

# ADMINISTRATION OF INHERITANCE IN MALAYSIA: DEVELOPMENT AND LEGAL CHALLENGES IN MANAGING FELDA

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## ABSTRACT

Federal Land Development Authority (FELDA) was introduced on 1 July 1956 in Malaysia. The late Tun Abdul Razak, who served as Minister of Rural Affairs and Deputy Prime Minister at that time created FELDA because he wanted to eradicate poverty in rural areas and bridge the economic gap among races. After the establishment of FELDA, many good reactions from the public were received. To this day, FELDA still has a place in the hearts of the Malaysia community because it succeeded in removing many poor people from the poverty. The interesting and unique thing about FELDA is that FELDA is different from ordinary land because the distribution of the property is governed by the Land (Group Settlement Areas) Act 1960. Since FELDA is different, there are many aspects that need to do research about FELDA, especially the recent development and challenges that FELDA owners need to overcome, all of which will be explained by the author in this paper. In this study, the researcher employs a qualitative approach, by conducting library-based research on relevant materials including, but not limited to statutes, case laws, textbooks, journal articles, newspapers and seminar papers. Based on the findings, despite bringing a significant benefit to the public, there are numerous challenges in estate administration

involving FELDAs that need to be addressed. It is the duties of the law makers to shoulder the responsibility in tackling the said issues as well as to formulate solutions in improving the overall process in estate administration involving FELDAs.

**Keywords:** FELDA, poverty, development, challenges, estate administration,.

## INTRODUCTION

Looking at the history of Malaysia, the history of Malaysia begins at the time of the Malacca Malay Sultanate which is around the year 1400 AD (Mariatul Qatiah Zakaria,2021) At that time, the territory of the Sultanate of Malaya covered most of the Peninsula and the east coast of Sumatra. Melaka which is one of the regions in Malaya, emerged as a glorious kingdom because it had an authoritative leader, an efficient administration and government system and its strategic position (Mohd Fadli Ghani, 2018). Many merchants came to Malaya at that time to trade and to spread religion. Malaya which used to be peaceful has turned into chaos in 1824 because the British have started to interfere in all the administrative affairs of Malaya that were previously managed by the Malay Kings with the help of state officials. Other than administrative affairs, the British also interfere in religious affairs in Malaya. Because of this, the local population felt dissatisfied and there were some fighters who opposed the British colonialism in Malaya namely Penghulu Abdul Said @ Dol Said, Haji Mat Hassan bin Panglima Munas or also known as "Tok Janggut", Haji Abdul Rahman Limbong and Datu Muhammad Salleh Datu Balu or "Mat Salleh" (Noraini Mohamed Hassan, 2017). All these heroes are willing to die just to ensure that Malaya is no longer colonized by the British.

In 1942, Japanese army marked the beginning of another colonial era in Malaya. Malaya which was previously colonized by the British finally had to accept a new culture which was Japanese culture. Many cultures were absorbed by the Japanese colonialists who wanted the people of Malaya to conform to their culture. This matter once again caused dissatisfaction among the people of Malaya and finally they agreed to oppose the Japanese colonialism as they did during the British colonialism. Even though many lives were lost, they did not care as long as the land of Malaya was no longer trampled upon by the colonialists

(Wan Hashim Wan, 1996). Finally, in 1945, Japan surrendered due to the atomic bombing of Hiroshima and Nagasaki (Astro Awani, 2021).

Because there was no administrator during the Japanese withdrawal, once again Malaya was disturbed and this time it gave space to the Communist Party of Malaya (PKM) to dominate Malaya (Al Azharri Siddiq Kamunri, 2020). When the Japanese army was defeated in 1945, PKM and the Malayan People's Anti Japanese Army (MPAJA) brutally ruled the cities in Malaya for two weeks because the British army had not yet arrived. Due to great opposition from the people of Malaya, PKM ultimately did not succeed in conquering Malaya and the British returned to power. After PKM left Malaya, Malaya was finally taken back by the British. The unity of the three main races, the Malays, Chinese and Indians in Malaya showed results when the London Agreement was signed on February 8, 1956. It signaled that the Federation of Malaya would be independent. Upon Tunku Abdul Rahman's return from London, he declared the independence of the Federation of Malaya at Padang Bandar Hilir, Melaka, on 20 February 1956. And finally, on the morning of August 31, 1957, the late Tunku Abdul Rahman, the first Prime Minister of Malaysia at that time, witnessed by thousands of people from various races and religions declared the independence of Malaya followed by the sacred cry of 'Merdeka!' (Muhammad Yusri Muzamir, 2020). With the independence of Malaya, it shows that the colonial rule in Malaya has ended.

