

EFFECTS OF FARAID: WHAT IS THE SOLUTION?

By

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(Meant for those who dare to think)

I do not have the statistics on lands which are uncultivated because they are too small and owned by too many unregistered owners as a result of distribution of inheritance in accordance with *faraid* (Islamic law of inheritance).

I did not do any research on the number of unregistered owners of agricultural land. This article is based purely on my own observation. However, I do not think anyone can dispute the problem that had arisen. So, the question is what is the solution?

I do not question the suitability of *faraid* law in the distribution of inheritance. I am only discussing the long-term effects and trying to find a way to solve the problem.

Unfortunately, this may be the only article that I have written in which I see the problem but cannot come up with a clear proposal to solve it. If that is so, why write at all? To me, this problem is more serious than a problem to which I know the answer because, if I do not know the answer, I will have to ask if anyone knows it, so that we could try to solve it.

Otherwise, the problem will become more and more acute that it cannot be resolved peacefully. We certainly do not want to wait for a leader like Mustafa Kamal Ataturk, Lenin or Mao Tse Tung to "solve it". So, by writing the article, it is hoped that others might be called to come forward to share their thoughts in order to find a solution, before it is too late.

Muslims divide their inheritance in accordance with *faraid*, unless there is an agreement between them to the contrary. Unless an heir waives all his or her rights, the number of heirs who will inherit the inheritance is the same. The number will grow from generation to generation.

As a result, a small plot of land would, after generations, will have many unregistered co-owners. They do not apply for a distribution order and have their names registered as co-owners as their respective shares are too small and none of them would want to take the trouble to gather all the heirs to go to the land office again and again and to fork out the expenses.

After a few generations, the land will either be abandoned or, if it is a rice field, for example, it will be cultivated by one of the heirs, even though his share may be only a few percent.

Although the estates are usually small (they get smaller and smaller after every generation), when we add the inheritance of millions of Malays/Muslims, the total area becomes large. Just imagine, for example, the extent of rice fields in Sabak Bernam Selangor, Kerian Perak, Province Wellesley North, Kedah North, Perlis and Kelantan North.

But, do we ever think how many million owners they belong to? I believe that almost all those lands have the same problem that I have mentioned. As a result, even if the location of the land is suitable for development, say housing, it cannot be developed, as most of the registered owners had died a long time ago and the land cannot be sold and transferred unless all the current beneficiaries are registered owners and they agree to and sign the sale and purchase agreements and the transfer forms.

A similar problem was faced in the proposed development of Kampung Baharu, Kuala Lumpur. I once heard a briefing on the proposed development of Kampung Baharu. The officer said there were house lots that had more than 500 unregistered owners.

The problem is not confined to Kampung Baharu alone, but throughout Malaysia. It has to be overcome.

The question is, how to avoid small lots of Malay/Muslim land being owned by too many owners until they are left vacant, unable to be developed or is controlled by one co-owner only.

The first obstacle we will face in finding a solution is the Syariah issue. Since *faraid* is the Islamic law of inheritance and each heir is entitled to his share (land), can he be forced to accept money or shares, instead? Can we convince the Malay / Muslim community that it does not conflict with the Syariah?

To answer that question, we need to know first, at least roughly, the solution that we are proposing. Frankly, I do not see a clear solution myself. What I do see is to prohibit by law the distribution of land which results in an owner owing less than one acre (for example) per lot.

A person I did not know before who had read my article entitled "*Distribution of Small Estates: Serious Problem Caused By the Effects of Faraid Has To Be Resolved*" (In Malay) (06 03 2016) suggested that a company be set up and that the lands should be purchased by the company and that the owners be given shares of the company. That too requires legislation like the first proposal. The difference is that the company will buy the land and give shares of the company to the beneficiaries instead of money, for the price.

We will discuss these two proposals first, from the perspective of their potential conflict with Shariah. I must, first of all, state that I am not a Shariah scholar and the views I

express are based solely on the facts before me and some knowledge of the relevant Islamic law.

To avoid confusion, let us take the first proposal, first. According to that proposal, the government, as an authority, will enact a law prohibiting the distribution of land which results in an owner owning less than one acre (for example) per lot. In other words, the smallest piece of land a beneficiary may inherit per lot is one acre.

If an order of distribution would result in such a situation:

- a. if no beneficiary waives his share; or
- b. if no beneficiary is willing to sell his share to another beneficiary;
- c. or if all of them do not agree to sell the land to someone, an heir or otherwise,

the land will then be transferred to a corporation established by the government. The corporation will pay the market price to the beneficiaries in accordance with their respective shares as determined by *faraid*, unless they agree otherwise.

Here the focus of our discussion is on whether this proposal contravenes the Shariah.

