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Jointly Acquired and Heritage Property in the Context of FELDA's New Model Strategy: A Family Heritage Innovation Plan

Nur Sarah Tajul Urus

Universiti Islam Antarabangsa Sultan 'Abdul Halim Mu'adzam Shah (UniSHAMS), Kuala Ketil, Kedah Darul Aman, Malaysia

Mus'ab Yusoff

Universiti Islam Antarabangsa Sultan 'Abdul Halim Mu'adzam Shah (UniSHAMS), Kuala Ketil, Kedah Darul Aman, Malaysia

Maffuza Salleh

Kolej Universiti Islam Antarabangsa Selangor (KUIS) Bandar Seri Putra, Kajang, Selangor Darul Ehsan, Malaysia

Rabi'ah Muhammad Serji

Kolej Universiti Islam Antarabangsa Selangor (KUIS) Bandar Seri Putra, Kajang, Selangor Darul Ehsan, Malaysia

Naziree Mohd Yusof

Universiti Sultan Zainal Abidin (UniSZA), Kampus Gong Badak, Kuala Nerus, Terengganu Darul Iman, Malaysia

Abstract---The Federal Land Development Authority (FELDA) began its innovative concept when FELDA's New Model Strategy which went through the evolutionary process in its distinctive niche was first launched in 2020. The New Model Strategy has a significant impact on the efforts to determine FELDA's vision and direction in changing the mentality of the settlers and rejuvenating FELDA thus driving the aspect of the integrated use of modern technology, mechanisation, automation and intelligent agriculture. Besides, the implementation of the diversity of crops on farms such as pineapple, young ginger, black turmeric and herbs. FELDA is a Malaysian government agency that addresses the relocation of poor rural people to newly developed areas to improve their economic status. FELDA's original main focus was the opening of smallholder farms for contemporary crops. FELDA settlers' husband works hand-in-hand in sustaining FELDA's aspiration to increase daily household income. Typically, conflicts

appear when the death or divorce of FELDA settlers occurs and their wives or heirs made property claims. FELDA land issues were discussed based on the types of land titles in the National Land Code 1965 and legal restrictions in Section 14(2) of the Group Land Act 1960.

Keywords--family heritage, FELDA's new, heritage, innovation, jointly acquired property, model strategy.

Introduction

The organization of the International Conference on Issues Related to Online Jointly Acquired Property (ICJAP, 2020) themed "Jointly Acquired Property: Between Benefits and Harms through Shariah and Legal Dimensions" is relevant in enhancing shariah knowledge innovatively through new methods in order to be adapted into the law codification. The Muslim community today is faced with the challenge of understanding the true meaning of *maslahah* and *mudarat*. *Maslahah* can be defined as benefits, advantages, uses and others. On the other hand, *mudarat* means something that is not profitable or causes loss. In line with the theme "Property: Between Benefits and Harms Through the Shariah and Law Dimensions" is intended to find a common ground so that there is no extreme ideology or indifference related to this polemic. Although the issue of jointly acquired property was discussed 10 years ago, this issue remains relevant to be debated and re-discussed at this conference so that the Muslim community is continuously aware of the issue, be concerned and can continuously improve in the implementation of fatwas and national legislations (Al-Mawardi, 1993; Ibn Qudamah, 1968; Sutton, 1989).

Jointly acquired property is known as property accumulated throughout the marriage whether movable or immovable property. The division of jointly acquired property's practice which was often associated with the life partnership of husband and wife has been recognised by the Islamic Family Law in Malaysia after being codified with special provisions available in each state. Inherited property is either inheritance or *faraid* knowledge. An academic conference is a good medium of discussion to generate new ideas by taking into account the main sources of Islamic law, the views of sects and contemporary fatwas. Scholarly discussions on the provisions of new laws and fatwas in Malaysia and abroad will have profound implications for global acceptance and relative perspectives on jointly acquired property issues.

The Federal Land Development Authority (FELDA) began its innovative concept when FELDA's New Model Strategy went through the evolutionary process in its distinctive niche when it was launched in 2020. The New Model Strategy has a significant impact on the efforts to determine FELDA's vision and direction in changing the mentality of the settlers and rejuvenating FELDA thus driving the aspect of the integrated use of modern technology, mechanisation, automation and intelligent agriculture. Besides, the implementation of the diversity of crops on farms such as pineapple, young ginger, black turmeric and herbs. FELDA is a Malaysian government agency that addresses the relocation of poor rural people

to newly developed areas to improve their economic status (Mackey et al., 1989; Ghodya et al., 2021; Maydasari, 2016). FELDA's original main focus was the opening of smallholder farms for cash crops. FELDA settlers' husband works hand-in-hand in sustaining FELDA's aspiration to increase daily household income. Typically, conflicts occur when the death or divorce of FELDA settlers occurs and their wives or heirs made property claims. FELDA land issue was discussed based on the types of land titles in the National Land Code 1965 and legal restrictions in Section 14(2) of the Group Land Act 1960. There was disorientation in FELDA's land understanding until the decision of the Syariah High Court, the implementation of the Department of Land and Mines as well as the views of property planning consultants on cases of sects, hibah and inheritance were targeted at the actual meaning (Loureiro et al., 2009; Wisdom & Agnor, 2007).