While Malaya (name before it was declared as Malaysia) is moving towards independence, FELDA was established. The late Tun Abdul Razak who served as Rural Minister and Deputy Prime Minister at that time established FELDA on July 1, 1956 to eradicate poverty in the countryside, close the economic gap between races and implement the development of the interior. FELDA *Lurah Bilut* was created in 1957 and it marks the beginning of the first group for FELDA in Malaysia. During the colonial period, the British intended to separate the community because they wanted to lessen the influence of local chiefs and prevent the Malaya community to live unitedly. Chinese people are the ones who genuinely have large assets in the local economy because they work as miners and conduct business in both cities and rural areas. The Malays work as small-scale farmers or fisherman in the village whereas Indians work primarily as farmer and manual laborer for the government (Noor Mohamad Shakil Hameed, 2019). Due to this division, the Malays and

Indians are struggling to stabilize their respective socioeconomic structures from poverty. This matter caused apprehensive among the government considering that the country at that time was heading towards an independent country. With the establishment of FELDA, it is hoped that the people in the rural area especially the Malays and Indians will get out from poverty and can increase their financial situation (Elita Maydasari, 2016).

In addition, people always get confused between FELDA and the Federal Land Consolidation and Rehabilitation Authority (FELCRA). The first and biggest distinction between FELDA and FELCRA is their historical backgrounds. Felda was founded in 1956 with an emphasis on the growth of oil palm plantations and other types of agriculture. As for FELCRA, it was founded in 1966 and more concerned with land management and the repurposing of underused or abandoned land. Secondly, FELDA is run by FELDA itself and is owned by the government. As for FELCRA, it consists of land which the farmers are unable to manage and decided to give to FELCRA. Last but not least, FELDA concentrates on the development of the palm oil industry while FELCRA concentrates on land management and the repurposing of abandoned land and crops like rice, rubber, and palm oil. From a legal perspective, FELDA was established under the section 3(1) of the Land (Group Settlement Areas) Act 1960 where it states that the State Authority can declare any land area as a group area.

It is supported with Article 76 (4) of the Federal Constitution where if it is related to land, it is indeed the responsibility or jurisdiction of the state itself. Each FELDA will prioritize its own people for each state. If there are states that have shortage of applications or selection of competent candidates, then the state will open applications for the others. At the early of its establishment, FELDA concentrates more on Peninsular Malaysia compared to East Malaysia as other government organizations are in charge of land development in the East Malaysia. With the development of time, FELDA has covered 317 states in all Malaysia including Perlis, Kedah, Perak, Selangor, Negeri Sembilan, Melaka, Johor, Pahang, Terengganu, Kelantan, and Sabah. This excludes Penang, Sarawak and the Federal Territory. However, Tan Sri Idris Jusoh Satu, the chairman of FELDA, recently suggested setting up FELDA in Sarawak to promote Felda's holdings there (Bernama,2023). This demonstrates clearly that FELDA is spreading its wings to nearly all of Malaysia's states. In terms of

management, FELDA used to be under the authority of the Prime Minister in year 2004. However, Malaysia Prime Minister, Datuk Seri Anwar Ibrahim announced that Rural and Regional Development Ministry (KKDW) will be given full power to administer FELDA and to resolve issues related to FELDA (Latifah Arifin & Farah Marshita Abdul Fatah, 2023). This enables facilities in FELDA that are beyond Prime Minister's Department's purview, to be adjusted.

In order to become a settler, there are several conditions that are required to be fulfilled including the person must come from Malaysians who are classified as living in poverty, healthy, married, between the ages of 18 to 35 years old (or up to 40 years for ex-military), no criminal history, do not possess their own home or land and have no reliable source of income or employment. The remaining factors are determined by the interview's selection criteria and observations of the candidate's health, talents, and family size (Ridhuan Isa, 2021). They will receive two types of land, namely land for agricultural use and the other for residential use. In some places, new settlers are given 10 acres (40,000 m<sup>2</sup>) of land to work on rubber or palm oil plantations. With the efforts carried out by FELDA especially in eradicating poverty by opening many job opportunities (Norafidah Assan, 2021), until today, the name of FELDA is at the peak of success. Many successes and proud achievements have been produced by FELDA. One of it is that FELDA is now one step forward in empowerment of mechanization and technology in the management of settler farms, so that farm yield productivity can be increased to an average of 20 tons per hectare per year which eventually increases the settlers' income (Noreen Noor Abd Aziz, Wan Haslin Aziah Wan Hassan & Nur Adilah Saud, 2012). This shows that the achievement represents an increase of 2.71 tons per hectare compared to the average settler yield for the year 2021. Settlers can also receive additional income of up to RM162 million for every 0.5 percent increase in the oil extraction rate (Berita Harian, 2022). By looking at this success rate, it actually gains a place in the hearts of the community to explore FELDA more.

