun ke Empat 2010 (Oktober - Disember)*, n.d.; Redistribution of small estates made easier," 2010). The success of Land Offices to handle these cases depends on whether submitted forms are complete. However, the positive changes that took place at the Land Offices did not address the issue of confusion among clients in trying to compile the necessary documents needed for submission along with the claim form. Thus, this is also not a practical solution to the current problem.

Thirdly, suggestions and recommendations from the previous studies in this area have helped to improve the delivery system by the government. However, these suggestions will only be able to be implemented with the existence of new constitutional amendments or decisions by the legislatures. That would consume time. Thus, these suggestions are not tangible and practical solutions to solve current problem of lengthy process time and high costs in the



administration and distribution of inheritance at the moment.

Lastly, the high degree of unawareness among clients should not be regarded. This problem of unawareness among clients has to be taken as a signal for drastic changes to be implemented. Lack of available guidelines for flow of processes and beneficiaries has been identified as the factor that is contributing the most effect on the problem of lengthy time and costly expenses in the distribution and inheritance problem.

## CONCLUSION

Although many efforts have been undertaken to improve the present system, this paper is particularly concerned about the Syariah-compliance of the present system that is not monitored. This paper has identified time and cost as two main parameters to be considered to ensure fluency throughout the processes at the respective institutions (Da Fonseca Lima, da Silva, & Vieira, 2006; Haga & O'keefe, 2001; Hillier & Lieberman, 2010; Kuhl & Tolentino-Pena, 2008; Nikoomaram, Lotfi, Jassbi, & Shahriari, 2010; Shigeno, 2004; Singh, Smarandache, Chauhan, & Bhagel, n.d.; Tibben-Lembke & Mitchell, 2007; Tinnirello, 2001; Vittal & Sivakumar, 2006), thus, it will highlight the contribution of this on-going study to provide a single complete *Syariah*-compliant network model that would be able to educate clients by providing clear guidelines for processes and beneficiaries involved in the distribution and inheritance process (Bazaraa, Jarvis, & Sherali, 2003; Chinneck, 2007; Taha, 2007).

## ACKNOWLEDGEMENT

This on-going research is supported by Universiti Teknologi Mara Malaysia. Special gratitude is extended to specialists in the field of inheritance management and distribution at Ministry of Natural Resources and Environment Malaysia.

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