The main objective of this study is to understand the concept of jointly acquired and heritage property in the FELDA scheme based on the fiqh perspective and the provisions of the law in Malaysia. The study is qualitative in which some cases have been randomly selected and analysed. The main collection method is secondary sources comprising digital books and information as well as cases. The results of the analysis revealed that jointly acquired and inherited matrimonial property have been the practice of FELDA settlers since the second and third generations. This study proposes that a strategic innovation plan can be introduced continuously to ensure that family relationships among FELDA can be preserved and family conflicts avoided due to this issue.

Research Methodology

This study is socio-legal, which is one of the research methods that combines two main areas of research, namely social sciences and law. Law is formed as a mechanism to manage the affairs and conflicts that arise in a society, hence, the law has a close relationship and is difficult to be separated from the society. The study also involves systematic research on new and up-to-date legal issues with high-value originality and creativity. This traditional or conventional legal method will involve the process of stating, interpreting and clarifying the existing law in the field of law (Zahraa, 1998).

The documentation method is a data collection method by conducting a study of documents that have a relationship with the problem under study (bin Mat Diah, 1987). Among those included under the documents' category are photographs, portraits, decisions, judgments, laws and regulations, autobiographies, personal letters, diaries and newspapers. The content analysis method was chosen to examine the fatwa research methodology for science and technology-based laws. This method requires a specific theme setting in ensuring the analysis process is in line with the text content (Ismail & Yusuf, 2009).

In this study, the theme is related to the FELDA scheme research methodology based on fiqh and current legal issues. This content analysis is done by selecting the appropriate text based on the study objectives. Therefore, the sample used for this purpose is information related to the selected FELDA scheme which is fiqh law and current law as well as science and technology impact. Six general

measures have been applied in this method. These measures include identifying research problems, selecting samples, reading and recording the content in accordance with the objective order and interpreting the results of the study (Idid, 2019).

Interview-based field study is one form of research (Yaqin, 2007), that relies on social interaction and aims to collect information for research purposes. Thus, this study focuses on the information collection, and research on the category of evidence based on the Syariah Court Evidence Enactment (Perlis) 2006. This study uses primary data and secondary data. Structured and unstructured interviews with high expertise in the field were conducted to obtain the required information (Yaqin, 2007). In addition, books and articles were also used as reference material to obtain the information needed for this study. The observation method is a way of collecting data by making direct observations on research or object under study. This method is significant in looking at the procedure and the reality of the implementation that takes place on the observed items. Through this method, direct observation with the respondent or the object of the study will be done to obtain the necessary conclusions.

FELDA land

The Land (Group Settlement Areas) Act 1960 was enacted under Article 76 (4) of the Federal Constitution. The Act came into force on 30 May 1960 and was applied to the states of Peninsular Malaysia only except Penang and Melaka and was subsequently amended to include these two states on 1 January 1966. The purpose of this act is amended to ensure its implementation is standardised for all states in Peninsular Malaysia in terms of policy and executive powers given to the State Authorities. The enactment of this act is aimed at creating a new planned settlement by providing economic resources through the farms' opening by implementing agencies. This planned development is based on the rules and restrictions as contained in this act to ensure that the developed areas achieve the goal of maximum economic development in terms of farm yield and settlers' income (Abd Aziz et al., 2012; Barau & Said, 2016; Fold, 2000).

Imperfect title

FELDA settlers are at risk of losing their rights to the land even after receiving individual grants, the land still cannot be considered the absolute property of the settlers which can be directly inherited to the FELDA's second generation. This situation occurs because there is an agreement between the original settlers and FELDA that binds both parties, thus preventing the perfect title given to the settlers on the land. An imperfect title is a property owned by a person while he does not gain any benefit or only gain the benefits of the property owned by others. The ownership of property is in one's hands while ownership of its benefits is in the hands of another. This means that two rights are in the hands of two different people.

A leasehold property is a type of land ownership that is less popular in the market. Leasehold refers to property placed on leasehold lands - leased land; or rented; from the government. Typically, the longest lease term allowed is for 99

years, but some new developments in the market have earned a term above 100 years. Nevertheless, such cases are extremely rare. Meanwhile, the shortest lease term is only 30 years. The “rental” cost for a Leasehold property is considered “wasteful”, as the owner will not be given any compensation once the lease expires. A certain amount of premium has to be paid to extend the lease, where the owner has to apply at the relevant Land Office. This is a chapter that is considered risky because if the government has a plan to develop the area, they can reject the application to extend the lease. The land is only considered to belong to the homeowner as long as the lease period is valid. Extending the lease term requires high premium payments. The amount depends on the type of property - residential, commercial, agricultural or other types of property. Locations play a role in determining the price of a lease extension. In addition, the owner can only extend the lease to a maximum period of 99 years. For example, if they stay 20 years in the lease period, they are only allowed to extend that period for 79 years (Nambiar et al., 1989; Khairiyah et al., 2013).

FELDA settlers are at risk of losing their rights to the land they have been cultivating for more than 60 years because there are legal restrictions that prevent any transfer of ownership of the property to the second generation. This situation occurs since FELDA is subject to the Group Settlement Act (GSA) 1967, thus causing its status to differ from ordinary land under the National Land Code. The word ‘risky’ means possible, imminent or potential, it does not mean the ownership continues to be lost. It can happen as a result of no proactive steps being taken in dealing with the problem. The application of which act in the transfer of ownership is not a major agenda but the extent to which it applies guarantees the perfect title in question.