However, behind the story of success of development in FELDA, there are problems and challenges that arise, especially related to estate administration that need immediate action by the authority. Generally, estate administration in FELDA is different from other lands, which makes it difficult for settler heirs to administer. Due to issues of estate

administration arising in FELDA, until today, many FELDAs area up to 800 acres are abandoned (Chamhuri Siwar, Abd Malik Ismail & Abdul Hamid Jaafar, 1998) and not cultivated. In order to reduce losses, the government uses this wasteland to cultivate food (Irwan Shafrizan Ismail, 2023). The abandoned FELDA is employed not only as a location for food production but also as an industrial area for animal food namely poultry and cattle (Muhammad Amnan Hibrahim,2022). These initiatives not only can reduce losses due to FELDA being abandoned but also open up new job opportunities for the Felda settlers. Even though there are a lot of things that may be done with this abandoned FELDA land, this should not happen at the first place. This is due to the possibility that some of FELDA may belong to the descendants or heirs of the original settlers. It is undesirable if inheritance under the FELDA results in the heirs losing their inheritance rights. In this paper, the researcher will elaborate more about the development and legal challenges in managing FELDA especially in the administration and distribution of the land upon a settler's death.

## **RESEARCH METHODOLOGY**

As for the research methodology, the researcher undertakes a socio-legal approach, which focuses on how the FELDA develop and the legal challenges in managing FELDA especially regarding inheritance in Malaysia. As a non-doctrinal study, this research employs a qualitative approach. Primary data collection (Abdul Halim Mat Diah,1987) such as semi-structured interviews (Anwarul Yaqin,2007), survey via questionnaire through SPSS Version 23 and Focus Group Discussion as well as secondary data, such as library-based research, journal articles, books, and legislation and case law are used to achieve the research objectives (Mahdi Zahraa, 1998). Land (Group Settlement Areas) Act 1960, Distribution Act 1958 as well as non-legal literature such as law textbooks, online articles, newspapers, case analyses, conference proceedings, and seminar papers are examined in the doctrinal analysis section. The researcher hopes that this paper can be used as a reference when people are interested in learning more about FELDA. The researcher also hopes that this paper will be extensively used to learn about the most recent FELDA developments. Most significantly, the researcher hopes that this paper will be utilised to learn more about the challenges that FELDA faces, particularly when it comes to estate administration or also known as inheritance.

## **ANALYSIS OF ESTATE ADMINISTRATION IN FELDA**

As a country that is rich with religions and cultures, there are differences in procedure for each religion when there is event of death. The procedure after death can be classified into two, namely for Muslims and non-Muslims. Muslims must adhere to certain procedures when handling the deceased and non-Muslims also have their certain procedures. But what they have in common is that before implementing inheritance, they must complete a few responsibilities. Firstly, the beneficiaries must make sure that the funeral cost debts (if any) are settle (Ahmad Mustapha,2021). Funeral costs or expenses are charges associated with managing the deceased from the time of death until they are buried in a grave. The fees incurred for bathing, dressing, digging the grave, transporting the body to the cemetery, and burial are among the rights that are taken into account when planning a funeral for the deceased. The amount of funeral costs needed depends on the deceased's situation, including whether he or she was a man or woman and poor or rich (Abdul Muhaimin Mahmood). If the deceased had property, the estate should be used to cover all costs associated with the funeral costs. However, if the deceased left no property, his family members will be responsible for paying all the funeral costs. The cost of funeral shall be deducted from the *Baitulmal* if the deceased had no relatives, their relatives were poor and unable to pay for the deceased's funeral costs.

Next, the beneficiaries must determine whether the deceased passed away testate or intestate (Brent Yap & Nik Irma Amir Nik Kamaruddin,2021). Intestate occurs when a person died without leaving a legal will, whereas testate occurs when a person died with legal will. If there is a will, the personal representative, who is often referred to as the executor, will carry out the distribution of the estate according to the deceased's will and Wills Act 1959. The terms of the will, which include address child custody, guardianship, and education, must be followed as will is legally binding. If the deceased left no will, the personal representative known as administrator is tasked with managing and distributing the estate of the deceased in accordance with the Distribution Act 1958. The amount to appoint a personal representative is not limited since it is allowed to appoint more than one person. If look more closely at the issue of wills, the author found that many people have passed away today without leaving a will. Despite the fact that having a will is not required, it is nevertheless a good idea because it allows for an exact distribution of the assets. For instance, the will must specify that the divide be made *Faraid* if it concerns a Muslim household (Tengku Maimun Tuan Mat, 1982).

