

**ENHANCEMENTS OF MUSLIM ESTATE DISTRIBUTION PROCESS
TOWARDS REDUCING THE DELAY AND LACK OF ITS DISTRIBUTION**

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DEDICATION

*To my beloved husband, **Mohd Ridzuan Bin Hj. Rashidi** and my daughters **Nur Rifda Shifwa binti Mohd Ridzuan** and **Nur Rafhanah Shaurah binti Mohd Ridzuan**....*

For their moral support and help.

*To my beloved late mother, **Allahyarhamah Hj. Siti Zaleha bt. Hj. Sono** and father, **Md. Azmi b. Hj. Mariani**, my grandmother, **Hjh. Sukaseh binti Idris**, my stepmother, **Siti Maslinda bt. Bariman**, my mother in law, **Hjh. Saidah binti Hj. Awang Senik** and father in law, **Hj. Rashidi bin Mokhtar**, my sisters and brothers, **Mohd Fairuz, Fathul Ammar, Faries Hamizi** and **Fathnin Nazihah**, my brothers in law **Hadeli bin Haron** and **Tuan Husni Mubarak b. Tuan Hussin**, my sisters in law **Rosniyati bt. Rashidi, Rohizam bt. Rashidi** and **Fairuz Fadjilah bt. Rashidi**, my niece **Puteri Allisya Qaisara, Aisya Qasrina, Arisa Qistina** and **Tuan Nur Aisyah Afrina**, and my nephew **Tuan Afiq Aiman***

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ABSTRACT

The number of cases involving unclaimed estate is increasing and as a result a large number of them are abandoned. Assets worth of RM 60 billion are waiting to be claimed until 2016. This may not include the assets pending distribution. To overcome this problem, this study aim to suggest an improved mechanism of estate distribution process in resolving or minimizing the delay and lack of estate distribution, concurrent with Malaysian economic growth as a developing country. In order to achieve this aim, three objectives are being set, namely: to ascertain the causes of delay and lack of estate distribution; to examine the existing process and measures practised by administrative, adjudicative and estate planning entities; and to propose a possible solution for improving the process of estate distribution. The study covers the cases among Malaysian Muslim, focusing on *harta sepencarian*, trusts, *waqf*, *wisoyah*, *hibah*, *wasiyah* and *faraid*, notably the procedures in Civil and Shariah High Courts. The methodology adopted in this study is based on a mixed method of quantitative and qualitative data. Data collection conducted at the Land Office, Amanah Raya Berhad, estate planning entities, Civil and Shariah High Courts and the beneficiaries of the estates including the heirs and trustees and *baitulmal*. Root cause analysis and comparative analysis were performed to analyze the documentary data, non-participation observation or notes, facts of law cases with some input from literature. Frequency, descriptive, Pearson correlation, reliability and validity analysis were used to analyze the quantitative data. The qualitative data was analyzed using content analysis. Most of the respondents answered that multiple agencies jurisdiction is the major causes of unclaimed, late claimed, and delayed distribution of estate. This study proposes a one stop centre, unified process and improved mechanism of estate distribution for the speedy distribution of estate of deceased Muslims.

ABSTRAK

Sejumlah kes yang melibatkan harta pusaka yang tidak dituntut semakin meningkat sehingga mengakibatkan harta pusaka ini terbengkalai dan tidak dapat diagihkan. Aset bernilai RM 60 bilion menunggu untuk dituntut sehingga tahun 2016. Statistik ini berkemungkinan tidak termasuk harta pusaka yang lambat untuk diagihkan. Bagi menangani masalah ini, tujuan cadangan penyelidikan dibentuk untuk menyediakan satu mekanisme penambahbaikan dari segi undang-undang dan proses pentadbiran harta pusaka bagi menyelesaikan atau mengurangkan kes harta pusaka tidak dituntut dan kes kelewatan pembahagian harta pusaka, seiring dengan pertumbuhan ekonomi Malaysia sebagai negara yang membangun. Untuk mencapai tujuan ini, tiga objektif telah dirangka iaitu: mengenal pasti punca utama harta pusaka tidak dituntut dan punca kelewatan harta pusaka tidak dapat diagihkan; mengkaji proses pembahagian harta pusaka dan kaedah perancangan harta pusaka yang telah dipraktikkan oleh badan perancang, pentadbiran, dan perundangan harta, serta mengemukakan satu cadangan penyelesaian untuk memperbaiki pentadbiran harta pusaka. Kajian ini meliputi kes-kes umat Islam di Malaysia, dengan memfokuskan kepada harta sepencarian, harta amanah, wakaf, wisoyah, hibah, wasiyah, dan faraid terutamanya prosedur di Mahkamah Tinggi Sivil dan Mahkamah Syariah. Kaedah kajian yang digunakan adalah berdasarkan kaedah campuran kuantitatif dan kualitatif. Pengumpulan data dijalankan di Pejabat Tanah, Amanah Raya Berhad, badan perancangan harta, Mahkamah Tinggi Sivil dan Mahkamah Syariah, bank dan penerima harta pusaka termasuklah ahli waris, pemegang amanah dan baitulmal. Kaedah sebab akibat dan perbandingan dilaksanakan untuk menganalisis dokumen, pemerhatian tanpa penyertaan atau nota, fakta kes undang-undang dan kajian literatur. Kaedah frekuensi, deskriptif, korelasi Pearson, kebolehpercayaan dan kesahan kajian digunakan untuk menganalisis data soal selidik. Data temu bual telah dianalisis menggunakan kaedah isi kandungan. Majoriti responden menjawab bidangkuasa multi agensi adalah faktor utama penyebab harta pusaka tidak dituntut, lambat dituntut, dan lambat diagihkan. Kajian ini mencadangkan satu pusat setempat, keseragaman proses dan mekanisme penambahbaikan yang cepat bagi pembahagian harta pusaka umat Islam.

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LIST OF ABBREVIATIONS

ACDE	-	Administrative Centre for Distribution of Estates
ADR	-	Alternative Dispute Resolution
AMLATFA	-	Anti-Money Laundering & Anti-Terrorist Financing Act
ARB	-	Amanah Raya Berhad
ASB	-	Amanah Saham Bumiputera
ASBI	-	Amanah Saham Bank Islam
ASDI	-	Amanah Saham Darul Ihsan
ASN	-	Amanah Saham Nasional
BNM	-	Bank Negara Malaysia
CHC	-	Civil High Court
CLJ	-	Current Law Journal
CMS	-	Court Management System
CoD	-	Coefficient of Determination
EPF	-	Employees Provident Fund
eSeS	-	Estate Search System
ETFs	-	Exchange Traded Funds
GST	-	Government Service Tax
JAWHAR	-	Jabatan Wakaf, Zakat & Haji
JKPTG	-	Jabatan Ketua Pengarah Tanah dan Galian
JKSM	-	Jabatan Kehakiman Syariah Malaysia
JPJ	-	Jabatan Pengangkutan Jalan
KPI	-	Key Performance Indicator
LA	-	Letters of Administration
LO	-	Land Office
LTH	-	Lembaga Tabung Haji
MACC	-	Malaysian Anti-Corruption Commission

MAIS	-	Majlis Agama Islam Selangor
MDIC	-	Malaysia Deposit Insurance Corporation
MKRA	-	Ministry Key Results Area
MLJ	-	Malayan Law Journal
NLC	-	National Land Code
NRD	-	National Registration Department
NRO	-	National Registration Office
OSC	-	One Stop Centre
PIDM	-	Perbadanan Insurans Deposit Malaysia
PNB	-	Permodalan Nasional Berhad
RCA	-	Root Cause Analysis
REITs	-	Real Estate Investment Trusts
SC	-	Shariah Court
SIRN	-	Single Identification Reference Number
SOCISO	-	Social Security Organisation
SPSS	-	Statistical Software Package for Social Science

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CHAPTER 1

INTRODUCTION

1.1 Background

Muslim is entitled to own property. Property is an accumulation of exclusive rights (Kamil, 2007) and concerns the ownership of things (Ainul, 2008) which has been received by the owner. In Islamic law, property can be classified into owner based and object based. Reference from Quran has noted that property is owned by God, it may be owned by individual or public (Yahaya and Azhar, 2005). Object based can be divided into movable¹ and immovable property² (Alhaji, 1983; Ibrahim, 1991). When someone owns a property, he can do in any way that is lawful in that property and uses it for himself or gives it to someone who he wants to obtain his property during his lifetime. Those who have not given any property in their lifetime, their heirs or *baitulmal* can receive the property after he passes away.