It is my opinion that this proposal does not contravene the Shariah because it is, firstly, made on the authority of the law made by the government on the ground of public interest.

Secondly, we do not deny the rights of the heirs. Instead, we enable them to get their respective shares. Otherwise, it is very unlikely that they will get any benefit from the inheritance. The only difference is that they do not get an undivided share of the land. They get money instead.

The second proposal is, actually, similar. The difference is that the buyer of the land is a company and it will pay the price of the beneficiaries' shares to the land by giving them the shares of the company instead of money. I do not think it contravenes the Shariah.

It should be noted that both proposals will be done on the authority of the government, by law, on the basis of public interest for the benefit of the beneficiaries and the ummah.

(I hope Shariah scholars will study the issue and give their views and arguments to support their views.)

The second obstacle is an economic issue. I am not an economist and I am not qualified to discuss whether the two proposals are suitable or not, economically. In any case, I will put forward some arguments which could be relevant when they discuss the issue. I hope to get responses from economists.

The lands are scattered all over the place, one piece here and one piece there. What will the corporation or company do with them? To rent them back to the former beneficiaries, the cost of employing workers to manage it might be more than rental received. What if the former beneficiaries/tenants do not pay the rent? How to claim from them? Take them to court? Eventually the corporation or company's employee would not dare to enter the village or the area!

Secondly, with reference to the second proposal, since the shares of the beneficiaries are very small, the number of shares of the company they will own is very small too. Most likely they will not get any benefits during their lifetime.

Each time a shareholder of the company dies, the heirs will have to obtain a distribution order comprising several shares and to register their names as new shareholders in place of the deceased. I say that they would not do it for the reasons mentioned earlier. Finally, the company will have shareholders who have passed away! Therefore, in my opinion, payment by shares of the company is not suitable.

For a project like this, I do not agree that it should be carried out by a company for the following reasons:

1. There is no guarantee of continuity. The company may be wound up if, for example, it is unable to pay its debt. It takes a lot of capital to have a branch in each district, while, at least during the early years, it may not have any income.
2. The value of the shares goes up and down. If it drops sharply, the shareholders who were forced to accept the shares, who had not received any dividend, may feel cheated and may even, riot. As a result, not only the company will be in peril, the government too may collapse.

To me, the second proposal is not suitable.

Thirdly, (this applies to both proposals), the law only applies prospectively. How do we solve the problems of millions of earlier cases that have fallen into the same category? In my opinion, almost all of the rice fields are in this category.

Maybe, one way is to make a law authorizing the land office to make a list of such lots, notify the registered owners, living and dead (which is not known to the land office) to inform the land office if the registered owners are still alive.

If all the registered owners are still alive and the land (lot) falls under this category, they will be asked to appear before the land administrator for an inquiry whether the registered owners are willing to sell their shares to one of them who is prepared to buy or all of them agree to sell their shares to a buyer who is not one of the joint owners, if there is such a buyer. If the answer to both questions is in the affirmative, then the sale and purchase process is done and the new owner (only one) is registered as the registered owner.

If not, then the land will be sold to the corporation, by operation of law.

If the information received is that one or more of the registered owner/owners had passed away, then his/their heirs will be asked to apply for a distribution order. The problems I mentioned earlier will be repeated, what more when it involves more than one person and/or more than one generation.

I welcome other suggestions, if any.

We now turn to the third obstacle, the political obstacle.

The issue is a national issue involving millions of people across the country. To solve the problem means undertaking a land reform that has never been done since Independence. Political leaders are certainly afraid to do so. The opposition could easily distort the proposal by saying that the government confiscates the land of the poor: the small pieces of land owned by the poor are confiscated by the government while the vast tracks of land owned by the rich are spared! Such blatant lie is easily believed by voters. Therefore, it is safer for the government not to mention the problem, especially if its position is shaky.

In addition, to do so would require a lot of money while there may not be any income, especially in the early years.

Most likely, no political leader, no Prime Minister would want to get involved in this land reform. If so, then the problem will continue, becoming more and more difficult to solve peacefully.

If we do not want that to happen, we have to think of a solution from now. It is hoped that this article will awaken all parties, academics, Shariah scholars, land administrators, economists and lawyers to provide input from their respective expertise in order to find a solution to the problem that threatens the entire Muslim ummah.

The Department of the Director of Lands and Mines should form a committee of experts from relevant expertise to produce a final suggestion to the government for implementation.

It is hoped that there will be a Prime Minister who is willing to think beyond five years and take the political risk to do so. Indeed, if he succeeds, he would not only be remembered as a statesman in his own country, but also as a Shariah reformer in the Muslim world, who does it without violating Shariah.

18 04 2020 (78th birthday). (78 years to write this article? At least it is written. Now it is your turn to contribute.)

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