*Hibah* can be made by FELDA settlers but FELDA's approval must be obtained. In addition, the heirs must agree through a letter of consent. And as for non-Muslim, the deceased's heirs must be named in the will in order for them to be entitled to the deceased's possessions. Future issues will arise if there is no will especially in huge families where everyone wants their own rights (Nor Afzan Mohamad Yusof, 2019). All of this is essentially a result of the deceased's attitude, who did not make early preparations before passing away. Because of this, the author believes that more people should be aware of the importance of creating a will before passing away which helps in preventing any future issues with inheritance.

After all these matters are completed, then the heirs can carry out the inheritance which is distribution of the deceased's assets to the beneficiaries (True Tamplin). It should be mentioned that Malaysian inheritance is influenced by Islamic law, traditional Malay customs, and civil law. The Ninth Schedule of the Federal Constitution, which is governed by the State List, also specifies that Muslims must follow Islamic law with regard to their private and family lives. The administrative bodies for estate administration namely Civil High Court, Estate Distribution Division and Amanah Raya Berhad (ARB) (Nur Fadlin Roslan & Azlin Alisa Ahmad, 2022). These administrative bodies differ from one another and each has its own financial jurisdiction. These three administrative bodies vary as well depending on the type of property namely small estate, large estate, or simple estate. Although this inheritance involves Muslims who are closely related to the Syariah Court, but it will not be discussed in more depth in this paper since the heirs must first receive a *Faraid* Certificate from the court, as the Syariah Court lacks the authority to grant letters of representation based on the decision made in the case of *Jumaaton and Raja Delila v. Raja Hizaruddin* [1998] 6 MLJ 556. According to Malaysia's Federal Constitution, the State Administration Enactment contains the jurisdiction for the administration of the estate. Other than that, when discussing about administrative bodies, Small Estates (Distribution) Act 1955, the Corporations Act 1995, and the Probate and Administration Act 1959 are the statutes that are employed in this country to administer and distribute the inheritance of Muslims and non-Muslims.

Back to inheritance in FELDA, compared to other land, FELDA is unique (Bernama, 2017) as on the death of the settler, the heirs of the deceased must report first the death of the settler to the FELDA Planning Office together with the documents such as a copy of Death Certificate, a photocopy of identity card, a copy of Land Title and other movable property



documents such as Vehicle Title Grant (Arsyad Ayub, Nik Mohd Zain Haji Yusuf & Mohd Helmi Husin,1983). Procedure like these do not occur anywhere else because it is practice to file a police report as soon as a death occurs and not to other organization or people (Azma ML,2022). The management must first take note and record the death in the Integrated Computer System (SKB). This report is important so that FELDA is aware of what is happening and can identify the latest number of settlers together with the current status of the FELDA owned by the settler. In most cases, the deceased's heirs may file a FELDA claim for death benefits. If the dead was the FELDA's first settler, priority will be given for this aid. Cash donations in the amount of RM3,000 will be made to the respective heirs. Applicants for this help must submit an application within 90 days of the decedent's death.

Similar to what occurs in other areas, the heirs of the deceased must manage their obligations, including paying for the burial expenses, paying off the deceased's debts, and carrying out the deceased's will (if any). Then, they can proceed with inheritance. As mentioned earlier, FELDA is unique compared to others as not everyone can claim the settler's land. The heirs who have the right to transfer FELDA after the settler's death are the father, mother, wife, ex-wife or ex-husband and the settler's children only. Even if the challenger is an heir who shares a bloodline with the deceased and is a settler, other than the stated types of heirs, no claim can be made. As opposed to inheritance for non-FELDA property, the heirs who may claim this property are more flexible. For instance, in Muslim cases, the heirs that may be entitled to the deceased's property include *Ashab al-Furud* (heirs who have been assigned their share), *Asabah* (heirs who are on the father's side), and *Dhawi al-Arham* (heirs who have a family connection or blood relationship with the deceased other than the heirs of *Ashab al-Furud* and *Asabah* whether male or female). As for non-Muslims, the heirs will carry out the name specified in the will on the condition that it is not contested or opposed by any heirs. Once the heirs of the settler are identified, the heirs can make an application to the Estate Distribution Division or other administrative bodies namely Amanah Raya Berhad (ARB) or Civil High Court for estate administration process according to the administrative bodies' jurisdiction. If the parties choose to go for Estate Distribution Division and their cause paper and documents are complete, the heirs will be notified to attend hearing at the District Land Office (PTD) for distribution of the small estate, transfer of ownership as an owner (Form E) or the designation of an administrator (Form F).