The administrator status compared to the owner which is awarded to the second generation of FELDA after the application is made, is an issue that needs to be resolved. Land administrators are usually bound by their roles. They are referred to as the landlord's appointed party, small estate office or court and only take effect after the master's death. The role of administering and managing the property even if it represents the heirs of the deceased is not guaranteed to the FELDA's next generation to absolutely own the assets applied for, even if his/her name is engraved in the document. The limitation of this right does not allow the administrator to make any hibah or will to the next generation, let alone receive the full rate of compensation from any land repossession. If it is true that the administrator can inherit, the extent to which this ownership effort will succeed if there is no clear procedure on the change of status from administrator to owner in any clause of the act. Conditions, procedures need to be detailed if administrator status refers to a temporary period in preparation for becoming a legal owner. If the application as a settler is subject to certain conditions, FELDA can impose conditions on the next generation in obtaining the owner's status (Goncharova et al., 2021; Kokhanovska et al., 2021).

It needs to be clarified under the legislation and applied uniformly to all FELDA land settlements. Acquisition of ownership through the Form E Inheritance Order is necessary to clarify the 'specific' requirements for FELDA properties in addition to the main conditions available, to facilitate management and differentiate it from Form F (Administrator). If the status of the administrator is maintained, it is

necessary to explain his role in detail which can equate to his rights as a legitimate property owner. The exclusive rights and interests of FELDA land administrators should be detailed to distinguish between FELDA land administrators and ordinary land administrators.

The above recommendations should be considered in an effort to ensure perfect property ownership for the FELDA generation. Enforcement should be supported by the Malaysian legal system through clear conditions in the GSA. Therefore, detailed discussions involving all parties (ministries, FELDA, settlers, non-governmental organisations (NGOs) as well as legal experts and real estate experts) should be made to find the best solution towards the sustainable development of FELDA properties.

Administrator is not the owner

The Act has undergone several amendments through several restrictions that were introduced to adapt to current changes and requirements to ensure the development of agricultural land is carried out continuously which benefit the settlers. Among the amendments that have been made are as follows.

- Amendments in 1965-these amendments involved agreements between land development agencies and the State Government, the declaration of group settlement areas, land development by cooperatives managed by land development agencies.
- Amendment in 1982-this amendment involved the surrender of the rights of residents in anticipation of ownership and the termination or cancellation of grouped settlement areas.
- Amendment in 2002 - this amendment involves sections 12, 14 and 15 which allow village holdings to be owned and jointly owned by not more than two owners. This amendment is intended to enable the settlers' wives, ex-wives or *kadim* heirs to be included in the village holdings as joint holdings or joint owners.

Several restrictions have been put in place to ensure that agricultural land development is carried out continuously with a maximum yield of production that can benefit the settlers. Among the restrictions are:

- Section 14 does not grant a Rural Tenure permit is granted to more than two nominees who are considered as joint holdings or joint owners
- Section 15 provides that the Rural Holdings area shall not be subdivided or partitioned at any time. This section does not allow rural holdings to be leased in part or in whole.
- Section 7 (3) which limits the use of Town Tenure only for residential, public, commercial, industrial or other use as approved by the State Government. Marital Property Claims The definition of matrimonial property is property acquired jointly during the period of marriage between husband and wife, which is the result of their joint resources and efforts. Matrimonial property is derived from the Malay adat recognised under Islamic law. This property is either movable property (*manqul*) such as money, household appliances, vehicles and others, or immovable property (*aqar*) such as land

and houses. A husband or wife has the right to claim matrimonial property after divorce, polygamy or after the death of one of the parties. In the issue of the FELDA scheme, the matrimonial property consists of i. Farm land ii. House land iii. House iv. Other properties divided in accordance with the ruling of the state Syariah court

The restrictions are intended to ensure that the land is not broken up into uneconomical units. In ensuring that the widows of the settlers continue to receive part of the property as a result of the joint venture with her husband, FELDA has prepared Guidelines for Matrimonial Property. In the FELDA context, Matrimonial Property covers settlers' farm land, house land, houses, other properties acquired while living on the land as husband and wife. If a settler passed away, only two heirs can be appointed as administrators to manage the property and their status is not similar to the asset's owner. His role is only to manage the property fairly among the heirs. The proceeds obtained must be distributed to other heirs according to the agreed share either through the *faraid* or consensus.

All transactions involving the FELDA scheme are subject to FELDA permission. This situation is worrying because there is no guarantee that the land will remain as the FELDA family generation's property and the right of the heirs is only to act as administrators, not the same as the landowner. This situation will have a long-term impact on the assets' ownership of FELDA residents, especially when there is a demand for development on the land in question which leads to land acquisition. If there is land acquisition in the future for development, what is the guarantee to the heirs who are only appointed as administrators? As administrators, they do not have the 'voice', rights and powers as landowners. If this occurs, the rights of the heirs and the FELDA generation, in particular, are denied and it is possible that they can lose the ownership right to the land. Even if compensation is given, is there any guarantee that they will receive compensation that is commensurate with the original owner?

Hence, a solution to the issue must be sought given since FELDA has been ongoing for a long period, and most of it has been inherited by the second and third generations. It is timely to make improvements to the GSA to enable the FELDA land to be inherited by the next generation, in line with efforts to protect the rights of settlers who have been working on the land for a long period. Unfortunately, many are still unaware that there is no absolute inheritance of FELDA land to the next generation (Sadguna et al., 2017; Nyandra et al., 2018).

