

PAPER 11

METHODS OF IDENTIFYING LAND TITLES AND BENEFICIARIES RELATING TO UNCLAIMED MUSLIM ESTATES

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ABSTRACT

Estate is referred to the property left by a deceased person after his death. An estate is considered unclaimed if the beneficiaries of the deceased do not apply for letters of administration, probate, and distribution order by court or Land Office. One possible reason is the difficulty to track the owners and their heirs. In addition there is also possibility of various land titles that carries clear identification of the owners but they still remain estates that ought to be distributed which for one or another reason they are not claimed, and lawfully given to the right heirs and beneficiaries. To clear the backlog of the unclaimed titles, identify new estates, and then distribute them, a good practicable method of identification of estates and tracking heirs is needed. This study was undertaken to establish a method to identify land titles and tracking heirs of unclaimed estates. This is a multipartite and multistage research, which requires specific methods. The theoretical part involved a comparative of law found in primary and secondary legal sources. This will consist of the study of old law such as Kelantan Land Settlement Act 1955, Perlis Land Settlement Act 1956, and existing laws and regulations relating to escheat. The second part of research looks at the methods of identification of unclaimed estates and tracking the heirs of deceased from perspective of their effectiveness and efficiency. The empirical part included the refinement of methods and testing them. These methods were used for data analysis, existing in Land Office, National Registration Office, Majlis Agama Islam Johor and Jabatan Agama Islam Johor. The final output of this research is in the form of propose appropriate course of action which could expedite the clearing of backlog of unclaimed estates in Land Office, and other agencies holding unclaimed estates.

(Keywords: Estate, unclaimed, intestate, escheat, inheritance law).

EXECUTIVE SUMMARY

1.0 INTRODUCTION

Under personal law inheritance is one of the complex but important matter for the welfare of citizens. The inheritance law is archaic and not many countries have updated for very lone including Malaysia. Currently the inheritance of Muslims is affected by both the law and land administration. While on one hand there is need to update the legal framework on the other the process resulting from the legal framework relating to inheritance and its distribution need reform.

The distribution of estates of Muslims in Malaysia is problematic. Ninety percent of the unclaimed estates of deceased Muslims (Wan Kamal, 2011, Siti Mashitoh, 2008; Ghazali, 2008), are presumed left unclaimed and unproductive. Out of 52 Billion (Badrul, 2013), it is reported that 1 Million land titles are unclaimed. One possible reason is the difficulty to track the owners and their heirs.

Estate of Muslims can be distributed among heirs or where there is no heir the property can be returned to the state. The relevant laws related to inheritance include the Small Estate Distribution Act, the Probate and Administration Act, the Public Trustee Corporation Act, the Unclaimed Moneys Act, and the Courts Rules while for escheat the applicable law is the National Land Code.

On Escheat, section 46 of the National Land Code, 1966, (NLC) provides for reversion of landed properties to State in four situations. They are: (a) expiry of term expressed in the document title, (b) forfeiture upon breach of condition and non-payment of rent, (c) upon death of heirless owners or owners abandoning land, and (d) on surrender of title by the owner of the land. Among the four, situation (c) is relevant to this research, of which both heirlessness and abandonment of land may serve as cause for clearing the backlog of unclaimed estates. Mohd Fauzi's (2004) other proposals are relevant to this situation. However, section 351 and section 352 of the NLC need to be considered along s 46. The legal principle empowering land administrator under these sections depends on the existence of satisfactory evidence before land administrator. In other words, where there

is no evidence of such a nature, the application of section s 46(c), together with section 351 and 352 is not practicable, until the owner is identified dead and the lack of heirs is conformed.

1.2 Problem Statement

Mohammad Tahir Sabit Haji Mohamad, and Ayu Ngadimin (2015) opined that estates can be claimed either through the initiative of heirs or of the land administrator. Since Land Administrator depends on the initiative of others, the current backlog is created. Mohd Fauzi (2004) thought there is need to empower the land administrator to initiate the process of distribution on his own. But his view is good for new cases, not the existing backlogs. Mohammad and Ayu (2015) extend the view of Mohd Fauzi to old cases.

Mohammad and Ayu (2015) proposed two scenarios and for each a method: first where the land title bears the identity card number of the owner and second where no such identifying number exists. In first case, for identifying estate lands, or identifying the heirs of a deceased owner, Identity Cards Numbers, death certificates and land titles numbers were considered to be the key for identification of unclaimed estates and heirs. They also considered few agencies that could help provide relevant information. They proposed the sequence of a process for each scenario. However, whether these methods could work is not clear. These proposed methods remain theoretical until tested. This study does not examine the effect and efficiency of the proposed methods.

In nutshell, to clear the backlog of the unclaimed million titles, identify new estates, and then distribute them, a good practicable method of identification of estates and tracking their heirs is needed. Thus far, there is no legally recognized and comprehensively tested method available.

1.3 Research Question

To study the problem comprehensively, two main questions are asked:

- i. What is the law on inheritance and escheat in Malaysia?
- ii. Is there a need for law reform?

1.4 Research Objectives

The general objectives of this study are to:

- i. Explore the existing legal framework in order to determine the method/s of identifying unclaimed titles that may be categorized as unclaimed estates and tracking the heirs of the deceased owner;
- ii. Ascertain the efficiency and effectiveness of the method/s of identification of unclaimed estates and tracking of heirs;
- iii. Propose appropriate course of action which could expedite the clearing of backlog of unclaimed estates in Land Registry/Office, and other agencies holding unclaimed estates.

1.5 Research Methodology

This research is Quasi Experimental. It uses a pre-post testing of the real data, where there are tests done before any data is collected to see if they are workable and suitable for identifying the unclaimed estates. The information obtained from the pre-test is used for the actual test carried out after the data from land office was obtained.

1.5.1 Data Collection Technique

This study used mixed method data collection techniques. For objective one, the data is collected through literature review and interview. An analytical technique is chosen as a strategy to compare existing relevant laws, existing process, and regulations, if any and

relevant. Data related to methods for claiming estates, identifying unclaimed estates, and tracking the heirs of deceased owners is included too. In-depth interview technique is used for obtaining supplementary data and information regarding the practice of the land administrators as prescribed by a give law. The obtained data and information are repeatedly analysed through a comparative and descriptive analysis.

Methods of study for objective two comprises both that suggested early by Mohammad Tahir and Ayu (2015) and that developed by this study through repeated testing and analysis. The previously suggested methods are discussed with practitioners, then modified, before obtaining the real data, and further changed after real data was obtained. The final methods are those developed in the course of empirical testing and analysis of results and overall testing of several methods.

To test the methods a sample of 49 problematic titles related to unclaimed estates that comprised 247 landowners was used. Further data was obtained from JPN, Penghulu office, and owners and beneficiaries.

Objective three is achieved after data analysis, testing of methods and the relevant conclusions.

1.5.2 Primary Data

The primary data is collected through in-depth interview and discussion with the selected respondents. The interviews were recorded to save the data especially the main opinions and suggestion from respondents to ensure the main points are correctly narrated.

1.5.3 Secondary Data

Two types of secondary data was used; first the compilation of existing relevant laws. This helps to identify the strengths and weaknesses of the legal framework that contain methods for the determination of property, estate and their transfer and transmission. The study compares the Malaysian substantive and procedural laws relating to unclaimed

estate. The second type of data of Mohammad Tahir and Ayu (2015). The proposed methods were tested before obtaining the data from land office and after that.

1.5.4 Data Analysis

i. Comparative Analysis

Comparative analysis is a technique for gathering and analysing the content of text. This analysis is used to evaluate information about methods of identifying unclaimed estates implied by various Malaysian laws.

ii. Descriptive Analysis

Descriptive analysis is a technique based on the finding of the in-depth interview session with related agencies. Each of interview data is recorded and then reported.

1.5.5 Validation

While the data obtained from relevant agencies is accurate, information obtained from other sources needed validation to ensure the methods of identifying unclaimed estates and heirs conforms to the objectives of the research. The final proposed method was examined and validated by respective expert panel.

2.0 THE METHODS FOR IDENTIFICATION OF ESTATES UNDER CURRENT MALAYSIAN LEGAL FRAMEWORK

We explored the current legal system first to understand the strengths and weaknesses of its framework and second to find whether there exists any method for identification of estates.

2.1 The Weaknesses and Strengths of Current System

One of the most important aspect of current laws is their simplicity and comprehensiveness. To test this we need to exclude the possibility of legal complexity, because otherwise it would be the serious weakness of the current legal system. A legal complexity refers to the density of actions addressed by a law, with multifaceted notion of justice, indeterminacy (lack of rule to settle conflict between different rules of justice (Kades, 1997) or open-textured, flexible, multi-factored, and fluid (Schuck, 1992) etc. We did not read this with Katz (2014) linguistic simplicity or otherwise. We choose some elements identified by the UK Government's Cabinet Office and Office of Parliamentary Counsel, 2013 which defined complexity in the terms of voluminousness of legislation (hierarchical structure, a citation network and an associated text function) ambiguity of rules, disjointedness, and interconnectedness, unnecessary, ineffective and inaccessibility. Multiplicity of legal system of Fatin (2016) is added too. We focus on the adequacy of effective laws about reporting of death of owners, of estates, their custody, administration and distribution, by the relevant agencies for speedy reporting, possession, and distribution of estates or declaring them escheated. We summarised the rules of written and unwritten laws of inherence under common law system and Islamic law that cause weakness of the system.