The property left by a deceased is called estate³ (Hornby, 2005). In Kamus Dewan, Third Edition (1994) defined estate as inheritance asset which has been left by a deceased person according to the Wills Act 1959, Probate and Administration

¹ i.e. cash, shares, Employees Provident Fund (EPF) and unit trust.

² i.e. land, building.

³ The word 'estate' may also refer to a large area of land that is owned by one person or family such as a lot of houses or factories of the same type known as a housing estate or industrial estate. However, this research deals solely with the estate that refers to the property left by the deceased person.

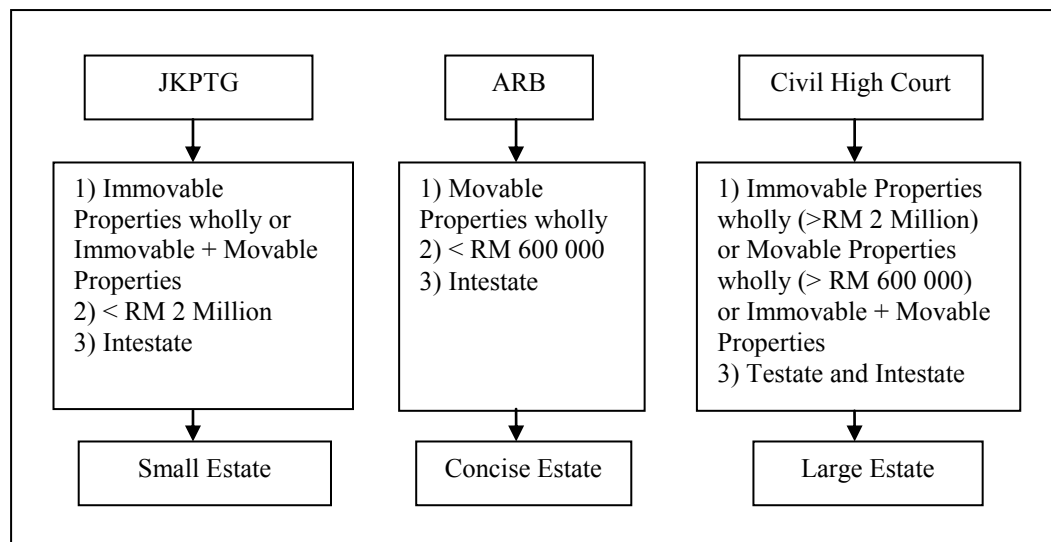
Act 1959, Small Estate (Distribution) Act 1955, Rules of Court 2012, Public Trust Corporation 1995, General Director of Land and Mines Guideline No. 18/1976 and rules. Generally, estates can be classified into testate and intestate estates⁴. Testate estates means estate that is disposed of by a person through his will⁵. However, intestate estates refers to the estate of a person who dies without leaving a will but dies intestate as to some beneficial interest in his property includes moveable, immovable, small and non-small estate⁶. The researcher has divided three categories of estates into unclaimed, late claimed or delayed distribution of estates. The definition of late or delayed claims for small estate can be found in Section 18 of the Small Estates (Distribution) Act 1955. For the purpose of this research, if a claim or application for distribution of estates is made by the beneficiaries, administrator or executor after six months, it will be considered as late claimed estates. In case of non small estate, Order 71 rule 6 of Rules of Court 2012 provides that in the lapse of three years from the death of the deceased can be declared as delayed claim. It is therefore may cause the delayed distribution of estates.

Current administrative mechanism, the process of following legal steps by a claimant and relevant agencies for distribution and settlement of the estate of the deceased person, requires claimant to refer to various agencies and institutions for the distribution of the estates of a deceased person. They are Civil High Court, Department of Director General of Lands and Mines (JKPTG) and Amanah Raya Berhad (called ARB hereinafter) (Omar, 2009; Suhaili, 2010). The illustration can be seen in **Figure 1.1**. All the procedures that have to be followed are stated in Small Estate (Distribution) Act, 1955 and the Rules of Court 2012.

⁴ Abdul Hamid Mohamad, "Administration of Property in Malaysia: A Civil and Shariah Law perspective" [2002] MLJ i.

⁵ 'Will' originated from the word '*wassa*' or '*wasiat*' under Islamic law that refers to deliver the property of testator to someone during his/her lifetime but the property is only effective after his/her demise.

⁶ Properties of a deceased person worth up to RM 2 million will be categorised as small estates starting 1st of September 2009. Previously, it was RM 600, 000 and below but that amount was based on the amendment of the Small Estates Act (Distribution) 1955 in 2007.

Figure 1.1: Distribution and Settlement Agencies of Deceased Estates

Source: Author (2016).

Many scholars consider the *faraid* system in Malaysia to be the problem as wills do not have a decisive role in the estate planning. Those people who make will or do *hibah* to the executed after his demise; they complicate the distribution of estates. *Hibah* can be resulted into will when it is found to be invalid because its execution is contingent on the death of the donor, or where the possession of the property is not delivered to the donee, during the lifetime of the donor. Indeed, a will cannot be enforced if it exceeds the rate of one-third of the whole estate of the testator (Ghazali, 2008; Marican, 2008), unless, if the heirs give consent then such will become a valid will. Where the beneficiaries do not agree with allocation under the said will for beneficiary, the will document cannot be enforced, because it will be invalid (Ariffin, 2009; as-Salihin, 2010) and the access of the estate will be distributed according to a fix share of estates in *faraid* system (Zamro, 2008). Reported cases of Court suggested Muslims who have disposed their property through *hibah*, effective after the death of the donor, could not be executed too⁷. The reason is, the donors did not deliver the possession of the property to the donee in their lifetime. This means Muslims have limited power of disposition which can take effect after their demise.

⁷ See *Eshah binti Abdullah & Five Ors. V. Che Aminah binti Abdul Razak & Two Ors.* [2004] XVIII (I) JH 47, or [2005] 1 CLJ (SYA) 276; *In the matter Ex P Fathillah Sidik* [2006] 1 CLJ (Sya).

It is good for the heirs if it is better for a country to distribute the estates as soon as possible. Otherwise, the lack and delayed estate distribution of deceased Muslims in Malaysia including all movable and immovable properties is the main causes for abandoned properties. The abandoned properties will then decrease the economic activity of individuals and land revenue of state. Nevertheless, Malaysian mindset is less sensitive with this scenario since the current process in order to make an application for a deceased estate whether small or large estates are unspeedy and costly. To distribute estates, it is important to formulate a method for the speedy and cheap estate distribution among Malaysian Muslims. Unfortunately, in Malaysia this is not the case. Therefore, a research is required to reform the procedure and substantive law.

1.2 Research Issue

This section presents the main elements of the research. The researcher highlights the general problems and specific problems of estate distribution of Malaysian Muslims. In general problems constitute in administrative and legal constraints. This leads to highlight the specific problem involving the cases of unclaimed estates, late claimed estates or delayed distribution of estates. In respect of this, the problems of estates distribution does not only occur in Malaysia but also in Singapore (Sadali, 2010), Mesir and Jordan (Ghazali, 2010). However, this study will solely cover the distribution of estates in Peninsula Malaysia.