FELDA transformation 2020

The issue raised about FELDA is on its cash flow? FELDA is now on the right track including cash flow issues. The government also focuses on FELDA. A Special Team was created to Address FELDA Issues led by Tan Sri Abdul Wahid Omar. Their proposals have been presented to the accountable minister and are now awaiting government approval. Another effort that FELDA has overcome related to its financial position is the settlers' debt statement which has not been completed for more than 10 years. The plan was completed within three months. It was an unfortunate miracle because this list of settlers' debts called pay sheets

was never received by the settlers but we managed to produce them. Why can this be done in three months? Since the deadlines have been set, proper governance as well as correct work management. FELDA sought professional services related to data and information on these debts and loans. We work with an independent auditor, PricewaterhouseCoopers (PwC). We are also streamlining the financial system and database.

Human resource management is proposed to create the post of blockhead assistant so that there is a young generation of FELDA leadership connectors in the land, block heads' assistants are appointed with criteria among those aged 50 years and below. Neuro-Linguistic Program (NPL) training will be introduced, a program that changes the employees' thinking patterns. Apart from that, the ongoing Wakaf FELDA will also be introduced. Focus on farm management by introducing smart farming practices and integrated farms. In collaboration with the Malaysian Global Innovation and Creativity Centre (MaGIC), Universiti Putra Malaysia (UPM) and the Malaysian Technology Development Corporation (MTDC). The plan is to introduce smart farming methods and launch a Smart Classroom in 101 secondary schools in all FELDA scheme.

FELDA wants to reduce the loan period given to settlers, from eight years to four years. Through this loan for replanting, a subsistence loan will be given to settlers at a cost of approximately RM1,000 (per month) per settler. That means in eight years, approximately RM96,000 will be borrowed by the settlers. If the loan year can be reduced to four years, the settlers' debt is not high, which leads to a low amount paid. FELDA does not spend much money to give loans to settlers. Is this possible? Yes, through new technology used in oil palm replanting. In 30 months, the palm will bear fruit and in four years, it will be able to produce 15 tonnes per acre. When the four-year loan period is shortened with the use of new seeds and best agricultural practices, the repayment for four years does not pose a problem.

FELDA not only owns farms but is also involved in production activities, namely manufacturing and downstream industries. It should be understood that factories are more profitable than farms, as does the downstream industry. In terms of yield, palm oil production by FELDA factories and there are downstream industries such as boxes, cans and bottles manufactured by FELDA companies themselves. The involvement of the Koperasi Perneroka FELDA (KPF), which is one of the 10 best cooperatives in Malaysia, once gave an 18 per cent dividend to FELDA in 2011. The goals of this collaboration are visions such as the success of Walmart's (hypermarket) in the United States and New Zealand's largest livestock farming cooperative, Fronterra Coop. Can this work? Yes, since FELDA is emphasising new methods in plantation work and oil palm production.

Do FELDA-owned farm transformation program and measures to increase yields work? It is being implemented with a vision to be among the best in the Top 100 list. It is witnessed that existing farms to be combined with other cash crops to be more productive and efficient. The digitisation program on the farm system and its management can be viewed. It is a collaboration with MaGIC and UPM as well as other research institutions. The '2523 program' is set, which is 25 tonnes of yield per hectare and a 23 per cent increase in oil extraction rate (OER) by 2023 as well as the integrated use of modern technology, mechanisation, automation

and smart agriculture. Implementation of a variety of crops on the farm such as pineapple, young ginger, black turmeric and herbs. In addition, the Settler Development Program (PPP) was introduced. The government has allocated RM1 billion for (projects) to be implemented within four years to increase the settlers' income.

Jointly acquired property

In general, there are also two justifications put forward by local scholars related to jointly acquired property, namely the acceptance of jointly acquired property through the concept of *al-Syarikah* and the concept of *adat* (custom tradition) (Tapah, 2000; Hobart 1975). Company property is a mixed property and both spouses have rights over the property (Hassan, 1984). Sometimes, the mixing can still be determined by the rate of the respective rights. However, sometimes the right cannot be determined. In Islam, the position of *al-Syarikah* can be divided into two parts, namely *Syarikah al-Milk / Amlak*-two or more people who own goods without a corporate *aqad*. While the other is *Syarikah al-Aqd / Uqud*-two or more people who share capital and profits based on an agreement between them.

The authors view that the sharing of property between husband and wife is more in line with the concept of *Syarikat al-Milk* than *Syarikah al-Uqud*. This is because *Syarikat al-Aqd / Uqud* clearly states the capital allocation and profit share according to the agreed terms and conditions. A marriage involves elements of love and sacrifice, the relationship of two families on the part of the husband and wife, family financial management and child support, sexual relationships, leadership and family education. All these elements make it quite difficult to measure based on the exact percentage of all property enterprises as a result of a husband-and-wife partnership.

Apart from using the argument of *al-Syarikah*, there is also a view that states that jointly acquired property is customary law. This is evident because the concept of jointly acquired property exists only in the traditional Malay community in Malaysia and other Malay communities such as Indonesia, Brunei and Singapore. There is no concept of jointly acquired property in civil law or family law in Western countries. Due to the jointly acquired property only exists in the Malay community, then it needs to be seen in terms of customs in Islamic law (Mohd Hafiz, 2016).