Table 1: Factors of Weakness of Malaysian Inheritance Laws

	The laws	The Rules	The Effect	The Nature of Weakness
Multifaceted	Probate, and Administration Act, Courts Rules, Small Estate Distribution Act, Public Trustee Corporation Act, Unclaimed Money	Three types of estates and unclaimed moneys; The right to claim; substantive, and Procedural rules	Confusion, expensive, and time consuming	General
Multisource	Common law and Shariah law; unclaimed moneys, contracts, land law, inheritance; others	Determination of estate, the share of claimants under inherence law or other general laws: contracts, torts, marital law and others; land administration	Application of the wrong law to relevant cases due to unconnectedness and lacunas;	General
Multijurisdictiona	Probate, and Administration Act, Courts Rules, Small Estate Distribution Act, Public Trustee Corporation Act, Unclaimed Money	Civil High Courts, Shariah Courts, Land Office, Amanah Raya, and Registrar of Unclaimed Moneys	Confusion, expensive, and time consuming	General
<i>disjointedness</i>	the National Registration Act 1959; Small Estate Distribution Act, Unclaimed Moneys Act, 1965, the Public Trust Corporation Act, 1995; Probate and Administration Act others	No connection with inheritance law is given ;	Delay of claims, delay of distribution and indeterminacy of estates	Specific
<i>Lacunae</i>	Unclaimed Moneys Act; the National Registration Act 1959; National Land Code, Small Estate Distribution Act, Unclaimed	Giving the money to ROUM; No rule on notification of death of property owners to relevant agency; notice to beneficiaries not provided,	Inconsistency with Art 13 of FC; Delay of claims, delay of distribution and indeterminacy of estates; possibility of missing out of heir	Specific

	Moneys Act, 1965, the Public Trust Corporation Act, 1995; Probate and Administration Act	ignorance of missing persons; AR has no power to take custody of estates; no duty of administrator to distribution estate faster; no unified rule when an estate can be escheated		
Unnecessariness	Unclaimed Moneys Act, 1965, the Public Trust Corporation Act, 1995; Probate and Administration Act	Custody of estate within jurisdiction of many agency, not public trustee; appointment of administrator not necessary	Process costly and time consuming, and fear of exclusion of a property from estate	Specific

Despite the above weakness, the legal system rich and it is believed the removal of above weaknesses its contents have are capable of a stronger modern legal system.

3.0 METHODS OF IDENTIFYING UNCLAIMED ESTATES

Following the analysis of the contents of various laws, we found that three sets of methods and processes for knowing estates: that which rely (1) on non – claimants, (2) on claimant to lodge petition and (3) that which is commenced by the government. We used the following factors for analysis of the Court Rules, 2012, the Probate and Administration Act, 1959, the Small (Distribution) Act 1955, the Public Trust Corporation Act 1995, Unclaimed Moneys Act, National Land Code:

- i. Knowing and reporting the estates
- ii. Administration and Possession of the estates
- iii. Identification of beneficiaries and successors to the estate
- iv. Transmission to the representatives
- v. The distribution of the estates and

- vi. Dispute resolution and jurisdictional issues

Among the above we used factors one, two for analysis of law in regard to identification of estates.

3.1 Methods of Identifying Estates by Non-Claimants

There are several laws that allows claiming estates by beneficiaries and others. They are discussed below

3.1.1 Unclaimed Moneys

The unclaimed Money Act 1965 makes it the duty of every company, firm,¹ and any person who has in their possession unclaimed money or money other than unclaimed, to have record of unclaimed moneys and maintain it all the time.² Unclaimed money mean money which remain unpaid for a period of not less than one year after became payable or sums credited to an account that has been operated for seven years, and a trade account that has remained dormant for a period of two years.³ Since this law is not connected to inheritance law the method is not applicable to reporting and custody, and claiming of estates. This is thus far the more complete process though it may not be beneficiary friendly.

3.1.2 Unclaimed Estates

While the unclaimed Moneys Act, does not have reference to estates, and the custody of the money is given to Registrar of Unclaimed Moneys, the Police Act refer to estates. However the ss 22, and 23 of Police Act impose duty on any one to report and surrender unclaimed immovable estate to the police, however the final custody of the estate is given to Public Trustee. These laws do not provide notice to claimants and beneficiaries.

¹ s 8; s 10(2); s 14(1). UMA

² s 10(1) UMA

³ s 8 UMA

3.2 Knowing the Estates through Claimants

There are several laws that imply claiming the unclaimed estates by one who has the locus standi: the beneficiaries to the estate and non-beneficiary claimants. Three important legislations have to be considered for who the knowledge of estates of deceased are significant in the interest of interested persons and the government as the claimant of escheat and bona vacantia. They are the Public Trust Corporation Act, 1995, the Small Estate (Distribution) Act, 1955, and the Courts Rules, 2012, and the Probate and Administration Act 1959⁴. The agencies and tribunals in charge of distribution of estate generally will know about estate through an application by the claimants to estates. The applicant could be by heirs and personal representatives or outsiders.

3.3 Knowing Estates through Land Administrators Initiative and Action

Under this section we discuss two laws of Malaysia: the Small Estates (Distribution) Act and the Kelantan Land Settlement Act 1955. While the former is applicable throughout Malaysia the latter is for Kelantan and one for another state. The Small Estates Distribution Act though applicable throughout Malaysia and yet the backlog exists we believe if studied once again and administrative guidelines are issued, the Act is capable of clearing the backlog as well as prevent future backlogs. For this reason we included it in this category.

It is pertinent to note that the above two laws are different: the Small Estate (Distribution) Act is non-systematic while the Kelantan Act is a systematic one. It may be used but it has to be enacted first for the purpose of all states; otherwise, the Small Estate (Distribution) Act can be made systematic through issue of new guidelines.

3.3.1 Small Estate (Distribution) Act

Small Estate (Distribution) Act may be divided into two types of process: that which depends on petition of claimants and that which may commence after claimants fail to

⁴ For sections relevant to petitions see ss 3, 16, 18, 19, 23, 39 and 45.

claim. Fatin and Mohammad Tahir Sabit (2015) have discussed the existing prevailing claimant dependent process which we do not repeat it here. We focus on the second process i.e. that which commences after failure of the first.

Under section 8 of Small Estate (Distribution) Act any person claiming to be interested in the estate may apply to the Collector having jurisdiction under section 4 for the distribution of the estate. Nevertheless, section 18 (1) of the Act imposes duty on the Settlement Officer or the *penghulu* that they shall report the matter to the Collector and the Collector may thereupon direct the Settlement Officer or the *penghulu*, to lodge a petition for distribution of the estate. The Settlement Officer or the *Penghulu* to know that (a) a proprietor of a land has died and (2) no proceedings have been taken, within six months of the date of death, to obtain a grant of probate or letters of administration or for distribution under this Act of the estate of the deceased.

3.3.2 The Kelantan Land Settlement Act 1955

In addition, to above law the Kelantan Land Settlement Act 1955 (Revised 1991) provides for field investigation of the ownership of land, which also includes investigation about the estates of deceased persons. It provides for 'revision of registers, recording of interests in land, settlement of claims, determination of owners, possessory title to land, and issue of documents of title to land, in areas from time to time declared in the State of Kelantan'⁵.

Under Kelantan Land Settlement Act 1955 (Revised 1991) an area within the State can be declared as Settlement Area where every claimant to land may be called upon to appear within a specified place and time and to submit his claim. After such a declaration within six months all transfers, transmissions, and land dealings are suspended except those made under this Act.⁶

The Settlement Officer records claims on behalf of any person, whether present or not, who appears to him to have a claim to any interest in land. After recording the claims, the

⁵ s 1 Kelantan Land Settlement Act 1955 (Revised 1991)

⁶ s 3(1)(2) Kelantan Land Settlement Act 1955 (Revised 1991)

District Officer makes inquiry into the claims.⁷

The District Officer conducts a public enquiry to ascertain who is in possession of land, who is the registered proprietor, who is entitled to be registered as proprietor, whether any person has a registerable interest therein, and the extent of the land over which any interest is exercisable. The claimants could appear in person or by an agent authorized in writing or appointed before the District Officer. They shall produce to the District Officer any instruments affecting the land or interest, which they claim.⁸

Since the investigation is for the revision of registers, one should expect claims to the estates of deceased persons. Therefore, the District Officer is empowered to distribute an estate under Small Distribution Act 1955⁹, if he finds that a given land forms part of a small estate of a deceased person who died intestate within last six years from the date of hearing.¹⁰

The district officer is empowered to make a finding and order accordingly in the following situations:

- i. That the person in possession of any land at the date of the enquiry is or holds under a person in occupation of State land under approved application in expectation of registration of title in accordance with the law.¹¹
- ii. That land in a Settlement Area is registered in the name of a person and that another is in possession thereof otherwise than holding under the proprietor.¹²
- iii. That the person in possession entered into possession as tenant, chargee or otherwise than as owner, by leave or license of or on behalf of any person not being the proprietor who claims to be entitled to such land or any interest therein.¹³

⁷ s 4(2)(3) Kelantan Land Settlement Act 1955 (Revised 1991)

⁸ s 5(1)(2) Kelantan Land Settlement Act 1955 (Revised 1991)

⁹ According to s 6(2) the District Officer shall be deemed to be the Collector of the district where the greater part of the property is situate for the purposes of subsection 4(2) of the Small Estates (Distribution) Act 1955.

¹⁰ s 6(1) Kelantan Land Settlement Act 1955 (Revised 1991)

¹¹ s 7, Kelantan Land Settlement Act 1955 (Revised 1991).

¹² S8(1)

¹³ s 8(2)

Upon receipt of such order the Registrar shall furnish the person in possession or, where appropriate, the person under whom or by whose license the person in possession entered into possession, with the appropriate document of possessory title.¹⁴

It is to be noted that the Act still does not give power to the District Officer to dispose claims which are intestate for more than 6 years, and where the land comprises an area the value of which could be more than the prescribed amount that make the land a non-small estate.

It is further to be noted that the process is for ascertaining the fact that the land is in possession of right persons. Hence, the beneficiaries and claimants to estate are included. All officers are the land office officers which may be state employees. It is less complicated as under the Small Estate Distribution Act may involve federal officers too.