Legally, the estate distribution process must be made according to Small Estate (Distribution) Act 1955 and after a certificate of *faraid* in favour of heirs or *baitulmal* is issued, and letter of administration is granted by High Court (Zaini, 2004). The process is relatively long, complicated, costly (Ahmad Hidayat, 2008) and tedious. For this and other known and unknown reasons, the heirs may not know the deceased, the property of their deceased, and the list of deserving beneficiaries. Looking at their societal attitude towards applying their rights over the deceased properties, it will only delay its devolution.

Section 25 of the Civil Law Act, 1956 provides that, this statute shall not apply to any property disposal under jurisdiction of Muslim law, native law and custom law. Hence, it is clearly mentioned that the administration of estate distribution for Muslims are governed by Islamic law not the Civil Law (Zulkifli, 2008; Pawancheek, 2008). On the contrary, the Civil High Court has the power over matters relating to succession, testate and intestate, probate and letters of administration in accordance with Article 74 (1) of Malaysian Federal Constitution read with Ninth Schedule Paragraph 4 (e) (i). Therefore, Muslims have to go to the Civil High Court and Shariah High Court for the process of claiming the properties of a deceased person.

According to Section 17 (1) of Public Trust Corporation Act, 1995 (Act 532) (eprints.utm.my), ARB has a jurisdiction to dispose of small intestate estate and movable properties that not exceeding RM 2 million. Regardless of this, the applicant can make a claim to the Land Office for immovable properties and small intestate estate which is less than RM 2 million. Section 8 (7) of Small Estates (Distribution) Act 1955 (Act 98) prescribes such properties which is not considered as small estate, means that movable or immovable properties which is RM 2 million and above, it would be within the power of High Court. The above shows that both small and large estate, are under jurisdiction of High Court, Shariah Court, Land Office, ARB, banks and other relevant entities. The process is therefore long and expensive.

Previously in 2007, worth of RM 40 billion of estates are reported by ARB (ARB Legacy Services CEO, Datuk Rafie Omar) and JKPTG (Vice Ministry of National Resources & Environment, Datuk Ir. Hamim Samuri) as frozen and waiting to be claimed by the beneficiaries. Over the coming years, in 2016, a great number of RM 60 billion estate properties (mymetro.com.my) have been classified as unclaimed estates with majority of them are owned by more than 500,000 beneficiaries of Muslims (Wan Kamal, 2011). Among them are coming from the undivided share of inherited property, Employees Provident Funds (EPF) (Patrick, 2007), Lembaga Tabung Haji (LTH), Permodalan Nasional Berhad (PNB), takaful or insurance companies, and banks (Siti Mashitoh, 2008; Ghazali, 2008; Badrul, 2013).

Analysis and evaluation of all the causes may result into a suggestion for a speedy, cheap and effective triggering mechanism for the administration of estates of deceased Muslims. If no triggering, sound, and fast mechanism for initiating the process of claiming and distribution of estate is found, the problem of unclaimed or late claimed or delayed distribution of estate will continue, which will negatively affect the national economic growth. To achieve the above target, the following questions need to be asked.

1.3 Research Questions

The research issue can be unfolded into a number of sub-questions, namely:

- 1) What are the causes of delay and lack of estate distribution?
- 2) Who have the right to make an application and why they do not want to claim?
- 3) How fast the process of estate distribution is after an application is made?
- 4) Which law and procedure they have to refer and do the laws need to be changed?
- 5) Is or is it possible to have a mechanism that can be triggered by the death of the deceased owner?
- 6) What agencies have the jurisdiction in administering the estates of deceased Muslims, and can they be restructured?
- 7) How effective are the existing measures for preventing new unclaimed estates?
- 8) How to tackle these problems and what is the impact if any?
- 9) What types of mechanism needs to be developed?

1.4 Research Aim

To suggest an improve mechanism in estate distribution towards resolving or minimizing the delay and lack of its distribution, concurrent with Malaysian economic growth as a developing country.

1.5 Research Objectives

To resolve the abovementioned problem and achieve the aim, this study embarks on the following objectives:

- i. To ascertain the causes of delay and lack of estate distribution.
- ii. To examine existing process and measures practised by administrative, adjudicative and estate planning entities.
- iii. To propose a possible solution for improving the process of estate distribution.

1.6 Research Significance

The outcome of this study might benefit individuals, State governments and industry. The study would not only help to reduce the arrears, but gives benefit to the beneficiary in utilization of properties in a way to enhance their economic status and also assist the state, concerned, achieve enhancement and its gross development product (GDP).

1.6.1 Individuals

Besides the academic contribution, this study may benefit the beneficiaries and general public which aims to create awareness among Muslims that their properties could be distributed to any parties they want while they are alive or after

their death and encourage them to make a quick claim for the estates of deceased person.

1.6.2 State Government

This research can be a source of reference to policymakers, the state officials such as the Land Officials, National Registrar Offices, Department of Mal in JAWHAR, and State Religious Council to assist them in formulating the appropriate policy for recommendation to the state policymakers to minimize or overcome the unclaimed, late claimed and delayed distribution of estates. Hence, land office may be introduced to a dynamic method of fast distribution whereby state can have more revenue. *Baitulmal* may also benefit by claiming the power of administering the unclaimed estates early and acquired new properties. Additionally, State and National Economic Planning would also benefit to plan economic growth based on actual data once the suggestion of this research being implemented. Practically, it is very useful and important to provide new inputs to facilitate the process of policy formulation and decision makings.

1.6.3 Industry

This study may also contribute to Amanah Raya Berhad and estate planning entities particularly in enhancing the administration and planning of estates of deceased person. Further, the researcher may revisit the practise of preventive measures e.g. *harta sepencarian*, trusts, *waqf*, *wisoyah*, *hibah* and *wasiyah* to narrow the gap that exists between the academic and practical world. This may help the industry to practise the process of estate distribution according to the law and guiding them not to create dispute among the beneficiaries.

1.6.4 Officers of Court

This research would provide a holistic perspective of issues to the officers of Court included the judges and lawyers to reduce workload and backlog.

1.7 Research Scope and Previous Studies

This study focuses on the administrative and legal constraints of estate distribution among Malaysian Muslims including *harta sepencarian*, trusts, *waqf*, *wisoyah*, *hibah*, *wasiyah* and *faraid*, conducted by the administrative, adjudicative and estate planning entities. The estate distribution process will cover both movable and immovable estates whether small or large estates and focused on unclaimed, late claimed and delayed distribution of estates. The research targets the discovery of a comprehensive list of the main problems of estates Muslim based on the real life situations and experiences from a focus group of respondents.

In the pursuit of understanding the issue, research particularly on unclaimed, and late claimed estate of the deceased Muslims are uneasy to find but several Malaysian academicians as listed below have mostly written about the delayed distribution and planning of estate. These researchers have covered various perspectives on the execution of estate distribution and will be discussed as follows.

Mohd Fauzi Bin Mohd Yusoff (2004) addressed the main factors that influenced the delayed distribution of estates namely heirs attitude being not sensitive about the time of claiming estates, lack of understanding on how to claim the estates, relying or letting other heirs to claim it and lack of knowledge about the cost of claiming. To solve the problem of late claimed estates, several solutions were proposed by Mohd Fauzi. For instance, fine has to be imposed on any late application of estates after two years from the death of the land owner; proactive action by JKPTG to educate public about estates distribution; hold a seminar for the staff, distribute info campaign, ask the chieftain to claim the estates if heirs delay the

process (S 18 Act 98) and deprive the land ownership after seven years from one who did not pay the taxation (S 100 NLC). However, a deep research on unclaimed estates, late claimed estates and suggesting a model has not been done yet.

Mohiddin Md. Omar (2004) has identified several problems of estates distribution first, from organizational perspective. He listed lack of training, work load, and unprofessional service, no small estate unit in each district, old equipments, and uncomfortable workplace. Second, he analysed the main problems of estates distribution from work procedure perspective. They are incorrect applications, inefficient sending notice; withdrawal of registrar's caveat in case of trustee, ISO 9001:2000 procedure, long procedure, and limitation in GSA land. He proposed estate distribution process should be improved by develop a training committee, making management strategy, provision of new equipment. On work procedure perspective adopting efficient method of sending notices, online networking, easy method for withdrawal of registrar's caveat in case of trustee, simplification of the quality procedure in MS: ISO 9001:2000 and amendment of the GSA 1960. The missing point is he excludes the causes and possible solutions of unclaimed and late claimed estates.