Islam recognises that custom, either specifically or in general, is one of the sources of Hukum Syara '(Article 36, *Majalah Ahkam al-Adliyyah*, 1968) and that a custom can be accepted when it has become a custom or habit. This shows that Islam celebrates the customs practised by its people in certain territories as long it does not conflict with Islamic law. The legal history shows that when Rasulullah SAW was faced the problem of *adat* ('urf), (Awang, 2008), he took a different attitude between one *adat* and another *adat* whether accepting *adat*, rejecting or accepting with the amendment of an *adat* to become law. When a custom or 'urf is recognised for its merits and gets legal recognition, its position is no longer as a custom but turns into a rule or legislation that must be enforced.

Apart from that, the method of fiqh which states “*al-‘adah al-muhakkamah*” (al-Suyūṭī, 1983), is also the basis for the conception of jointly acquired property in Islamic law. It should be emphasised that Islam does not reject the customary practices of society as long as it does not contradict the *nas qati'e* which has been codified by al-Quran, al-Sunnah, al-Ijma 'and al-Qias.

Jointly acquired property method of division

The practice of the Syariah Court in Malaysia provides that if the wife is a full-time housewife, then the court will be required to allocate one-third of the total property. If the wife is working or has her income, and the wife can prove all the property acquired, whether the purchase of electrical goods, furniture, vehicles, houses or real estate, the court will allocate one-half which is half of the total property.

Jointly acquired property and inheritance

In the FELDA's history as an agent or representative of the Government with the settlers since 1956, it is found that there are several levels of agreement between them that can be seen in the aspect of Shariah Law. First stage: Ihya al-Mawat. Ihya al-Mawat is reviving the land that is idle, the land is not owned and not cultivated by anyone. The origin of this land ownership goes back to the original people who cultivated it even without the permission of the government. This is the view held by the *jumhur fuqaha*. While the imam Abu Hanifah and the Fuqaha 'of the Maliki School are of the view that full ownership of the cultivated land must be through the government's permission. However, a government has the right to distribute the land to its people since the Government is the ruler who regulates the public property of Muslims which can be divided according to the common good. The method of division occurs in two ways, first: dividing the land to its people along with full ownership rights, it is named (تمليك إقطاع), second: dividing the land to them for benefit ownership rights only, not full ownership, it is named (إرفاق إقطاع).

Looking at the original agreement and the Land (Group Settlement Areas) Act 1960, it is clear that the land given was related to the ownership of the second way, in the beginning, i.e. the Government gives/provides beneficial ownership only. Although the Government has promised to give land ownership rights with a 99-year lease only after the settlers complete the Repayment, which is the development cost that has been advanced by FELDA, all these are sweet terms and words uttered to mock and deceive the settlers' desires and efforts which in the end this agreement remains as the original i.e. giving the right of benefits only and the right of priority to the settlers which cannot be taken by the other party for 99 years. Each of them is allocated 10 acres of farmland and 0.25 acres of residential land.

Second stage: al-Muzara'ah. Next, when the trees in the middle of the jungle have been cut down, directed, levelled and explored by the settlers along with FELDA loan assistance. The purpose and goal of the establishment of FELDA are to create a new settlement in a planned manner by providing economic resources through the opening of oil palm and rubber plantations. There is a covenant

agreement here in general that goes back to the covenant of *al-Muzara'ah*, that is; an agreement on the acquisition of the land revenue which took place between the original land manager, namely FELDA on behalf of the Government with the settlers as the land beneficiary. When this form of land division has changed, which was originally the ownership of benefits to the settlers (إرفاق إقطاع), changed to the Government giving ownership of benefits and requiring the return of revenue from the land, it is named with the term (إجارة إقطاع) rental lease (Al-Farra & bin al-Husayn, 2000).

The issue of akad *al-Muzara'ah* was debated among the *fuqaha* in the past if wages and rent were taken from the agricultural farm land itself. Among them are the Fuqaha 'of the Hanbali School, Imam Abu Yusuf and Muhammad who required the contract of *al-Muzara'ah* to certify and allow the ownership of land benefits and proceeds through the contract (إجارة إقطاع), this view is also a fatwa held in the Hanafi school. While those who forbade it continues to forbid it in the covenant even through the government, this view is from the schools of al-Syafi'i, al-Maliki and Imam Abu Hanifah. However, some are of the view that the akad *al-Muzara'ah* that takes place between the government and its people can be extended compared to other *akad* because it goes back to the division of land which is the property of the public good (Al-Farra & bin al-Husayn, 2000). The revenue received by the government is on the basis of property ownership of the common good of the common people that can be developed, not individual ownership. While the revenue received by the settlers is the property of individuals due to their efforts.

There are other levels of agreement between FELDA and the settlers such as loans (*al-Qard*) and stock investments (*al-Mudharabah*). It resulted in the addition and depreciation of property acquired by the settlers. Can all these properties be inherited property or not?

In the issue of the FELDA scheme, the properties involved are:

- Farmland
- Homeland
- Home
- Other assets acquired while living in the plan as husband and wife.

Their property is divided into two categories from the Syara' view; first; full ownership of property such as houses, crop profits and investment shares. Second; benefit ownership property such as farm land and house land. In the first category, it needs to be seen whether there is payments' sharing between husband and wife in home development, a partnership in generating farm profits and a sharing of investment capital before divorce or death? If there is a valid partnership according to the *mu'amalat* contract, then they are both the owners of the house according to the percentage of the payment, it is named (المالك شركة) on the *jumhur* side. (شركة المضاربة) Both are partners in employment enterprises (الأبوان شركة) according to the view of Fuqaha 'Mazhab Hanafi and partners in share investment capital (المضاربة شركة) profits are divided between them according to mutual agreement. Both of these contracts can be attributed to the growing and outstanding amount of profits, they are considered as joint property.