3.4 Claims of distribution and declaration of escheat

The discussion by Fatin Afiqah and Mohammad (2015) on claims for distribution suffices. In the context of reporting and custody of estates by the Corporation, it is proposed that 6 months for mandatory reporting of the estate and 15 years for making claim for distribution be fixed. Failing to claim estates within 15 years, the estate to be escheated⁴³. The claimant could recover the estate before the lapse of 15 years with profits, thus making section 11 of Unclaimed Moneys Act consistent with section 20 of Public Trust Corporation Act, 1995.

A tribunal responsible for claims ought make a distribution order, and it ought to be enforced by the Corporation and Small Estates Distribution Unit. Appeal from this tribunal can be made to the high courts in contentious cases. The benefit of this structure would be to know the estates, beneficiaries and distribute them faster.

¹⁴ see ss 7, 8, Kelantan Land Settlement Act 1955 (Revised 1991)

4.0 METHODS OF IDENTIFYING ESTATES AND THEIR BENEFICIARIES SUGGESTED BY PREVIOUS STUDIES

The most serious issue to tackle is the force the unaware and unwilling beneficiaries to claim the estates of a deceased. For this a proactive role of the Small Estate Distribution Unit of Land Office to discover unclaimed estates, and a methods that can assist Small Estate Distribution Unit of Land Office achieve its objectives are necessary. While the first can be achieved by imposing duty to claim the second issue could solved by having a method known to the land office. For this purpose Mohammad Tahir Sabit (2015) and Ayu Ngadiman (2011) is significant. They have proposed the following methods:

The above authors proposed that the NRD can share the relevant information of a deceased person with Land Office or other agencies and tribunals, dealing with determination of estate of a deceased or its distribution. It could send a copy of the certificate of death to them, which may also include the family tree of the deceased, and the addresses they have resided in the past.

Other time, the Land Office may request such information from NRD. For instance, if the land administrator intends to take initiative under s 8 and 18 of the Small Estate (Distribution) Act it can request full information from the National Registration Department about the name of registered landowner, and his/her descendants, spouses, during the time he passed away or earlier. The order of descendant may include relative by blood and marriage. Additional information may also be requested such as the addresses of the owners of the land or if there are any other persons who had had carried out similar names and resided in the same location. Information about the addresses of the spouse/s and descendants may also be available and could be shared with Small Estate Distribution Unit of Land Office or other agency for the purpose of ascertaining efficient process of the estate claims, distribution and transmission.

For land office to do the above, the power under section 18 of the Small Estate Distribution Act was emphasised on. That is the Settlement Officer and penghulu or baitul mal. In cases where the time has passed since the owner of land has passed away, the land office for purpose of updating its register may take the initiative to identify titles belonging to dead

persons. This can be done by having access to the data of NRD. Where this is possible the above authors suggested that land office can use identification card numbers, old or new, or any other ID Number that could be registered both in Land Office and the registration office. Only matching these IDs could enable the Land Office to update its information about the death certificate of the landowner, his address, her family and their addresses current and past.

The above authors also saw cases where the NRD data may not be found to help Land Office because of lack of matching ID Numbers or due the lack of ID Numbers, at the first place. In both cases, the following method of identification of unclaimed estate was suggested:

- i. Where matching ID number does not exist, or the land title does not have ID number, historical background of the given Lot of the land can be used. Reference may be made to the available taxation records of the relevant Lot in the land revenue systems, if any. Where payment is made and the taxpayer is the owner, supposing the title is new, the land title is up-to-date and the lot does not belong to deceased owner. If a person other than the owner pays the tax, further enquiry may be made about his relationship with the landowner, by looking at the family tree of the taxpayer. If there is any matching information that can be used as clue to the death of the owner and the possibility that the taxpayer is one of the heirs then that line of investigation can be followed.

There could be information showing the tax payer is relative of the owner but does not exclude the possibility of the landowner to be alive. The particulars of the taxpayer may be used for contacting him/her and making relevant enquiry, particularly so if the title is registered not in very recent times. Where there is no contact address or number, enquiry may be made from the Election Commission or the Inland Revenue Offices about the whereabouts of the landowner or the taxpayer. Information from these offices could be used to ascertain the status of the landowner or the heirs of the landowner. Where no assistance can be received from such data, site visit to the location may be required. Perusing all these may greatly clear the problematic titles.

- ii. Following the taxpayer, or the possible heirs may be comparatively easy. Their information and addresses could be sought by following their IDs not only in above agencies but also in Amanah Raya, Tabung Haji, and vehicle licensing and registration office. These could prove to be accurate compare to election office, or even Inland Revenue office. Landowners, who may be presumed to be alive, could also be traced from these agencies.

Despite the problems in land office for application of all the above methods, we tried to use all the above suggestions. However, before using them we sought the views of practitioners through a brief pilot study.

5.0 PILOT STUDY: TESTING THE PREVIOUSLY PROPOSED METHODS OF IDENTIFYING ESTATES AND THERETO

The pilot study was carried out at Pejabat Tanah & Galian. This study involved discussion with Ketua Penolong Pengarah from Land Development Unit, Land Registration Unit, Revenue Unit, Information Technology Unit, Land Disposal and Enforcement Unit & Strata Unit. The main purpose of this pilot study was to discuss the methods and workflow for identification of titles that could be unclaimed.

5.1 Proposed Method and Workflow for Searching Deceased Land Titles

Sistem Pendaftaran Tanah Berkomputer (SPTB) is one of the system used at Land Office Registration Unit in Malaysia. SPTB was implemented by phases and the State of Johor was using SPTB in phase 2. Although SPTB has been used for many years but there are titles still not converted to computerized title and still remain manual. Due to this problem, we originally proposed to study Computerized Titles and Manual Titles.

There were few steps proposed for checking the registered titles. First, at Registration Unit, Land Office, to check on a particular title whether or not it has estate distribution transaction. We also thought about titles where there is no estate transaction, to find whether or not the registered owner is alive or dead. To find an answer about the death

of the land owners we proposed to use the second method. From the list of registered titles, each titles was to be checked whether the title has estate distribution endorsement. The registration date of the estate distribution application and the expiry date of the transaction were to be noted. Those titles with estate distribution endorsement, attention would be paid to the distribution of estates. If the titles were still not distributed to the beneficiaries, checking of the LA status would be required. The time of grant of probate to the personal representative would determine the status of title being effectively claimed or otherwise. Where it was to be found that the personal representative is administering estate longer than one year that would be marked as unclaimed. A field visit was thought to be made to find whether the estate is contentious or otherwise. If there was contention regarding entitlement or representation, the case was to be marked as problematic and further process was thought to be suggested.

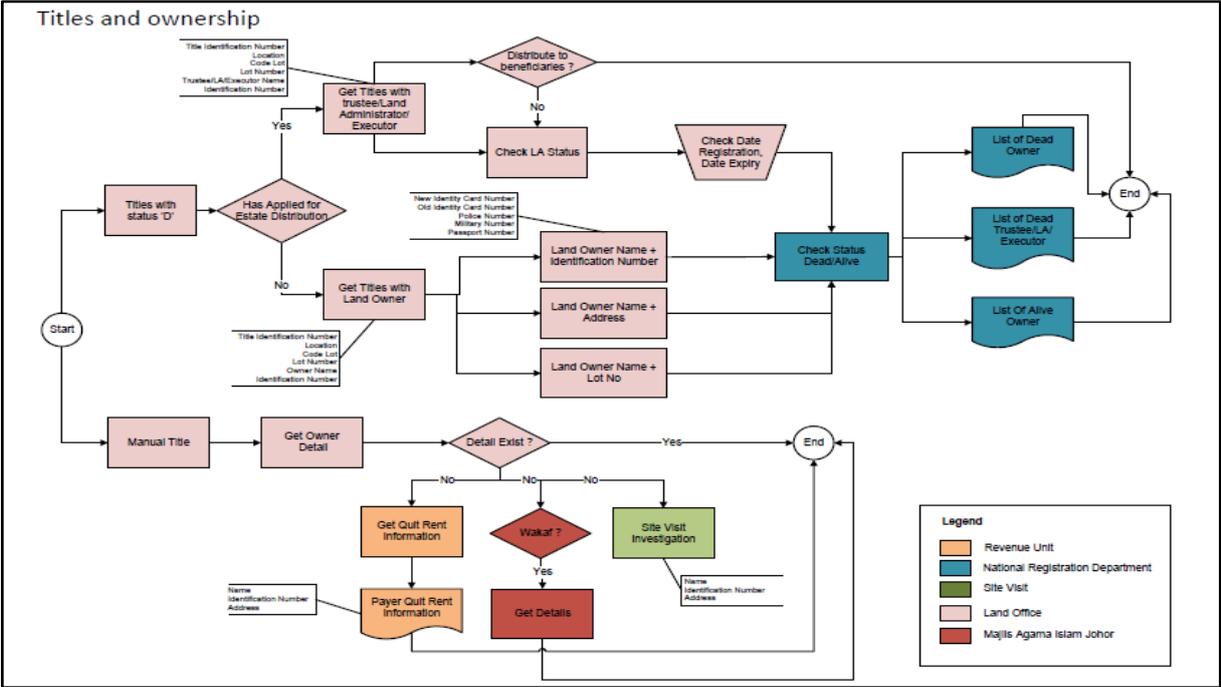


Figure 5.1: Proposed Method Workflow for Title Identification

Secondly, we proposed to check with National Registration Department on the status of landowners; i.e. whether they are dead or active. Those titles that do not have any application for estate distribution were to be listed based on the proprietors’ names with their identification numbers. Each of the proprietors were to be checked. At the end, a list of individuals’ names as dead or alive would be reported. If they were dead, details of their marital status including their family tree would be checked. Family tree would involve

parents, siblings, uncles/aunties and also grant parents. The family tree was proposed to be taken from NRD Johor. These information gathered from NRD Johor and JAIJ were thought to indicate that a particular person is the heirs of the death person. For owners without ID No., Lot No., name and address of the owners we proposed a site visit to meet the relatives and neighbours of the owners of the land.