Mohd Shafie Bin Mohd Karli (2006) investigated the administration and management constraints of the *faraid* estate residue caused by lack of staff, lack of expertise and lack of capital. He also identified physical constraints due to location, size, multiple ownership and boundaries. Legal constraints include civil and shariah jurisdiction, technical problem, land revenue and policy. Socially he listed attitude and lack of awareness. As possible solutions, MAIS is suggested as the legal creator within the cooperation of Shariah Court and Jabatan Mufti. Unfortunately, the researcher did not touch about unclaimed, late claimed and delayed distribution of estates.

In addition, Siti Norharliza Binti Abd Jalil (2008) examines problems relating to delayed distribution of estate comprised of incomplete information in Form A; delay in issuing Form C by High Court; delay in hearing date; dispute among beneficiaries and; slow distribution system. For preventing such issues, some

solutions are being proposed such as notice should be given to heirs to resubmit the application form; involvement of High Court only, slow the process of claiming; and motivating public to prepare for estate planning system. This study was limited to the factors that influenced the delayed distribution of estates. Md Ghazali Ibrahim (2008), has examined the issue of inheritance of land the title of which is still under the name of demised with multiple beneficiaries under one lot of land, dispute among heirs; delay in estate distribution, and problem relating to nomination. This researcher suggests a declaration of will, *hibah* and trust as the preventive measures but he did not examine the legal issues related to inheritance problems and the administrative issues are too general.

Moreover, Pawancheek Marican (2008) investigates the substantive, procedural and cases of law conducted by Court and ARB. He also explains about the importance of having a will as the best preventive measure. However, he did not focus on causes of unclaimed, late claimed and delayed distribution of estates. Ahmad Hidayat Buang (2008) reviews the delay in processing the application of estate distribution i.e. the devolution of property after death based on *faraid* he thought that it is long, complicated and costly due to dispute among family members and involving court procedures. The researcher proposes *hibah* or *wasiyah* or *waqf* as the best solution for the planning of Muslims' property. This study did not discuss about unclaimed estates but generally explained the causes of late claimed and delayed distribution of estates.

Siti Mashitoh Mahamood (2008) explained unclaimed monies include estate of a deceased with no heir. She listed out four reasons why people have not claimed the money i.e. no heir left behind, lack of knowledge, absence of nominees and lack of contact. She suggested that *Baitulmal* has the eligible right to manage the unclaimed monies of Muslim's estate of a deceased person, not the General Accountance of Malaysia. Sadly, her study did not explore late claimed and delayed distribution of estates but focusing on unclaimed monies especially the law procedure.

Kamariah Dzafrun Kamarul Baharin (2009) examined the jurisdiction of agencies like High Court, land office and suggests one organization to settle the distribution of estates. She also finds out four causes of delayed distribution i.e. family dispute, attitude, lack of knowledge and lengthy process. She suggests developing one agency or *Mahkamah Pusaka* to handle all cases involving estate of a deceased person. She did not study much how the organization will do the operation and what type of model that needs to be referred.

Suhaili Al-Ma'mun (2010) contended that Malaysian Muslims are still far behind in Islamic Estate Planning matters in terms of theory and implementation. There is need to address all types of product which have been provided by estate planning entities in the future and any action to educate public is required. However, her research is only focusing on wealth management. Mohd Ridzuan Awang (2010) was concerned on the jurisdiction of estate distribution process, the law involved and proposed the existing measures such as will, hibah, and trust. However, he did not focus on causes of unclaimed, late claimed and delayed distribution of estates but identify the weaknesses of measures. Besides, Abdullah bin Muhammad (2010) listed out the issues relating to unclaimed and delayed distribution of estate and suggested some solutions particularly in administration, technology and behaviour aspect but lack of study on existing measures, large estate distribution and not suggesting model of estate distribution.

Wan Kamal Mujani (2011) has focused on two factors contributing to the delay and failure to complete applications for the distribution of inheritance estate. They are attitude of the legal heirs and the weaknesses of estate administration process. However, it needs further in- depth study on these issues. Lastly, Akmal Hidayah Halim (2012) has studied on the theoretical and procedural framework relating to estates administration and the execution of hibah and will but limited study on the factor causing unclaimed estates and did not suggesting an improved mechanism. From the above discussion, it can be said that many factors are involved. The description of the previous studies of estate distribution is shown in **Table 1.1**.

Table 1.1: Previous Studies of Estate Distribution Process of Muslims.

Author(s)	Topic	Data Analysis	What has been studied so far	What is not studied or studied but still need improvement	What then I will be studying
Mohd Fauzi Bin Mohd Yusoff (2004) (Master Thesis)	Punca-Punca Kelewatan Permohonan Harta Pusaka Kecil. Kajian Kes: Pejabat Pembahagian Pusaka dan Pejabat Daerah dan Tanah di Negeri Perak.	Analyse the data using Statistical Package for The Social Sciences (SPSS): Frequency Analysis.	Addressed the main factors that influenced the delayed distribution of estates and proposed several solutions.	Lack of study on unclaimed estates and delayed distribution of estates and not suggesting model of estate distribution.	Ascertain the causes of delay and lack of estate distribution; examine the efficiency and effectiveness of existing process and measures; and suggesting a model and new process of estate distribution.
Mohiddin Md. Omar (2004) (Master Thesis)	Kajian Masalah Pembahagian Harta Pusaka Kecil Dari Perspektif Organisasi dan Prosedur Kerja. Kes Kajian: Negeri Johor	Using frequency analysis in Johor Land Office.	Identified several problems of estates distribution from organizational and operational perspective and proposed estate distribution process should be improved	Excluded the causes and possible solutions of unclaimed and late claimed estates.	Ascertain the causes of delay and lack of estate distribution; examine the efficiency and effectiveness of existing process and measures; and suggesting a model and new process of estate distribution.
Mohd Shafie Bin Mohd Karli (2006) (Master Thesis)	Pentadbiran dan Pengurusan Harta Tanah Lebihan Faraid Melalui Perolehan Sistem Pusaka Di MAIS	Interviews have been conducted in MAIS and JAKIM.	Investigated the administration and management constraints of the <i>faraid</i> estate residue and proposed separate jurisdictions of Baitulmal and JAIS.	The researcher did not touch about unclaimed, late claimed and delayed distribution of estates.	Ascertain the causes of delay and lack of estate distribution; examine the efficiency and effectiveness of existing process and measures; and suggesting a model and new process of estate distribution.
Siti Norharliza Binti Abd. Jalil (2008) (Bachelor Thesis)	Sebab-sebab Tunggakan Kes Penyelesaian Harta Pusaka Kecil Bagi Permohonan Baru. Kes Kajian: Unit Pembahagian Pusaka Pahang Tengah.	Data has been collected through interview in Pahang land office.	Examined problems relating to delayed distribution of estate and proposed solutions for preventing the delayed.	This study was limited to the factors that influenced the delayed distribution of estates.	Ascertain the causes of delay and lack of estate distribution; examine the efficiency and effectiveness of existing process and measures; and suggesting a model and new process of estate