If a *fasad* occurs on this contract (الأب دان شركة) after each of them has performed the work, then, they are only eligible to receive a reasonable wage (المثل أجره) only from the matrimonial property, not based on the promised profit.

In the case of death, the joint ownership, profits and arrears which are the matrimonial property must be divided according to the ownership of the spouse (husband or wife) and then *faraid* made to the heirs including the spouse of the deceased. Thus, without any partnership agreement between the husband and wife, a property remains under its original ownership and in the event of death, the property is divided to the heirs without being associated with the matrimonial property of the couple. The second category; i.e. property ownership benefits from FELDA, farm land and house land, its title is imperfect, the settlers only have benefit rights without full ownership rights. In the case of divorce, this right remains under the nominee placed by FELDA, either husband or wife or both of them, it cannot be an exchange of ownership between husband and wife except with the consent of FELDA because of the tax agreement (إجارة إقطاع) signed came from FELDA's side. In the event of the death of a settler named by FELDA, either the husband or the wife, then the question is relevant; is the contract (إجارة إقطاع) or the rental lease revoked and returned to FELDA rights or can it be inherited by the family of the deceased?

Jumhur views the covenant of al-Ijarah as a common covenant, namely; both parties (FELDA and settlers) who have entered into an agreement, are obliged to fulfil the promised exchange and cannot be cancelled as long as the promised thing can be implemented based on the agreement period. Therefore, the death of the settler is not the main reason for the termination of the promised jobs, the matter can turn to his heirs to be implemented until the end of the term of the agreement (Al-Dasuqi, 1996), which is after 99 years. Al-Hanafiyyah, on the other hand, is of the view that the contract of al-Ijarah is automatically annulled due to the occurrence of death and the ownership of the benefits of the deceased cannot be inherited. The *jumhur* view is more appropriate for linking the ownership of farmland benefits and house land with inherited property, divided according to the share of the heirs. The same is true of the proceeds returned to the heirs' share of ownership.

When all doubts related to FELDA heritage property have been answered, then as a result, a nominee (husband or wife) who was first assigned the rights of sole benefit owner by FELDA, when he/she died the ownership of the benefit is not counted as inherited property because no agreement can be linked and inhabited with his spouse, even the benefits are distributed directly to the heirs. The law differs, if FELDA surrenders the title by placing two nominees (husband and wife), then they are both given the right to own the benefits jointly and when one of them dies, half of the ownership of the benefits belong to the surviving spouse, then added from the share of the estate. along with other heirs.

Since the legacy of benefits cannot be seen, it is difficult to be managed by the less knowledgeable, preferably given good explanation to the original nominee or next generation, then they have to play an important role while still alive to record the will and appointment of his successor among the trustworthy heirs who can manage the estate and manage the distribution of benefits and proceeds to the

other heirs. The heirs who are entrusted also need to be conscious and maintain good relationship among family members. Otherwise, the settlers' heirs will continue to be burdened with incidental costs as proposed for FELDA to create their trust entity: the 'FELDA Trustee' who is responsible only to hold the trust for the FELDA lands with certain management costs.

In a conclusion, the *jumhur* fuqaha among the four sects allow the distribution of idle land by the government to the people for the common good, whether divided with full ownership or ownership of benefits only. The general benefit goes back to the people and the government to strengthen the economy, it is not in the interest of individuals or cronies who are just waiting for the opportunity to reap huge profits on behalf of the interests in FELDA or the Government only. When those in power are of such a nature, they will certainly inherit the traits to their subordinates including the settlers themselves. Therefore, the Government that has produced a consistent economy must be trustworthy and find a solution to return to the original purpose of the agreement, which is to eradicate poverty and improve the living standards of farmers. What is seen as the purpose of welfare on the side of the poor people has changed into an increase in *mafsadah* and destruction. It is something to be worried about and needs to be addressed as soon as possible.

The ownership of these land benefits is also followed by farm work where the proceeds are shared between FELDA and the settlers. This is also agreed upon by the fuqaha al-Hanabilah and the majority of Fuqaha 'Mazhab Hanafi. When a death occurs, the result of its validity can be inherited and passed on by the heirs of the deceased by imitating the Hanbali sect. Since the *jumhur* do not agree with the plantation contract (*al-Muzara'ah*) that took place and the Fuqaha 'of the Hanafi School say that death can dissolve the *al-Ijarah* contract and the benefits cannot be inherited by the family of the deceased.

Therefore, the view of Fuqaha 'Mazhab Hanbali is relevant to be practised and divided the ownership of land benefits to the deceased's spouse as matrimonial property before the other part goes through the process of *faraid* to others if their names (husband and wife) are owners appointed by FELDA when they are alive. Without the naming of the two of them, the entire right of benefit returns to the heirs according to their respective *faraid* shares without being linked to the matrimonial property. When the benefits of the land are divided, the jurists also discuss how to practice the sharing of these benefits in the chapter (المهايد أة). Currently, FELDA is updating to implement the Land Heir Scheme for a smooth transition, which is a program to update the settlers' land ownership data that will finalise the inheritance information. This effort aims to resolve the issue of inheritance that has been going on for so long.