Thirdly, at Jabatan Agama Islam Johor, we were to check the existence of marriage and divorce.

5.2 Finding of Pilot Study

Based on the discussion with the officers of Land and Mines (Pejabat Tanah & Galian) on the proposed methods and workflow for land title identification, we modified our original proposal. The officers involved in discussion, expressed concern about the secrecy and security of the data. They suggested that the method should be based on the availability of the data that they will provide. They suggested that we focus on the titles with outstanding quit rent, titles with more than one proprietors and manual.

Due to the above discussion, we adjusted our methods of enquiry (See Figure 5.1).

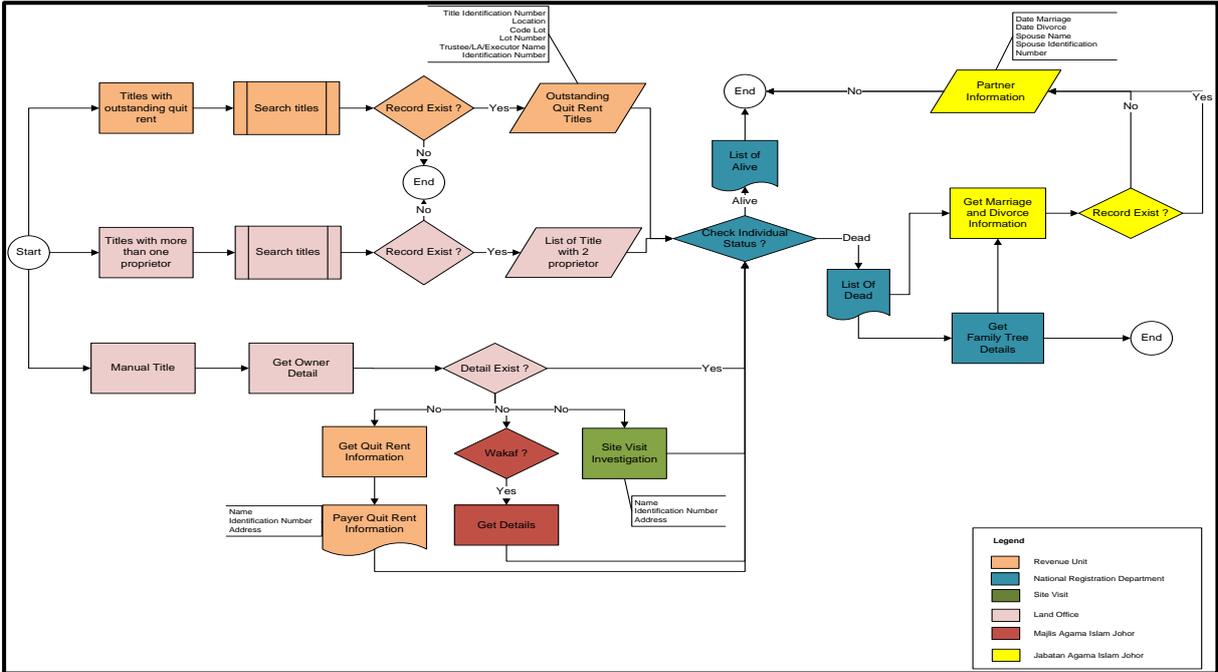


Figure 5.2: First Modification of Method and Workflow

As illustrated by Figure 5.2 we modified our workflow and study method based on the discussion we had with Land Officers. We assumed to study three types of titles i.e. those with the unpaid record of quit rent, with joint ownership, and manual titles. In all three cases, if there was a record, the list of proprietors was to be produced. These were to be studied further to find the status of individual owners and their marital status. The marital status of the owners were thought to be obtained from National Registration Department, JAKIM, and Majlis Agama Islam Johor. A field study was thought to be conducted only when information are not available about the death of landowner; where after search for heirs of the landowners could be commenced. However, in cases of ownership where uncertain, due to lack of data in the land office or JPN, information from Majlis Agama Islam Johor were supposed to be received.

Accordingly we have to analyses the data, find the details of the proprietors, and their heirs. The personal detail of the owners of land lots would include the information about their marriage, their children, their parents and brothers and sisters as heirs if the owners of the land were found to be deceased. These personal details would also include the names, the IDs, the addresses, date of marriage, and date of death. The reference to quit rent was used to find whether the lack of non-payment of quit rent can be used as a clue to the death of the landowner (Figure 5.2).

Basically, the early and modified proposed method largely remained the same. That is why the following course of action was taken. Three possible ways that were to be used to search for the details of owners: (1) Quit rent information from the Revenue Unit, (2) Waqf status on that particular land (3) Site visit and field investigation. If the owners' details are found, in either of those places, they will be used for marking the land title as an estate or otherwise. This information has to include both individual information and also their marriage information. The process for other cases would be the same as discussed early.

6.0 DATA ANALYSIS AND RESULTS

The data that was received from the Land Office was problematic. Several issues were faced that could be considered to be hindrance to identification of unclaimed estates. We divide our discussion into two: the analysis of the data itself and the analysis of the methods we tried to test in finding the unclaimed estates and tracking the heirs.

As we analysed the data we found that it consisted duplicate names, wrong addresses, wrong IC Numbers, and other incomplete information. Despite the inaccuracy of data we tried to categories it based on attributes that we could use as a clue to identify the unclaimed estates. We used age of registered landowners, indicated from the first two digits of new and old IC Numbers which carries the year of birth of the owner. Additionally, we also compared the date of registration and expiry date where title was leasehold. We also looked at the non-payment of tax or quit rent, beside the age of owner and the type of ownership.

The 48 lots of Muslim holdings had 275 individual and co-proprietors.(Table 6.1)

Table 6.1: Identification of Unclaimed Estate based on IC Number and Name

Lots		Owners	
99	Muslim	48	247
	Non – Muslim	51	103
	Total no of Duplicate Names		23
	Total no of Duplicate IC		6
	Old (e.g. 16428)		31
	Others (e.g. A0169236)		4

Overall, there were two types of problematic ICs. Some of these ICs had five digits and others had seven digits. The seven digit ICs began with letter A and RF both had no indication of age. These if coupled with no address were considered to be hindrance to the identification of heirs and relative of land owners.

There were titles that were not having complete information. Some of the problems are indicated in the Table 6.2 below.

Table 6.2 (i): Titles With Incomplete Information

Types of Lots	No of Lots	No of owners	Owners with no ICs	Owners with No Address	Owner Complete info	Total
Individual Titles	22	22	0	11	15 (5%)	22
Shared titles	26	247	59	202	39 (14%)	249
Total	48	275	59	213	54 (19%)	275

Based on the above analysis only 54 owners had complete information of which 14% from jointly owned titles and 5% of individual titles. Twenty one percent (21%) from 275 Muslim owners among co-proprietors had no IC number. Additionally from 275, 213 Muslim co-proprietors had no accurate address (73%).

Table 6.2 (ii): Type of Ownership

Type of title	ownership	trust	WKL	administrator	Others
Freehold	201	1	1	1	8
Leasehold	56	3	0	0	4
Total	275				

The data on the type of ownership showed that out of 275 owners 73.09% registered as Pemilik (PM) for freehold, 20% registered under leasehold title, others registered trustees and personal representatives (Pemegang Amanah (PA), WKL, and Pentadbir). The rest have no information on the title which will be completed in due course.

We also analysed the data based on expiry date of title, non-payment of tax and age of owner (referred to the first two digits of new ICs) which is illustrated in the Table 6.3 below.

Table 6.3: Comparison of Expiry Date, Non-payment of Tax and Age of Owner

Registration date	Expiry date	Quit Rent not paid	Status	Lease Term	No. of IC	Age Of Owner
12/02/2006	11/07/2105	1 Tahun	Leasehold	99	160128-XXXXXX	101
26/06/1991	-	6 Tahun	Freehold	-	301109- XXXXXX	87
26/06/1991	-	6 Tahun	Freehold	-	180116- XXXXXX	99
26/06/1991	-	6 Tahun	Freehold	-	190824 XXXXXX	98
26/06/1991	-	6 Tahun	Freehold	-	260613 XXXXXX	91
10/04/2004	-	3 Tahun	Freehold	-	180204- XXXXXX	99
10/04/2004	-	3 Tahun	Freehold	-	730809 XXXXXX	44
08/06/1971	07/06/2070	1 Tahun	Leasehold	99	130629- XXXXXX	104
18/04/1981	17/04/2041	1 Tahun	Leasehold	60	180608- XXXXXX	99
21/04/2011	-	-	Freehold	-	780708- XXXXXX	39
21/04/2011	-	-	Freehold	-	740727- XXXXXX	43
21/04/2011	-	-	Freehold	-	181127- XXXXXX	99

The analysis of all land owners age showed the following pattern:

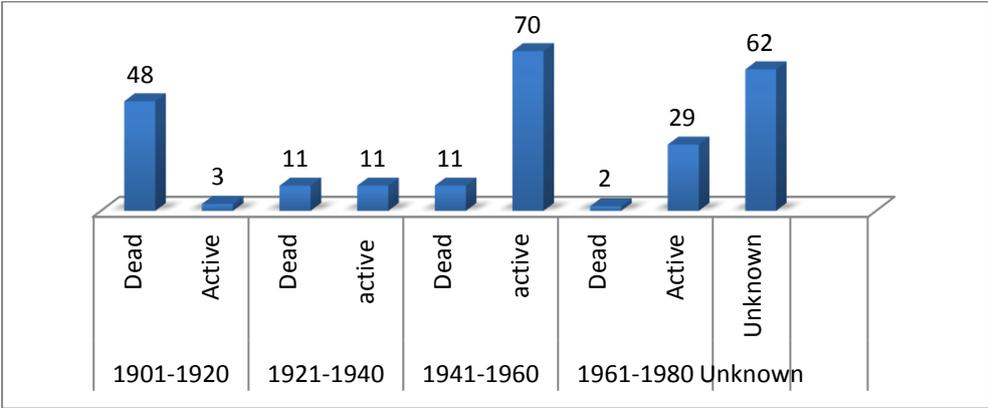


Figure 6.1: Land Owners Age

The data analysed which consisted of the ICs indicating year 1901 to 1920 showed that 48 beneficiaries are dead and only 3 beneficiaries were still alive. As for Year 1921 to 1940 it showed that the number of dead and active beneficiaries are the same i.e. 11 both dead and active. The data from Year 1941 to 1960 and year 1961 to 1980 shows that the total number of active owners is higher than dead owners. 62 owners could not be identified because of the absence of a valid identification card number. It is therefore inferred from the above table that the following clues for suspecting estates can be used:

Table 6.4: Analysis Methods of Land Office Data for Identification of Estates

No	Signs of unclaimed estate	Degree of presumption
a) 1	Non-payment of Quit Rent for 2 years	Weak presumption of unclaimed estate
2	Non-payment of Quit Rent for 2 years + short period of lease	Reasonable presumption a) unclaimed estate b) abandoned estate
3	Non-payment of Quite rent for 2-12 years + short term lease, or age of owner above 70 years	Strong presumption
b)	Old age of owner	
	92-106 years old	Strong presumption of unclaimed estate
	70-91 years old	Reasonable presumption
	50-69 years old	Weak presumption i. Weak presumption if Quite Rent is paid, ii. Reasonable presumption if Quite Rent not paid.
c)	No IC Numbers	May be presumed if there is another IC no of the relative, otherwise need inquiry.

7.0 FINAL TECHNIQUES OF DATA GATHERING

As a result of the data we received from Land Office, and considering the above problems we further modified our techniques of our study for testing the proposed methods of identifying estates. Figure 7.1 indicates the methods, which some of them were planned at the beginning and those, which in the course of our study, were suggested by experts (the INSPEN Panel and our fellow researchers at the University).

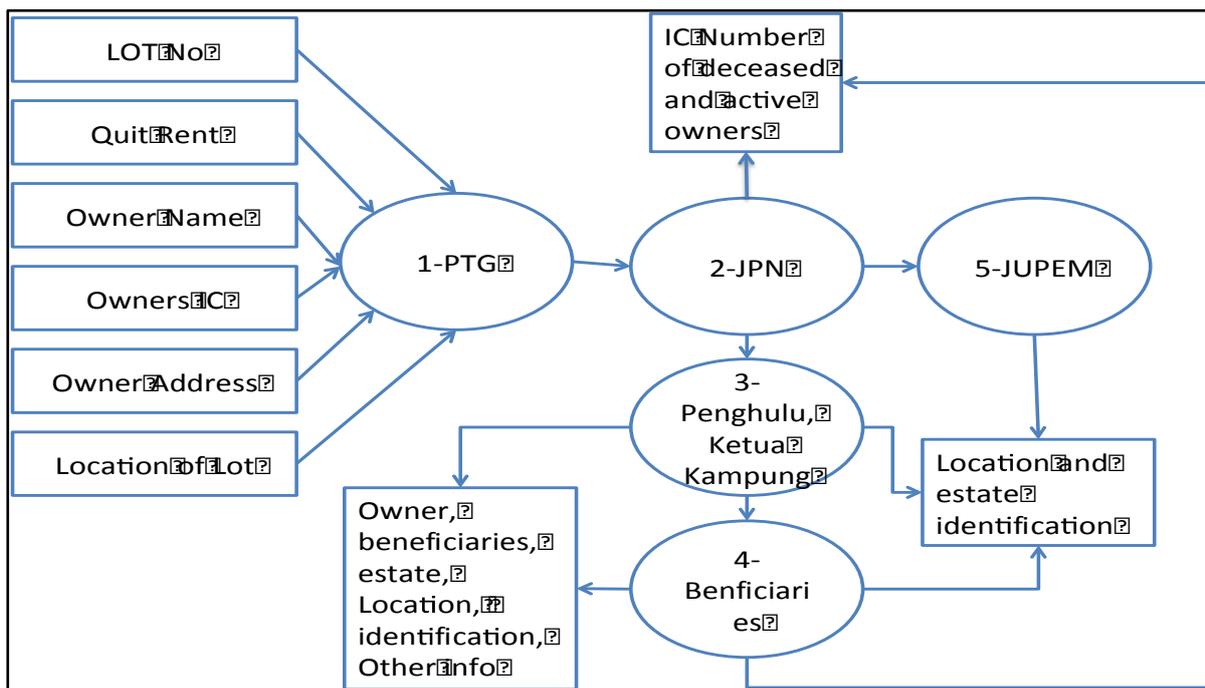


Figure 7.1: Method were used for this Research

As Figure 4.11 shows that five sources of data gathering were considered to be used i.e. PTG Johor, JPN, Penghulu and Ketua Kempung offices, Beneficiaries, and JUPEM. The first two were as planned. In the course of study penghulu, and JUPEM were seen necessary. Contact was made with Majlis Agama Islam for waqf properties, and Jabatan Agama Islam for marriage and divorce data. However, the latter had no computerized data and thus it was considered problematic due to constraint of time. Majlis Agama Islam was contacted, however, we received no cooperation from them. A summary of reasons is discussed below:

- (1) **PTG:** as mentioned early the list of 48 lot with 247 owners, some individual title others joint, was received from this office.

- (2) **JPN:** After we received the data we sent the list of all owners with other needed information to National Registration Department (JPN/NRD). This was for purpose to check the death of landowners, heirs or beneficiaries of the estates and their addresses. We received the data and around 50 % of landowners were confirmed to be alive or dead. However overall, the results were not satisfactory as we could not get the data on the heirs of deceased persons, and some identity card numbers could not be matched or there were no record of the owners. The addresses were not accurate too or there exist no information about it. We could not get family tree of the landowners from the NRD for reasons of privacy and secrecy. Therefore, we were forced to conduct fieldwork.
- (3) **Penghulu and Ketua Kempung:** To get information about the remaining 50% of the data, on the status of landowners being alive or deceased, their addresses and the status of their heirs we have to approach Penghulu, Ketua Kampong and later JUPEM. Based on data from PTG Johor we intended to use lots number to trace the location of the given lots of lands through detailed location maps of JUPEM. We therefore requested data from JUPEM. While waiting for data from JUPEM we conducted our fieldwork to get more details about the owners of estates and the beneficiaries thereto. Penghulu and Ketua Kampung (Head of Village) helped us to trace the beneficiaries based on their own knowledge or by name or by address. However, all information could not be obtained from the head of villages about the land owners, beneficiaries or the location of the land.
- (4) **Beneficiaries:** they were approached, but limited to those who were able to know them from Penghulu or Ketua Kampong, to confirm the information from PTG and Penghulu or Ketua Kampong. We managed to get hold of some owners, and beneficiaries and got useful information. The owners and beneficiaries did provide information about the status of the land whether in possession of living owner, or in process of distribution, or such process being completed or no action being taken by the beneficiaries. However, they did not include lots that were yet to be investigated.
- (5) **JUPEM:** where the land owners' addresses were not known or not accurate JUPEM data was used which was helpful in getting the location of the land.

8.0 RESULTS OF STUDY ON EFFECTIVENESS AND EFFICIENCY OF METHODS USED

The list consisting all 247 landowners was checked by JPN. The result of the verifications were made based on IC No, address and death certificate. We categorized the results as:

- i. Successful Data
- ii. Unsuccessful Data (This will be discussed under field work report)

8.1 Successful Data

Based on the above confirmation from Jabatan Pendaftaran Negara (JPN), 61% of those owners were active or alive. 39% of them were dead.

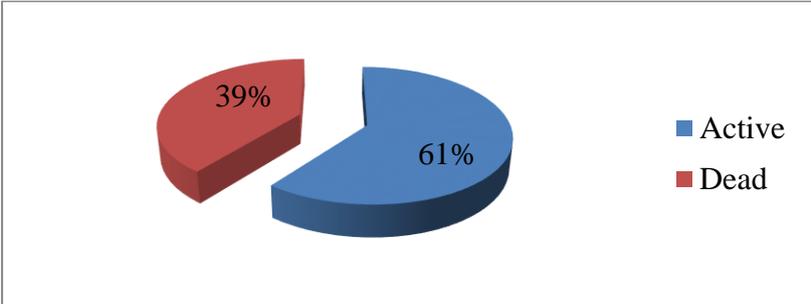


Figure 8.1: Success based on IC Number

Three Landowners whose Army or Police ID numbers were recorded on land titles were also identified.

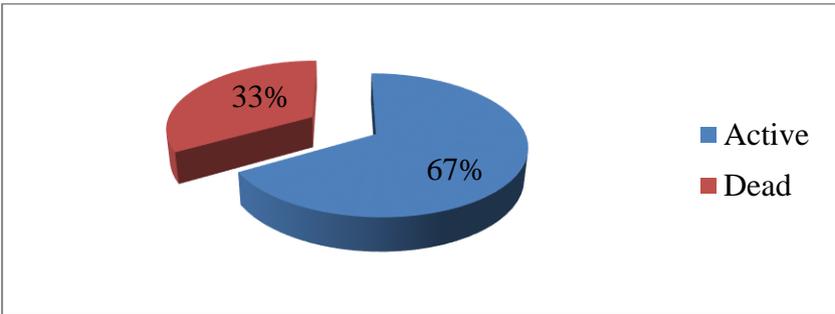


Figure 8.2: Success based on Police or Army ID

Based on the confirmation from Jabatan Pendaftaran Negara (JPN), the ICs with alphabets are police or army identification numbers. It was found that 67% of those owners are dead and the remaining still alive.