					distribution.
Md Ghazali Ibrahim (2008) (Book- published by Tijarah Network)	RM 38 Billion Pusaka Belum Dituntut	Theoretical data	Examined issues of inheritance in general and suggested the preventive measures of estate planning system.	Do not examine the legal issues related to inheritance problems and the administrative issues are too general.	Ascertain the causes of delay and lack of estate distribution; examine the efficiency and effectiveness of existing process and measures; and suggesting a model and new process of estate distribution.
Pawancheek Marican (2008) (Book- published by Lexis Nexis)	Islamic Inheritance Laws In Malaysia	Theoretical data	Investigated the substantive, procedural and cases of law conducted by Court and ARB and explained the importance of having a will as the best preventive measure.	Do not focus on causes of unclaimed, late claimed and delayed distribution of estates.	Ascertain the causes of delay and lack of estate distribution; examine the efficiency and effectiveness of existing process and measures; and suggesting a model and new process of estate distribution.
Ahmad Hidayat Buang (2008) (Shariah Journal)	Appreciation of Syari'ah Principles In Property Management In Contemporary Malaysia Society	Theoretical data.	Reviewed the delay in processing the application of estate distribution and proposed hibah or will as the best solution for the management of Muslims' property.	Not discuss the unclaimed estates but generally explained the causes of late claimed and delayed distribution of estates.	Ascertain the causes of delay and lack of estate distribution; examine the efficiency and effectiveness of existing process and measures; and suggesting a model and new process of estate distribution.
Siti Mashitoh Mahamood (2008) (Jurnal Pengurusan JAWHAR)	Isu-isu Berbangkit Dalam Pengurusan Baitulmal di Malaysia: Pemakaian Akta Wang Tak Dituntut 1965 (Akta 370) & Bidangkuasa Baitulmal dalam Harta Orang Islam	Data has been collected through interviews of experts in law.	Listed out the reasons of unclaimed monies and suggested Baitulmal to manage the unclaimed monies of Muslim's estate of a deceased person, not the General Accountance of Malaysia.	Focused on unclaimed monies in term of legal procedure but lack of study on late claimed and delayed distribution of estates.	Ascertain the causes of delay and lack of estate distribution; examine the efficiency and effectiveness of existing process and measures; and suggesting a model and new process of estate distribution.
Kamariah Dzafrun	Mewujudkan Satu Institusi	Using descriptive	Examined the jurisdiction of	Not study how the	Ascertain the causes of delay and

Kamarul Baharin (2009) (Master Thesis)	Pengurusan Penyelesaian Pembahagian Harta Pusaka	analysis in Perak as the case study.	agencies, causes of delayed distribution and suggested Mahkamah Pusaka to handle all cases involving estate.	organizational will do the operation and what type of model needs to be developed.	lack of estate distribution; examine the efficiency and effectiveness of existing process and measures; and suggesting a model and new process of estate distribution.
Suhaili Al-Ma'mun (2010) (Durham E-Theses)	Islamic Estate Planning: Malaysian Experience.	The data has been collected in various estate planning entities.	Contented that Malaysian Muslims are still far behind in Islamic Estate Planning matter and it is needed to address all types of preventive measures.	Lack of study on unclaimed, late claimed and delayed distribution of estates but focusing on wealth management (hibah or will).	Ascertain the causes of delay and lack of estate distribution; examine the efficiency and effectiveness of existing process and measures; and suggesting a model and new process of estate distribution.
Mohd Ridzuan Bin Awang (2010) (Konvensyen Kebangsaan Perancangan dan Pengurusan Harta)	Senario Perancangan dan Pengurusan Harta Orang Islam di Malaysia	Theoretical data	Concerned on the jurisdiction of estate distribution process and the law involved; proposed the existing measures such as will, hibah, waqf and harta sepencarian.	Do not focus on causes of unclaimed, late claimed and delayed distribution of estates but identify the weakness of measures.	Ascertain the causes of delay and lack of estate distribution; examine the efficiency and effectiveness of existing process and measures; and suggesting a model and new process of estate distribution.
Abdullah bin Muhammad (2010) (Konvensyen Kebangsaan Perancangan dan Pengurusan Harta)	Pengurusan Harta Pusaka Kecil: Isu dan Cabaran	Theoretical and empirical data	Listed out the issues relating to unclaimed and delayed distribution of estate; suggest some solutions particularly in administration, technology and behaviour aspect.	Lack of study on existing measures, large estate distribution and not suggesting model of estate distribution.	Ascertain the causes of delay and lack of estate distribution; examine the efficiency and effectiveness of existing process and measures; and suggesting a model and new process of estate distribution.
Wan Kamal Mujani	Constructions of Failure	Theoretical data	Examine two factors	This study covered the two	Ascertain the causes of delay and

(2011) International Journal of Business Management, Medwell Journals.	and Delay under Islamic Estate Management.		contributing to the delay and failure to complete applications for the distribution of inheritance estate: attitude of the legal heirs and the weaknesses of estate administration process.	factors contributing the delay but not focusing on the unclaimed estate.	lack of estate distribution; examine the efficiency and effectiveness of existing process and measures; and suggesting a model and new process of estate distribution.
Akmal Hidayah Halim (2012) (Book- published by Sweet and Maxwell Asia)	Administration of Estates in Malaysia Law and Procedure	Data based on statutes and law cases applied in Malaysia.	Studied the theoretical and procedural framework relating to estates administration and the execution of hibah and will.	Limited study on the factor causing unclaimed and delayed distribution of estates in Malaysian Muslim.	Ascertain the causes of delay and lack of estate distribution; examine the efficiency and effectiveness of existing process and measures; and suggesting a model and new process of estate distribution.

1.8 Research Methodology

The research methodology is an essential part of any research as it examines what has been done in tackling the research questions established at the preliminary of the research. Thus, this section describes the research process by outlining the research design and methodology applied in this research. A combination of exploratory, correlational, explanatory, and descriptive research are determined to ascertain the causes of delayed and lack of estate distribution, the effectiveness and efficiencies of the existing measures and process and its enhancement. Data has been collected in a means of a mixed method research consisting of the literature based research, documentary analysis and observation, semi-structured questionnaire, and semi-structured interview. This research also benefited from both quantitative and qualitative methods.

Therefore, this section aims to generate empirical evidence which is reliable and valid based on the methodology and methods adopted in the research. Discussion on the methods of the research includes the method of data collection, development of research instrument and sampling technique. It is also outlines the process of data collection and analysis.

1.8.1 Mixed Method Approach Adopted for this Research

With the respect to the data collection approach, a mixed or triangulation method was adopted in this research. The quantitative research is represented by the collection of data through questionnaires which were quantified before they were analysed, while qualitative research is characterized by the collection of data through semi-structured interviews among the experts. The primary research was divided into three stages of collecting and analysing the data.

The first stage achieves the first objective of the research which is ascertaining the causes of delay and lack of estate distribution. The quantitative

technique was implemented by using a questionnaire. The questionnaire was formulated based on the causes that were gathered from the literature review. The questionnaire was distributed to the beneficiaries whether they have make a claim or not in the area of Johor and Kelantan. The data were analysed using frequency analysis, descriptive analysis, Pearson correlation analysis, and root cause analysis. Besides, the qualitative technique was also conducted among experts by using in-depth interview in order to support the first objective of the research.

This strategy follows the sequential exploratory design strategy suggested by Creswell (2009) as illustrated in **Figure 1.2**. This design was adopted because the primary research began with the collection and analysis of quantitative data followed by the collection and analysis of qualitative data. These two methods were integrated during the interpretation phase of the study.