Court cases

BR v. MS, Selangor Syariah Appeal Court. Appeal Case No. 10000-041-0160-2017 case, Amnah Bt Ariffin vs. Noor Azhar Bin Umar case. In the Syariah High Court in Seremban in Negeri Sembilan Darul Khusus Mal Case No. 05100-017-0399 Year 2007 Felda Jointly Acquired Property Case, Grant Claim: Kamsiah Yusof Vs Latifah and Three Others, In the Syariah High Court of the State of Pahang Darul

Makmur, In Kuantan Mal Case No: 06200-017-0137-2009 Between Jamaliah Binti Jathi and Amiruddin bin Mahmud Federal Land Development Authority. This is a list of cases related to FELDA land estate management. In this case, the court discusses the practical benefits for the FELDA heirs.

Fatwa

Muzakarah of the Fatwa Committee National for Islamic Affairs Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia for the 38th time, which convened on 21 June 1995 in Negeri Sembilan discussed the law of Inheritance of Property and Jointly Acquired Property Implemented in the FELDA Scheme. Muzakarah has decided that:

- The practice implemented in the FELDA scheme on the inheritance of property based on the 1960 Act is not contrary to Islamic law because the agreement to place one nominee is made with the agreement of all parties involved.
- If there is no consent of the heirs to appoint one of them as a representative, then:
 - The property of the deceased must be sold.
 - The sale of the property shall be given priority to the heirs.
 - Proceeds from the sale of the property shall be divided among the heirs according to *faraid*, and
 - If the property of the deceased is not completely distributed to the heirs according to the *faraid* then, the excess distribution must be handed over to the baitulmal.
- The practice implemented in the FELDA Plan on jointly acquired property does not contradict Islamic law.

Challenges on the governance of inheritance

First: The value of knowledge and awareness. The community needs to be aware of the things around them in order to be more prepared and mature to face the situation of managing the inheritance. Second: A one-stop centre to house all the important agencies in the country needs to be established to make it easier for the public to deal more easily and quickly. Third: The special statute of inheritance law needs to be enacted and created because the codified knowledge of fiqh gives more value in terms of its enforcement and validity. The fourth and final is related to the knowledge of inheritance management by heirs. Heirs who have been educated since childhood will be more open-minded in finding the final say on the division of the inheritance. The family relationship among the heirs is more valuable than the inherited property.

Result

FELDA's inheritance policy is in accordance with GSA rules and not the National Land Code. This has caused several problems in the inheritance of matrimonial property and inheritance among the FELDA generation. The findings of the study show that the GSA rules have caused some controversy between siblings in the family among the FELDA generation. GSA have both negative and positive effects

on their economy. If the management of FELDA is taken over by an untrustworthy property administrator. FELDA land is perfectly owned and the settlers have the full right to do anything to it because the grant has been issued in their name. That is the reason why banks can accept FELDA land collateral and can be auctioned if the loan is not repaid. If the settler is only the owner of the benefit & not the fact which may be the bank will accept as collateral & then the auction is made to a third party. The State Government then approved the transfer of the name in the grant from the name of the settler to the name of the auction buyer.

FELDA has set the procedure of inheritance or succession when a settler dies through the method of appointing an administrator from among the heirs to manage the estate. To expedite the process of naming a settler's successor, the heirs of the deceased settler must submit an application for division of the estate to the Small Estate Division Unit, District Land Office. The procedure has been criticised by the heirs and the management of FELDA itself, especially related to property administrators who lack integrity in carrying out the administration of the estate of the deceased. Unresolved inheritance cases will also complicate the settler farm management process such as the signing of replanting agreements and the distribution of farm produce payments.

Hence, the government and FELDA must immediately study and submit FELDA inheritance proposals by referring to property planning methods in resolving this issue. The issue of FELDA inheritance should not suffer the same fate as the issue of the inheritance of Kampung Baru Kuala Lumpur which is bound by the Malaysian Agricultural Settlement Act (MAS). Port Dickson Syariah Subordinate Court Judge, Hamizan Mohd Nor stated:

“Among the effects of the FELDA inheritance problem is that family members cannot complete the power of attorney process because there is no agreement of all heirs to place only two nominees as property administrators who will be entrusted to manage inheritance matters. including land, income and debt. This situation occurs because family members lack understanding, refuse to tolerate and do not trust other heirs.”

FELDA settlers are at risk of losing their rights to the land they have been cultivating for more than 60 years because there are legal restrictions that prevent any transfer of ownership of the property to the second generation. This situation occurs since FELDA is subject to the Group Settlement Act (GSA) 1967, thus causing its status to differ from ordinary land under the National Land Code.

Recommendations and Conclusions

FELDA land inheritance property planning. Banks can accept FELDA land collateral and can be auctioned if the loan is not repaid. If the settler is not the owner of the benefit, it is impossible for the bank will accept it as collateral and then an auction is made to a third party. The State Government then approved the transfer of the name in the grant from the name of the settler to the name of the auction buyer. Wasiyyah Shoppe Bhd has also resolved dozens of inheritance cases of FELDA settlers involving hibah. The hibah order was issued by the Syariah High Court after finding that all the rules & conditions were met. This order allows land to be demoted to the name in the order. Wasiyyah Shoppe Bhd

always ensures that the GSA land hibah is made in accordance with the conditions of the Act itself, ownership cannot exceed two (2) names. In order to achieve the objectives of the GSA Act 1960 & better management, settlers should discuss with FELDA before doing any transaction on FELDA land. Settlers need to respect FELDA & the GSA Act itself while FELDA also needs to respect the rights of settlers & accept the fact that in today's world settlers have higher education and can access various sources of information.