8.2 Unsuccessful JPN Data and Discovery Through Penghulus

Fifty (50) landowners were not identified by JPN, or the department did not have full information about them. Table 8.1 shows four categories of unsuccessful data which are explained below. First two columns shows the names of the landowners, and their IC Numbers and the third column shows the information we received from the department. As can be seen, JPN had no information about the landowners' whether or not they were dead. Some of these landowners had normal IC numbers comprising both old and new. Others IC numbers were not in the typical format. Some of them were Police or Army IDs and one of them was a company. We list the data in the following sections.

Table 8.1: Unsuccessful Data from JPN

Owners	Frequency	Percent
1. Unidentified landowners with proper IC Numbers	6	12
2. Land owners with Abnormal IC Numbers	11	22
3. Landowners with No IC Numbers	32	64
4. Own by company	1	2
TOTAL	50	100

1. Unidentified landowners with proper IC Numbers

Table 8.2 shows the results of study in JPN and penghulu or ketua Kampung. Those land lots the owners of which were not identified by JPN were investigated through fieldwork comprising the penghulu and ketua kampung. The highlighted columns are indicative of such fieldwork results.

Table 8.2: Unclaimed Estates Identified Through JUPEM Data.

No	District	Mukim	Lot Number	Address	JUPEM Data Identified by Google Map Coordinates
1	Batu Pahat	Sri Gading	2928	No Address	1 50 59.567 103 08 00.631
2	Batu Pahat	Sri Gading	11459	48 Lorong 1a, Air Hitam, Batu Pahat, Johor.	1 51 21.117 103 10 09.372
3	Johor Bahru	Plentong	36244	27 Jln. Anggerik 22 Tmn. Johor Jaya Johor.	S54704.567 E26836.489
4	Johor Bahru	Mukim Pulai	26483	4 Blok Sibul Taman Bakti Jalan Tasek Utara Johor Bahru	1 29 48.675 103 40 37.777
5	Johor Bahru	Mukim Pulai	6904	No. 60, Tingkat 1, Block C, Flat Bukit Cagar, Johor Bahru	1 32 42.501 103 39 01.927
6	Johor Bahru	Mukim Pulai	3068	Lot 3068 Jalan Cempaka Kg. Sri Jaya, Johor Bahru	1 30 53.266 103 37 22.475
7	Johor Bahru	Mukim Pulai	4012	4012 Kg. Melayu Kangkar Pulai, Skudai, Johor	1 29 47.118 103 41 56.118
8	Johor Bahru	Mukim Tebrau	113	No Address	1 31 27.876 103 46 08.683
9	Johor Bahru	Mukim Tebrau	17892	No. K-1 Jalan Raya Ulu Tiram, Johor Bahru	1 35 07.613 103 48 20.639
10	Johor Bahru	Mukim Tebrau	19305	No. 29, Jalan Panti 7, Taman Bukit Tiram	1 36 20.033 103 48 35.282
11	Johor Bahru	Mukim Tebrau	58442	16, Jalan Mutiara Emas 3/12, Taman Mount Austin, Johor Bahru	1 34 30.633 103 44 54.192

12	Johor Bahru	Bandar Johor Bahru	10324	No Address	1 29 15.097 103 45 28.594
13	Johor Bahru	Bandar Johor Bahru	1967	Ketua Pengarah Insolvensi, Malaysia Cawangan Wilayah	1 28 23.693 103 45 38.415
14	Johor Bahru	Bandar Johor Bahru	1593	Lot 2472, Jalan Taib, Kota Kecil, Kota Tinggi	1 28 21.179 103 44 45.425
15	Johor Bahru	Bandar Johor Bahru	4868	No. 5, Jalan Sahabat, Kampong Melayu Majidee, Johor Bahru	1 30 36.751 103 45 00.800
16	Johor Bahru	Bandar Johor Bahru	18557	Kampung Jelutong, Ayer Baloi, Pontian, Johor	1 29 50.012 103 42 53.655
17	Kluang	Mukim Kluang	60536	52, Jln 5/4, Tmn Sri Kluang, Kluang -Sp-	2 01 57.527 103 18 08.169
18	Kluang	Mukim Kluang	4482	No Address	2 00 43.313 103 15 46.151
19	Kota Tinggi	Kota Tinggi	679	No Address	1 45 43.473 103 55 40.325
20	Kota Tinggi	Kota Tinggi	10556	Lot 2472, Jalan Taib, Kota Kecil, Kota Tinggi	1 44 36.278 103 54 06.688
21	Kota Tinggi	Kota Tinggi	2535	No. 3, Jln. SS 14/4B Subang Jaya, Selangor	1 50 46.071 104 01 59.724
22	Pontian	Mukim Benut	532	No Address	1 38 33.586 103 15 29.855
23	Johor Bahru	Mukim Tebrau	4294	No Address	1 31 40.804 103 42 56.011
24	Johor Bahru	Bandar	63	No Address	Unsuccessful data

		Johor Bahru			With No Address
25	Kota Tinggi	Kota Tinggi	5643	Lot 2472, Jalan Taib, Kota Kecil, Kota Tinggi	Unsuccessful data With wrong Address
26	Muar	Bandar Maharani	13145	No Address	Unsuccessful data With No Address

2. Land owners with Abnormal IC Numbers

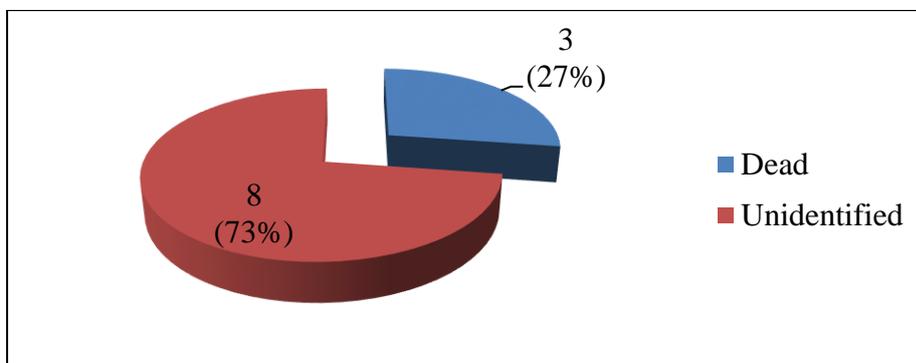


Figure 8.3: Land Owners With Abnormal IC Numbers

There were 11 landowners with unusual IC numbers in the data we received from Land Office. Jabatan Pendaftaran Negara (JPN) did not confirm the death of any of them. However only three (3) land owners were found to be dead based on confirmation from the beneficiaries during fieldwork. The status of the remaining eight (8) landowners was unknown.

3. Landowners with No IC Numbers

Thirty two (32) landowners had no IC Numbers on their grants. Therefore expecting information from JPN would be futile. Hence, information through fieldwork were collected.

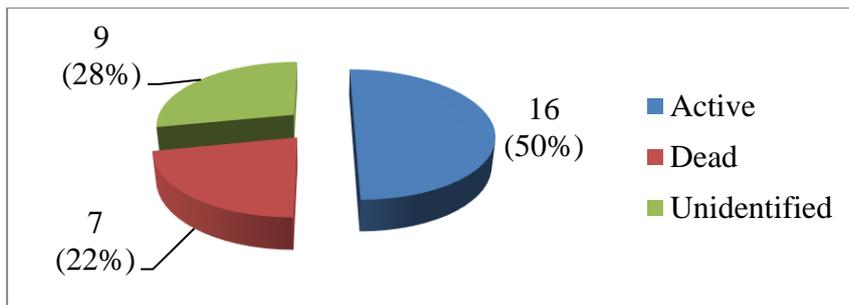


Figure 8.4: No IC Number

The information from penghulu, ketua kampung and beneficiaries showed 23 landowners were either dead or still active. In other words half (50%) landowners were still active. The remaining 28% could not be identified, while 22% were dead.

4. Own by company

It was found that one title was registered under a company name. In fact it was found that the land lot belongs to beneficiaries included in a company. This is an interesting case, as it seems that the estate has been transferred to a company incorporated by the beneficiaries. A company under law has perpetual succession, which means that the estate, forever remains estate and the directors as and when such is needed can add beneficiaries. The researchers therefore did not see the need to investigate this further.

To sum, the information about 26 lots were not available to the penghulu offices, and therefore they remained to be investigated further. We choose to begin with the identification of the location of the lots first. For this we used JUPEM data as is discussed below.

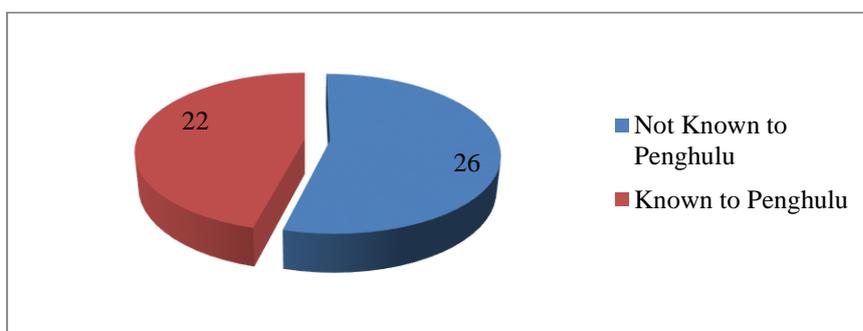


Figure 8.5: Location of Unclaimed Estates

8.3 Land Lots Located Through JUPEM and GPS Coordinates

Location of 26 land lots, which were not known to the headman and village leaders, was identified through the data from JUPEM. However, only 23 estates were successfully located using this technique; the other 3 lots could not be identified because of the absence of complete data.