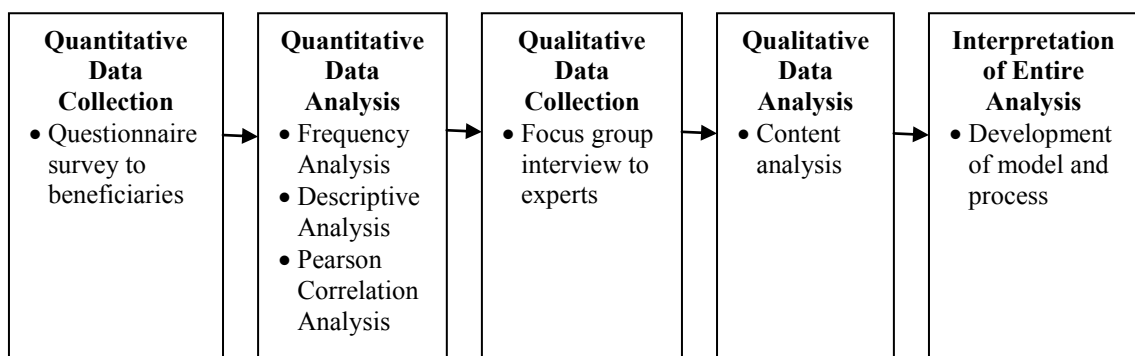


Figure 1.2: Sequential Exploratory Design Strategy

Source: Adopted from Creswell (2009)

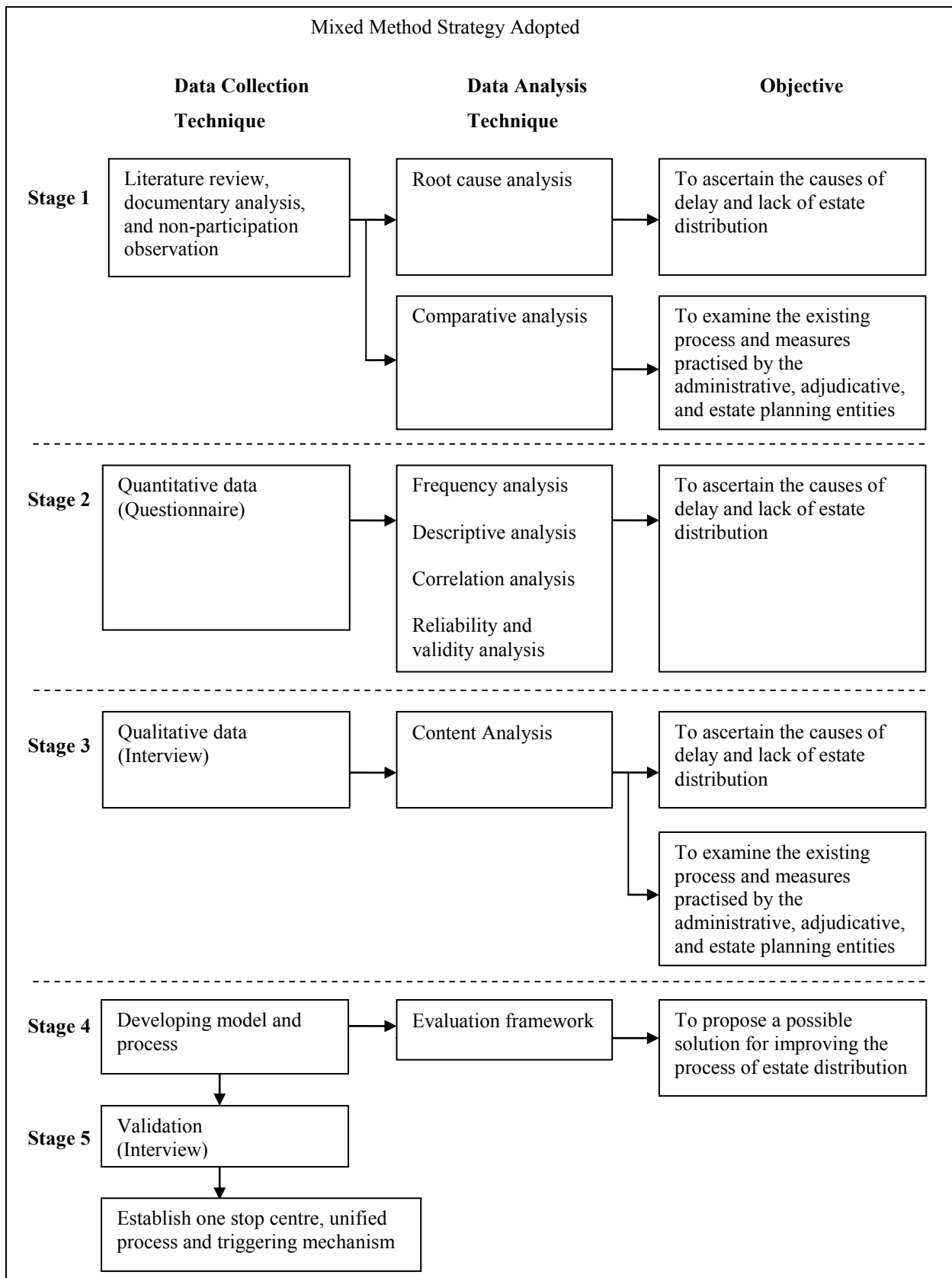


Figure 1.3: Mixed Method Strategy for Current Research

The second stage achieves the second objective of the research to examine the existing process and measures practised by administrative, adjudicative and estate planning entities. Documentary analysis, non-participation observation, facts of law cases decided by the judges in courts with some input from literature, and qualitative data were collected in the second stage to expand the understanding of the topic. The data collected from the focus group was analysed using content analysis. The advantage of the focus group interviews is that it allows a large amount of expansive and contextual data to be gathered quickly (Marshall and Rossman, 1995). The interview question was constructed based on the result of the first stage of the research. This was targeted at achieving the second objective of the study.

The third stage achieves the third objective of research which is to propose a possible solution for improving the process of estate distribution. Results from the survey and interview led to the enhancement of estate distribution process. This relevant aspect is used to develop a model namely one stop centre for distribution of estate, unified process and a triggering mechanism. The purpose of the model is to provide an effective, cheap and speedy process in order to minimize the delay and lack of estate distribution of Malaysian Muslim. This is in line with achieving the third objective of the study.

The model and process developed was validated by two experts from the Small Estate Distribution Unit in JKPTG (Federal) Putrajaya. The purpose is to determine the applicability of the model for industry. Details of the methods used in this study are given below. The overall methodology of this research is captured in **Figure 1.3**.

1.8.2 Data Collection and Data Analysis

This section explains the data collection and analysis approach adopted in this research. The process was divided into five stages to achieve the first, second and third objectives of the research. The combination of first, second and third stages

ascertain the causes of delay and lack of estate distribution, followed by stage one and three which examine the existing process and measures provided by the administrative, adjudicative, estate planning agencies. The last stage namely stage four and five which propose a possible solution for improving the process of estate distribution. Each of the stage is discussed in detail in this section.

1.8.2.1 Stage 1: Literature Review, Observation, and Documentary Analysis

As depicted in **Figure 1.3**, the secondary research stage consists of three phases. The first phase involves collection of literature review which has been done by previous researchers. The second phase involves collection of non-participation observation whilst undergo data collection in the land office, court, and ARB. The third phase involves collection of documentary analysis through the archival records in the land office, civil High Court, ARB and reported decisions of courts found in local case law reports particularly MLJ and CLJ.

(a) Root Cause Analysis

Root Cause Analysis (RCA) is a method that is used to address a problem or non-conformance in order to get to the “root cause” of the problem and should be permanently eliminated through process improvement (Anderson and Fagerhaug, 2006). In other words, it is the fundamental breakdown or failure of a process which, when resolved, prevents a recurrence of the problem. In fact, it is a systematic approach to get to the true root causes of the process problems. Said simply, RCA is asking why the problem occurred, and then continuing to ask why that happened until reaching the fundamental process element that failed. The useful tools in RCA include brainstorming, Pareto chart, fishbone diagram, flowchart, run chart, control charts, and histogram. Brainstorming is a process in which a group quickly generates as many ideas as it can on a particular problem. The fishbone diagram is a technique to graphically identify and organize many possible causes of a problem (effects). It begins with define problems, followed by categorize the possible causes, brainstorm, and end with creating a chart or diagram that clearly shows the known causes and

their inter-relationships. The aim of this diagram is to identify all of the contributing root causes likely to be causing a problem. The usefulness of a fishbone diagram is dependent upon the level of development. For a deeper level of analysis, Correlation analysis was used to quantify correlation and RCA to quantify causation (Ishikawa, n.d.; Wilson and Paul, 1993; Reising et. al., 2007; www.moresteam.com/toolbox).