Several mechanisms can be used by settlers in the process of dividing FELDA land. Among the means is the first mutual agreement between the heirs to give a permanent descent of ownership to one of the heirs. The reduction of ownership is the simplest mechanism to maintain the status of the land as it was originally, which is not to divide the boundaries based on uneconomical in terms of management and plantation yields. However, most of these methods are difficult to implement because it requires the consent of all heirs who are entitled to the property according to *faraid* law, especially involving many heirs and each of them wants their name to be placed as the owner of the estate. The second mechanism is to appoint an administrator to manage the land as discussed above. In addition, the third mechanism that can be used is that the heirs can pay the rights of the other heirs and the reduction of land ownership becomes the property of the heirs who pay in full.

The main problem that makes the settlement of the FELDA estate delayed and not resolved for a long period is the attitude problem among the settlers themselves, including the heirs who do not want to take the appropriate steps to resolve the matter. Furthermore, there was no preliminary planning on the matter before the death of the settlers. There is no question of the restriction status in the ownership of FELDA property as prescribed by law. What is necessary is the appropriate action to be taken by the heirs to resolve the division of property between the heirs in the event of the death of the settler. On the other hand, settlers need to be wise in making inheritance plans during their lifetime to provide the heirs with solutions and initial steps to complete the division of the estate after the death of the settlers.

Takharuj is permissible by Islamic law as one of the mechanisms for resolving the division of the inheritance of Muslims. *Takharuj* means the issuance of a name as the property's administrator. His job is to manage the affairs of the inheritance left by the deceased, (Wan Najmiah and Md. Yazid, 2013). Most of the settlers choose the administrator as the mechanism for the division of FELDA property as opposed to direct ownership to the jointly agreed heirs in the FELDA Taib Andak Kulai Johor area. Proposals and policy implications of the concept of *takharuj*: As a result of an interview with the Director of Inheritance Administration Section, FELDA Land Management Department, FELDA Kuala Lumpur Headquarters, he proposed that the concept of *takharuj* be adopted and reviewed by the FELDA land inheritance administration section to address pending estate management cases. According to him, this concept is the best because this concept when developed, only one nominee will manage the property. Through the three methods of *takharuj* mentioned above, the problem of property management will be solved as well since there is no claim after that.

Settlers Trustee Foundation: As we know, FELDA settler land for the matrimonial property includes farm land, house land, houses and other properties which are divided according to the ruling of the state Syariah court. Therefore, when the settler trustee foundation is established, issues such as the death of the nominee before the deceased settler's estate is managed for distribution to heirs can be addressed and as a new alternative to facilitate the division process more effectively.

Create a One Family Cooperative: When a cooperative is established in FELDA, it can share business activities in a family. This effort can improve the economy for low and middle-income family members. Apart from that, this partnership also takes care of each family member's welfare and the relationship will be further strengthened. To some extent, the functions and benefits of this family cooperative add more entrepreneurship programs in each of the settlers' families so that the issue of uneconomical land or there are heirs who do not get inheritance claims can be handled prudently. Cooperatives are also encouraged to explore the field of SMEs as a complement to the SAWARI project and agriculture-based enterprises. Hence, the cooperative management system needs to be improved so that its role as a settler institution can be developed (Som, 2003).

FELDA Scheme Land Inheritance Management Guide Kit: Through the analysis of previous studies as well as cases of pending estate management, it was found that there are a few heirs who do not understand the procedures to manage their inheritance. Apart from that, there are also cases where the estate management division in the land office or FELDA is less thorough or knowledgeable regarding the correct procedure for estate claims for settlers who have died. This problem is detrimental to the FELDA community when estate cases are delayed and not claimed by the heirs. As an alternative, the authors propose that a specific guide kit for the management of FELDA scheme inheritance land be introduced. This kit guides by providing examples of forms and important procedures that need to be followed by heirs when claiming the estate as well as the duties and responsibilities that should be performed by the land office or FELDA. Therefore, this method can smoothen the process of inheritance that can be completed smoothly.

In order to maintain the well-being of the family relationship of the settler community, FELDA needs to remove the restrictions of Section 14 under the GSA Land Act 1960. There is no issue of land transfer to be made to the heirs of the second generation. Therefore, a new contract will be made between FELDA and the new owner to work on the land. As Shamsul (1997), stated, the government provides an 'instalments purchase' scheme for the development of settler land, for this purpose a repayment period of between 10 to 35 years is considered appropriate. The scheme will recoup its cost through 'easy payments' once the cultivated land starts producing yields. Settlers will be able to fully enjoy the fruits of the land when they have finished paying the cost of crops loaned by the government. Therefore, there is a need for continuous awareness of the second generation and subsequently an explanation of the inheritance of FELDA land in terms of ownership.

In accordance with the theme "Property: Between Benefits and Harms Through the Dimensions of Shariah and Law" is intended to find a common ground so that there is no extreme ideology or indifference related to this polemic. Thus, the title of this article is jointly acquired property and heritage in the context of FELDA's new model strategy: A family inheritance innovation plan is seen as significant to be highlighted today in order for the growth of knowledge about related sciences can be identified, refined and translated into the reality of a society that loves justice and fairness.

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