For the three lots, further information may need to be gathered either from JPN, penghulu and other means for which we had no time to do. The three lots may need to be viewed further in the land office by referring to documents kept by this office. Only then, one can think of further course of action to solve the cases. **We categorized all 23 cases as unsolved cases but the three we consider serious.** Table 8.2 below lists the land lots and Figure 8.6 show JUPEM Data.

9.0 DISCUSSION ON THE METHODS OF IDENTIFYING UNCLAIMED ESTATES

This study was undertaken to find a solution for unclaimed estates. To do this unclaimed estates have to be identified and the heirs of the deceased have to be tracked. Both need clear practicable methods of identification and a clear legal framework.

This point was linked with a larger issue of the existing law i.e. s 46, 351, and 352 of National Land Code 1965. That existing law empowers the Land Administrator to claim heirless land titles. However, since these rules depend on evidence, the land administrator cannot do anything without proof of heirless lots. To enforce the above sections the land administrator needs to obtain proof of heirless lot and then action can be taken under section 351.

We found that Malaysian law does not facilitate presumption of escheat. Only proof to that effect can be used. To presume escheat a substantial reform of the law is needed. On matter of obtaining proof, the existing law including NLC, Public Trustee Act, Small Estate (Distribution) Act 1955 and Unclaimed Moneys Act and others were needed revision. With exception of Small Estate (Distribution) Act 1955 and the Kelantan Land Settlement

Act, all other laws wholly rely on claims and petitions by the beneficiaries of estates or other claimants.

The jurisdiction of the Land Office relating to application for the distribution of an estate is mentioned in section 8 (1) and 18(1) of the Small Estate (Distribution) Act 1955. It was found that even though the law empowers the Settlement Officer or the penghulu to commence claims, however such claims are on behalf of the heirs. We interpret this to also mean that a land administrator may be able to obtain proof of heirless estates in this way. This method provided by law is useful for old and new cases. The backlog of old cases (presumed one million titles) can be cleared through the above statutory method.

For old cases, the Kelantan Land Settlement Act or the methods suggested by Mohammad Tahir (2015) and Ayu (2013) to some extent can be used. While the former is used during British Time, and its application is limited to the given state. The usefulness of the new methods for settling old cases under s 18 of SEDA were not tested. Therefore the effectiveness of those methods was tested in the field and the results are reported above. As can be observed, overall, the majority of the cases were solved through the above four methods: matching IC numbers on grants with that with JPN, fieldwork (enquiry from Penghulu, and JUPEM data). Only nine percent (9%) of the cases remained unsolved. In other words, only three lots were not identified.

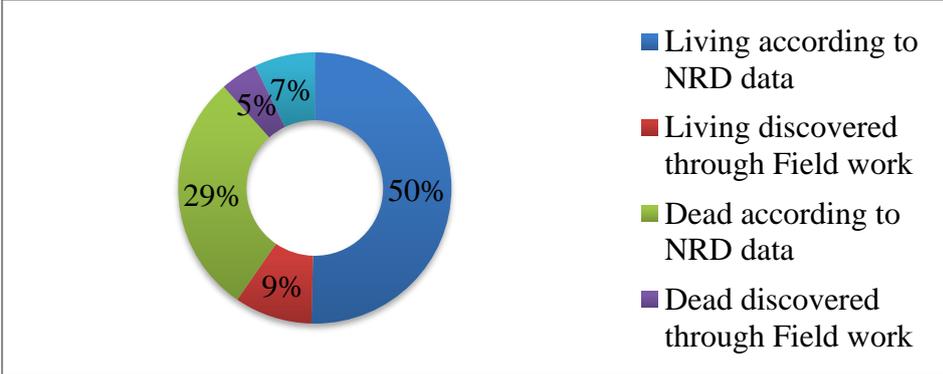


Figure 9.1: The Rate of Identification of Living and Dead Landowners

In other words, out of 247 landowners, twenty-two of them remained unknown of which three were hard and others could be solved had the conditions were permissible. While the rest were either dead or alive confirmed by JPN, Penghulu and heirs.

Figure 9.2 below shows the successes rate of each method used. While there were more titles that were not known to Penghulu, however, their information still substantially remain significant.

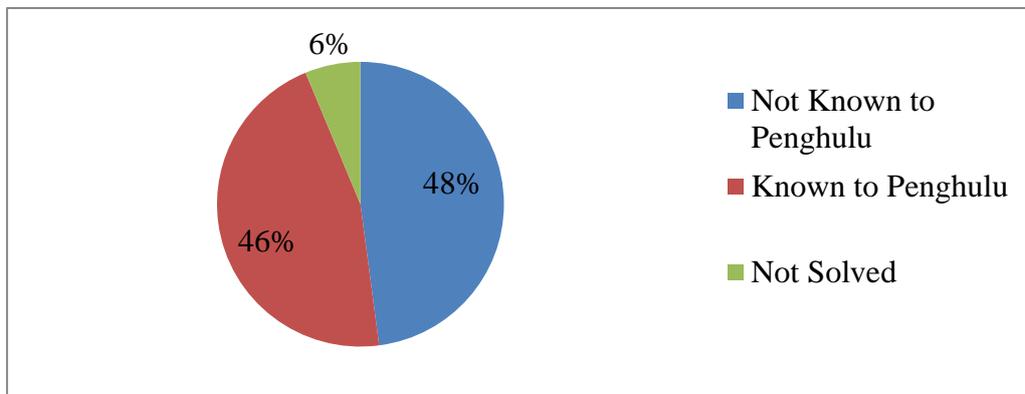


Figure 9.2: The Successes Rate of Each Methods Used

The inability to identify the small number of owners could be due to incomplete information we received. If the title is studied further, some of the above methods and that of Mohammad Tahir and Ayu would be useful. Otherwise, based on the confirmation from Jabatan Pendaftaran Negara (JPN), 48% owners were found to be still alive and 30% dead. Those living owners discovered through fieldwork were 21, that is 9% and dead were 4%. There were only 22 beneficiaries whose status was unknown. Had there be no constraint of time, after locating the lots, it is assumed that further enquiry with JPN, penghulu and beneficiaries could have provided further information. This indicates inefficiency of the method we used. Should there be a future study, data from land office be comprehensive, and the data from JUPEM be obtained soon after Land Office provides the list of suspected estates. Only then, contact with JPN and penghulu can be made.

Further, we suggest:

- (a) Where the title has incomplete information a copy of the title can be provided to the researcher.
- (b) Land Title and detailed maps from JUPEM should be used for inquiries
- (c) Land officers can analyse their data based on the age of landowner. Those above 70-100 of age have the likelihood of death and therefore they can be subjected to inquiries.

The analysis confirmed the usefulness of two methods proposed by Mohammad Tahir and Ayu; that is IC Number matching between that on land title and that in JPN. Site visit and location proved significant both for identifying the landowners and the beneficiaries of deceased landowners. These methods can be refined further by identifying the land titles that may be estates of deceased persons and that comprehensive information and detailed maps of location of the land lots should be obtained first before one contacts JPN or goes on site visit including the penghulu and beneficiaries. Other methods of the above authors may be tested once there is integration of data from various agencies proposed by them.

- (a) The methods tested by the researchers are suggested for the benefit of land office for clearing their existing unclaimed land titles presumed to be estates under power given by s 18 of Small Estates (Distribution) Act.
- (b) For new cases, the existing s 18 of Small Estates Distribution Act can be used by land office, however a new directive or guidelines may needed. This law is limited to estates worth below 2 million.

10.0 RECOMMENDATION

The recommendations consist of two main proposals, a short term that should work within the existing legal framework and a long-term that may need revision of few relevant laws. The latter we are not discussing here.

These researchers suggest the following course of action to be taken by authorities mentioned below. The suggestions are expressed to achieve two aims: first, to find a way to effect section 46 together with 351, and 352 of National Land Code, 1965, by providing evidence of escheat and perhaps abandonment of a land lot. The second aim of the suggestions is to reboot the process under s 8 and 18 of Small Estate Distribution Act 1955 (SEDA) i.e. the claiming of estates by Settlement Officer or the Penghulu. Or if found viable to follow the process under the Kelantan land Settlement Act. Under both aims the main task to be performed is to clear the existing backlog of unclaimed estate, and to prevent further accumulation thereof.

10.1 Short Term Suggestion

Short-term proposal includes two methods for clearing the backlog and prevention of new cases of unclaimed estates. The clearing or preventing of backlog of unclaimed estates can be conducted by an in-house taskforce or can be outsourced to any consultancy agency.

10.1 Outsourcing the Task

Any company or consultancy agency can perform the work under scrutiny of the head of the Small Estate. The outsourced task can consist of getting the data, the data processing, analysing and the fieldwork. The agency can send the cleared data to the Head of the Small Estate Distribution Unit. He then can take further action as mentioned in section 18 of SEDA and explained below.

10.2 In-House Clearing Task Force (The sooner the better)

The task of this team would be to identify dead landowners, and track their heirs. It is difficult work that needs dedicated servicemen to perform it regularly. The taskforce may work according to Kelantan Land Settlement Act if applicable without amendment, or adopt its procedures through rules and guidelines, or according to s 18 of SEDA.

Working under s 18 of SEDA, a dedicated team is needed to regularly receive dead men related data, match it with that of the land office, and work with Penghulu, and Amanah Raya. It involves tracking the heirs, observing the sites and servicing notices on the heirs, lodging no-claim reports by heirs with the Director, and lodging petition for estates' possession and distribution. All these are new tasks that these researchers propose to be added to the normal process of petitions for claiming estates in a Small Estates Units of Land Office.

For the aforementioned tasks, an ad hoc taskforce, the number of which is to be decided by the administration, for clearance and prevention of backlog, is proposed too. This may consist of State and Federal Officers to work together. The Small Estate Distribution Unit and other sections of the Land Registries or Land offices need to synchronise their efforts.