(b) Comparative Analysis

Comparative analysis compares two or more things namely texts, theories, historical, figures, two scientific processes, and so on (Walk, 1998). It is also defined as the item-by-item comparison of two or more comparable alternatives, processes, products, qualifications, sets of data, systems, or the like (businessdictionary.com). In order to write a good compare and contrast research, the similarities and differences of the raw data are required to be observed. Then, arguments could be made by the researcher (Walk, 1998). According to Yin (1984) written by Alvord et.al. (2002), comparative analysis can be a useful way of generating hypotheses about phenomena that combine complex phenomena, long-term dynamics, and difficulties in access.

Thus, the comparative analysis was performed to analyse the efficiency and effectiveness of the existing process (general and specific process) and measures (*harta sepencarian*, trust, *wisoyah*, *waqf*, *hibah*, *wasiyah*, and *faraid*) practised by the land office, civil and Shariah High Court, ARB, and estate planning entities such as as-Salihin Trustee Berhad, MAIS, banks and so on. Besides, this study provides a comparative analysis of the time frame for application and distribution of estate in Johor and Kelantan land office and civil High Court (non-contentious cases) and also the contentious cases resolved by the Court of Appeal and Federal Court. Generally, this study adopted a hypothesis-generating rather than a hypothesis-testing approach to a complex and not yet well-understood issue.

1.8.2.2 Stage 2: Questionnaire Survey (Sampling)

The questionnaire used for this research was designed in such a way to respond to the already defined research questions. As such, it consisted of three parts: respondent's background, the factors that causing the unclaimed, late claimed and delayed distribution of estate of Muslims, and respondent's opinion on the enhancement of estate distribution process.

Noting the flaws of applying the questionnaire method, accordingly the construction of the questionnaires was based on previous studies which were carried out within the same area of interest, thus helping to avoid the researcher from asking unrelated and ambiguous questions. Therefore, most of the questions were developed with the help of existing studies and pilot study.

With regard to the survey via questionnaire, the sample used is representative of a group of Muslims, age 18 and above, who have made a claim and not claim the estate of a deceased person in Malaysia when the survey began. The aim of obtaining a sample of 390 respondents coming from each state of Malaysia seemed to be impossible due to some constraints. As a result, two states of Malaysia namely Johor and Kelantan are chosen which score the highest accumulated delay of estate in JKPTG from year 2006 until 2010. Even though this survey has been done in the land office and civil high court in Johor and Kelantan, but some of the respondents are coming from Selangor, Kuala Lumpur, Malacca, Terengganu, Pahang, and Singapore but the estate was located in Johor and Kelantan. The specific target groups were actually the beneficiaries of a deceased person who have made a claim and not claim at all, who have experience in claiming, receiving and distributing the estate and they are Malay Muslims.

According to Nick Fox, Amanda Hunn and Nigel Mathers (2009), the required sample size should consist of likely response rate and non-response rate and the expected response rate is 70% (0.7). The minimum sample size made by the previous researchers such as Zulkifli (2008); Zamro et. al. (2008); Ajmain and

Halimatul (n.d.); and Nasrul and Norazila (2014) is 40 respondents while maximum sample size is 273 respondents. The author decided to take the maximum sample size, thus 273 is divided by 0.7 and equal to 390. Hence, the author has distributed 390 questionnaires to the claimant and non-claimant at the frontline counter in the land office, civil high court, urban and rural area but only 372 respondents have answered these questionnaires. 177 questionnaires have been collected from Johor and 195 questionnaires have been received from Kelantan.

Data collection for this survey has taken place from September 2013 to January 2014. Prior to the actual data collection, a pilot study was conducted in Pontian, Johor land office whereby 20 questionnaires were distributed to the beneficiaries in order to check the validity of the questionnaires. Several key amendments have been made after receiving the comments from the respondents such as simplify the questionnaires, make the questionnaires easy to be understood by the layman and not too academic, and reducing the number of pages. The final version of questionnaires was distributed by hand in the state of Johor and Kelantan.

(a) Descriptive and Frequency Analysis

In a very simple definition, descriptive statistics are “statistical methods used to describe data that have been collected” (Mason, 2010). In making a comparison, cross-tabulation was employed as this is also one of the useful methodologies in analyzing large data by groups, categories and classes (Rani, 2004). Then, the other analysis method to measure central tendency is the mean value (Rani, 2004; Mason, 2010). Descriptive analysis was adopted as the analytical approach using SPSS 19.0 software. The aim of the analysis was to achieve the first objective of the research which is to ascertain the causes of delay and lack of estate distribution. The analyses were performed to analyse the respondents’ backgrounds and the factors causing the unclaimed, late claimed, and delayed distribution of estate.

(b) Pearson Correlation Analysis

The two core purposes of correlation analysis are to look at the differences between variables and to examine the relationships between the variables (Dornyei, 2007; Naoum, 2007; Mertens, 2005). The analysis also seeks two variables and evaluates the strength and direction of their relationship or their association with each other. According to Dornyei (2007), a high coefficient means a strong relationship between the two variables, a coefficient of “0” suggests no relationship and a negative correlation coefficient suggests inverse relationships. The Pearson product-moment correlation is the standard type, computed between two continuous variables (Piaw, 2006, 2013; Dornyei, 2007).

In the present study, the Pearson correlation analysis was conducted using SPSS 19.0 software. The analysis was carried out to identify significant relationship between the independent variables (causes) and dependent variables (effects). The Pearson correlation analysis is significant when $p < 0.05$ as stated by Mertens (2005), Naoum (2007), Piaw (2006; 2013), and Dornyei (2007).

(c) Reliability and Validity Test: Cronbach’s Alpha

In this research, the Cronbach’s alpha reliability test was carried out to determine the reliability of beneficiaries’ opinions towards the causes of delay and lack of estate distribution listed in the questionnaire. Cronbach’s alpha is an average value in a reliability technique test that requires only a single test administration to provide a unique estimate of the reliability for a given test (Gliem and Gliem, 2003). It is important to check the reliability of the questionnaire data to establish consistency and reliability of the data (Rani, 2004; Sekaran, 2003). A computed alpha coefficient equals to 1 denotes perfect internal reliability and 0 denotes no internal reliability. For most purposes, an alpha of 0.7 is considered as satisfactory (Vogt, 2007). A rule of thumb outlines that 0.8 is regarded as reliable (Field, 2009) and acceptable level of internal reliability, but despite that, a slightly lower figure is commonly found acceptable by many researchers (Bryman, 2008). A very high alpha

(> 0.9) needs to be treated with caution due to redundant variables or items that have been duplicated.

1.8.2.3 Stage 3: Semi-structured Interview (Sampling)

In relation to the sampling for the semi-structured interview and to support the questionnaires, the author has made an interview session with six experts. They are: deputy of registrar office of Civil High Court Johor (Tuan Shafiq B. Mustaza), deputy of registrar office of Civil High Court Kelantan (Puan Noor Haslinda bt. Che Seman), deputy of registrar office of Civil High Court Selangor (Puan Rafiah Bt. Yusuf), assistant director of the Small Estate Distribution Section in JKPTG Johor (Puan Norhidayati bt Paino), assistant director of the Small Estate Distribution Section in JKPTG Kelantan (Puan Khairiah bt. Awang Lah) and head of executive operation in Amanah Raya Berhad Johor Bharu branch (Muhamad Asrar Bin Abdullah).

The small number of interviewees is not a problem as according to Sekaran (2003), the semi-structured interview uses a small sample size because of its intensive nature. According to Dornyei (2007), an interview study with an initial sample size of six to ten might work well. To sum, it can be concluded that a well-designed qualitative study usually requires a relatively small number of respondents to yield the saturated and rich data that is needed to understand subtle meanings in the phenomenon under focus.

The semi-structured interviews were carried out face to face in Johor, Kelantan and Selangor as well. Respondents participating in the semi-structured interview session are the persons responsible for dealing with the clients for estate distribution process and estate planning. Prior to the actual interview, initial invitations to participate has been made through email, by hand and followed by telephone calls to those agencies or individuals for the purpose of identifying the person in charge of the services from the identified organizations. Once the person

was identified, a call was made to confirm the date, time and venue. The semi-structured interviews were undertaken from September 2013 to January 2014.

(a) Content Analysis

Creswell (2009) explained that the process of data analysis involves making sense out of text and image data. It also involves the preparation of the data for analysis, conducting different analysis, moving deeper into understanding the data, representing the data and making an interpretation of the larger meaning of the data. Content analysis is a technique in analysing recorded interview transcripts (Piaw, 2013) which is an accepted method of textual investigation (Silverman, 2001) in order to identify the main themes that emerge from the responses given by the respondents (Ranjit, 2005) and making inferences about behaviours such as motivation and attitude presented through a communication (Piaw, 2013).

The data gathered from the focus group discussions is in verbal or visual form, which was converted into text containing all the statements made by the respondents. Thematic content analysis was used in analysing the data. The method involves identifying the key substantive points in the discussion and categorising them (Litoselliti, 2003). The categories need to be exhaustive as possible so that one statement fit one rather than many categories (Gillham, 2000).

After collecting the verbal or visual data (through interviews, observations, and text documents), the next step of the analysis involves carefully transcribing them into a text data. This gives idea about the thoughts expressed by the focus group respondents. Based on pre-scans and reading the transcript, the researcher codes the data to develop themes and categories of data. The main points mentioned by the respondents were identified to fall into three main themes or aspects related to: (1) the causes of unclaimed, late claimed, and delayed distribution of estate; (2) the efficiencies of the existing measures and process of estate distribution; and (3) proposal for a single tribunal of estate distribution. The next step involves generating a big picture of the event based on the relationships among the themes developed

from the data. This is followed by preparing the report. The steps used for analysis of the focus group data are depicted in **Figure 1.4**. These six basic steps are carried out continuously, simultaneously, and will be reversed many times by the researcher for in-depth understanding and get the big picture of the event under study (Piaw, 2013). More detailed discussion about the data analysis for this phase of data collection is provided in **Chapter 8**.

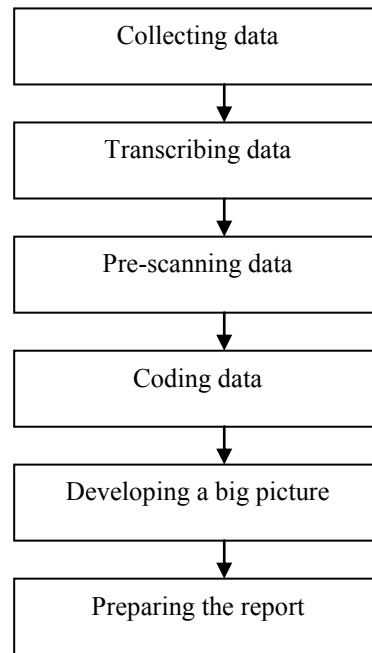


Figure 1.4: Steps in the Analysis of Focus Group Data

Source: Piaw (2013).

1.8.2.4 Stage 4 and 5: Model and Process Development and Validation

To achieve the third objective of the research, the model and process were developed based on the findings from the first, second and third stages. The third objective of the research is to propose a possible solution for improving the process of estate distribution. The model and process were then being validated to signify its validity.

Validity means interpreting the extent to which an account accurately represents the social phenomenon to which it refers (Hammersley cited in Silverman, 2001). Thus, both reliability and validity are important issues in the research

findings. The results from the validation process will determine the accuracy and reliability of the research findings. In brief, the reliability could be improved by comparing the analysis of the same data by several different researchers (Silverman, 2001; Piaw, 2013).

Four forms of validation have been suggested by Silverman (2001) and Piaw (2013) in order to increase the reliability of qualitative research as follows:

- (1) Use the triangulation method: Comparing different kinds of data (e.g. quantitative and qualitative), different methods (e.g. observation and interviews), different time intervals, and different locations to see whether they corroborate one another. If they are identical, then the reliability is high.
- (2) Use researchers as participants. This involves using trained researchers to make detailed and systematic observations and reports. Taking the findings back to the subjects being studied. When the subjects verify the findings, there can be greater confidence in the validity.
- (3) Use peer group observations. By comparing his research data with that recorded by his peers, the researcher will be able to increase the research reliability.
- (4) Use recording devices (e.g. interview forms, and audio or video recorders) to record the results of an interview or observation. These devices can be used as evidence of the reliability of the research.

The first and fourth ways of validating were adopted in the present study in order to determine the accuracy and reliability of the findings. As stated earlier the aim of this research is to suggest an improve mechanism in estate distribution towards resolving or minimizing the delay and lack of its distribution, concurrent with Malaysian economic growth as a developing country. Therefore, an interview session on the proposed model and process were distributed to industry experts who have experience up to 30 years in this area. Industry experts involved are officials from JKPTG Putrajaya (Federal). Based on the results of the validation, the final

model and process were developed. The validation process is discussed in **Chapter 9**.

(c) Evaluation Framework

Evaluation Framework aims to evaluate the performance of an organization or system based on which existing process and measures practised by administrative, adjudicative and estate planning entities for improving the process of estate distribution. According to Steudler et. al. (2004) the evaluation framework has been developed by considering four evaluation elements namely objectives, strategies, outcomes and indicators, and evaluation of results and by suggesting the evaluation areas include the policy level, management level, operational level, external factors and review process. Under review process, the author seeks to compare the existing process of estate distribution and the new proposed process in term of (a) institutional and organizational arrangements, (b) jurisdictions, cooperation and communication between institutions, (c) economic indicators, and (d) customer satisfaction. This method offers a fuller and richer insight of the enhancement of Muslim estate distribution process.

1.9 Chapter Flow

This thesis is divided into ten chapters as follows:

Chapter 1 states the research background, research issue, research questions, research aim, research objectives, research methodology, research contributions and thesis structure. It is important to describe in general on how the researcher aims are to be achieved and plan for the preparation of this report.

Chapter 2 explains the general concepts of property rights of an owner under Islamic and civil law. Firstly, this chapter is focusing on the estate and types of

property constituting an estate. Secondly, it discusses conception of various property rights, powers and disabilities of the owner, duties of administrator, liabilities of estate and right to claim an estate.

Chapter 3 and 4 examines the Muslim estate under Islamic law concerning the conceptions and theoretical aspect of transmission of property during the lifetime and after the death of the deceased owner. **Chapter 3** focuses on the disposition of properties that subject to *harta sepencarian*, *hibah*, charitable trust (*waqf*) and non-charitable trust. **Chapter 4** observes the testate (*wasiyah*) and intestate (*faraid*) succession. These substantive laws might reflect into quantum of share of the beneficiaries and would affect the effectiveness and efficiencies of administration of estates of Muslims.

Chapter 5 is dedicated to the description of the existing organizational framework in various institutions, and followed by the general and specific procedure law of disposing inheritance cases. It aims to give a clear view on the involvement of various agencies and to reform the existing laws or statutes relate to inheritance.

Chapter 6 observes the results of analysis concerning the documentary analysis in the administrative agencies including the statistics of the delayed distribution of estate, time frame and cost incurred whilst the application and distribution of estate in the land office, ARB and Civil High Court.

Chapter 7 analyses on the causes of delayed and lack of estate distribution with emphasis unclaimed, late claimed and delayed distribution of estates in the view of beneficiaries. This chapter discusses the findings for the quantitative method.

Chapter 8 is the findings based on the qualitative method. The aim of this chapter is to discuss the results of analysis concerning the causes of delayed and lack of estate distribution in the perspective of experts.

Chapter 9 begins with a triggering mechanism, a single tribunal and a unified process proposed for the effectiveness and efficiencies of the estate distribution process. This chapter also includes test, validation, and modification of the tested improved mechanism suggested by the experts.

Chapter 10 is about the summary of conclusions, recommendation and others. This last chapter concludes the outputs, the limitations of this study and eventually led to suggestions for future research.

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