There is also a need to work with National Registration Department, JUPEM, Penghulu, Amanah Raya, and conduct weekly visits to the areas where the heirs of actual or presumed deceased landowner reside or are known to the residents of the location. The above proposal is expected to work well within the current legal framework. Section 8 of the Small Estate (Distribution) Act 1955.

10.2.1 The Structure of the Task Force

The researcher proposes the following structure for the task force:

1. Leader: The Head of the Small Estate Unit:
2. Data acquisition, process and analysis: 1 officer
3. Field investigation: 1-2 officers
4. No-claim reporting, petitioning and escheatment proceedings: SO/Penghulu/ the Corporation (either of them as the head of the taskforce see it expedient)

The task force can be on national level, on state level, or on district level. Where the task is on national level few teams may be needed and may have the above structure. The teams can be mobile who travels from one jurisdiction to another. On district level it can be permanent, but may have two officers in charge who frequently acquire new data from NRD and investigate unclaimed estates on the ground. Once the case is fit for petition, it can be commenced and notice to interested parties can be sent.

10.2.2 The Process

The Process may look as follows:

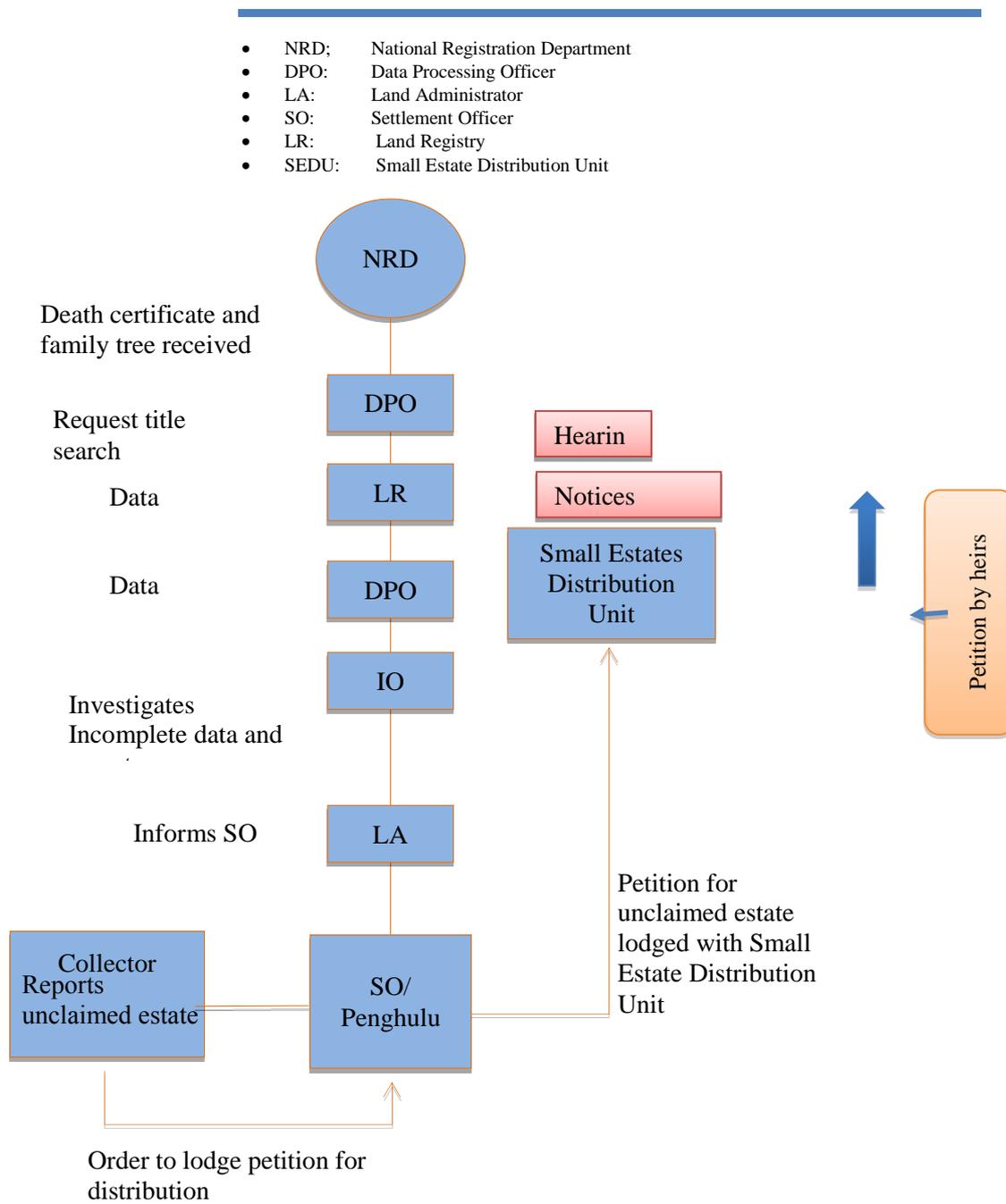


Figure 10.1: Unclaimed Estate Identification and Claiming Process

10.2.3 Methods of Identifying the Unclaimed Estates

Learning from our experiment, the following methods could guide the Small Estates Distribution Unit in the Land Offices to clear the backlog of unclaimed estates and prevent further heap of them.

- (1) Where the task is to clear the backlog, the Small Estate Distribution Unit may request, from time to time, land titles data, stage by stage from the Land Registry. A selected set of data (chosen based on the age of the owner according to the IC No) can be sent to the National Registration Department to confirm the status of the owners as dead or active. The NRD may be asked in case an owner has passed away to provide the family tree of the deceased, with explanation of, if possible, family relations tied by blood and contract (marriage).
- (2) Where the task is to deal with new cases, the National Registration, on the date fixed for enforcement of a directive to share information on death of citizens, can send regularly the death certificates and family tree to the Small Estate Distribution Unit. This information then can be processed by Data Processing Officer and matched with Land Registry's data on land titles. The matched data will be subjected to analysis and further investigation if needed.
- (3) Whether or not the data form NRD is requested, or sent by the same department, it can be processed; and if unclear it can be passed by the DPO to the Investigating officer (IO) for further enquiry.
- (4) The investigating Officer would have to ascertain the address of the owner, heirs and others, and in doing so he has to;
 - a. Investigate about the heirs and their number, their addresses, and visit the site or location of the land if the personal details of the deceased are clear;
 - b. Where the address is not clear he has to refer to penghulu for getting information about the deceased, his/her heirs, and properties

- c. In case the information from the penghulu are not clear, a site visit is needed and further information can be gathered from neighbours if any.
 - d. Where the address of the heirs is unknown, the detailed map of the location can be obtained from JUPEM so that the address is located if the property is residential or commercial. Otherwise the information have to be gathered through other means such as police and other agency where the information are up-to-date.
- (5) Once the IO gets the information enough to commence the proceedings, it can be sent to Land Administrator for seeking his opinion on the probability of commencing the proceeding for estate distribution, and escheatment. If there is case to be pursued further, the advice of the Collector is needed under section 18 of SEDA 1955.

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References

- Abdul Hamid M. (2002). Administration of Property in Malaysia: A Civil and Shari'ah Law Perspective. *M. L. J.* 3, i.
- Akmal Hidayah H. (2012). *Administration of Estates in Malaysia: Law and Procedure* Petaling Jaya: Sweet & Maxwell Asia.
- Akmal Hidayah H. (2013). Reforming Legal Framework for Administration of Estates in West Malaysia: An Overview, *The Law Review*, 295-306.
- Akmal Hidayah H. & Nor Azlina M. N. (2015). Criminal Liability for Breach of Fiduciary Duty: A Case of Criminal Breach of Trust by the Personal Representative of the Deceased's Estate. *Pertanika J. Soc. Sci. & Hum.* 23 (S): 125 – 136.
- Fatin Afiqah, M. A. (2016). *Enhancement of Muslim Estate Distribution Process towards Reducing the Delay and Lack of its Distribution*, PhD Dissertation, Universiti Teknologi Malaysia, Unpublished.
- Fatin Afiqah, M. A. & Mohammad, M. T. S. H. (2015). A proposal for a Single Tribunal of Estates Distribution in Malaysia, *Journal Teknologi*, 75:10, 1-16.
- Hamim Samuri (2016) *bernama*. Retrieved on 7 May 2027, from <http://www.freemalaysiatoday.com/category/nation/2016/02/01/rm60-billion-worth-of-unclaimed-estates-since-merdeka/>
- Kades E. (1997). The Laws of Complexity and the Complexity of Laws: The Implications of Computational, *Rutgers Law Review*, 49, 403.
- Katz D.M. & Bommarito II M.J. (2014). Measuring the complexity of the law: the United States Code, *Artificial intelligence and law*, 22: 4, 337-374.
- Schuck P. H. (1992) Legal Complexity: Some Causes, Consequences, and Cures. *Duke Law Journal*, 42:1, 1-52.

UK Gov. Office of the Parliamentary Counsel & Cabinet Office (2013) *When Laws Become Too Complex: A review into the causes of complex legislation*

White, M. J. (1992). Legal Complexity and Lawyers' Benefit from Litigation, *International Review of Law and Economics*, 12, 381-395.

Malaysia. The Births and Deaths Registration Act 1957

Malaysia. Employees Provident Fund Rules 1991,

Malaysia. Evidence Act 1950

Malaysia. Federation Army (Pay And Allowances) (Amendment) Regulations 2009.

Malaysia. Malaysia Army (Pay And Allowances) Regulations, 1961,

Malaysia. The Personal Data Protection Act 2010

Malaysia. Police Act, 1967.

Malaysia. Probate and Administration Act 1959

Malaysia. Public Trust Corporation Act 1995

Malaysia. Small Estate Distribution Act 1955

Malaysia. The Courts Rules, 2012

Malaysia. Unclaimed Moneys Act, 1965