Moreover, FELDA is also unique as it has its own restrictions imposed by the Land (Group Settlement Areas) Act 1960 that must be adhered to. In 1960, this Act was passed in order to take control of all state land development and to standardize them with guidance from the federal government and state governments. History shows that this law was amended three times: in 1965, 1982, and 2002 (Mohd Yassin Mohd Yusuf, 2010). As for the first amendment which is in 1965, it involves land development through cooperatives run by the implementing agency, proclamation of clustered settlement areas, and agreements between land development agencies and the State Government. Secondly, in 1982, it describes the termination or cancellation of collective settlement areas as well as the transfer of occupancy rights in areas with pending title. And lastly, in 2002 which went into effect on December 26, 2002, the Act now permits a maximum of two owners to jointly own and hold title to property in rural areas. Not only that, this amendment allows the spouse, ex-spouse, or heir to be enrolled with the settler in the title that has been issued or is pending issuance (Khamis Mat Som, 2006). They just required the completion of a new form which is known as Form AA. In addition, based on this Act, no sale, purchase, transfer Form 14A, pledge, rental, grant and bequest can be made on the land, except with the written consent of FELDA as they have a contractual relationship with FELDA at the beginning (Siti Fatimah Mohamed Anwar, 2019). The perfect title granted to the original settlers on the land cannot be enforced because of a binding agreement between the original settlers and FELDA.

This differs from normal land in that the ownership transfer process can be done for ownership rights without restrictions, but for ownership rights with restrictions or caveat, prior consent from the relevant party is required (Raymond Mah & Marilyn Teh, 2023). Although individual grants to the FELDA have been issued, it still cannot be considered as perfect possession by the settlers. This is completely different from normal land as after the process of estate administration, the new owner can do anything with the deceased's property (Salkukhairi Abd Sukor, 2017). This includes to lease the property. But, for FELDA, this cannot be done as section 15(3) of the Land (Group Settlement Areas) Act 1960 states that the FELDA cannot be leased in whole or in part. If they still wish to do it, the settlers must first get permission from FELDA as they have a contractual relationship with FELDA (Norhanisah Pidaus, 2022). This provision is supported with section 17 of the Land (Group Settlement Areas) Act 1960 where it states that only specific crops specified in the agreement between the State government and Executive Agency may be grown in rural holding areas. Based on the stated provision, it clearly shows that the ownership of FELDA is not as easy as imagined.

Additionally, according to section 7(2) of the Land (Group Settlement Areas) Act 1960, ownership of the agricultural land is concurrent with the settler's house lot. The individual who owns or manages the settler's agricultural land is the same individual who also owns or manages the settler's house lot. Whatever is endorsed on the land title, will also be endorsed on the house title. House and land have the status of chained land where it cannot be divided forever. In other words, settlers cannot separate the house site as one part, and the agricultural land as one part. Both must be owned together forever and cannot be divided into small land lots (Nurain Akhmal Khairunnisa, 2021). However, there are exceptions to this restriction. Similar like normal land, FELDA can be claimed as matrimonial property but the percentage is subject to the Syariah Court to determine. For instance, an application can be made to Court demanding the wife's share of 50% of the monthly revenue of the oil palm every month. If the Syariah Court allows, then the palm yield every month must be divided into two, one for the deceased's heirs including the wife and the other for the wife (Nik Erman, 2022).

Furthermore, if a settler has more than two children, the settler can only transfer his FELDA to two of his children. This is subject to written permission from FELDA and consent of all his other heirs through a letter of consent signed in front of the Commissioner of Oaths (Nur Dhia Almas Muhamad Aizam, 2022). However, there is an exception for this restriction. This is when the development costs initially borne by FELDA were fully repaid by the settlers. The development costs may consist of land premiums, the cost of building homes, costs of developing land (planting trees and land clearing). When settlers pay all this cost, FELDA would conduct survey in relation to the promised land alienation. Furthermore, there shall be no joint ownership in FELDA unless permitted. According to section 13 Small Estates (Distribution) Act 1955, although two names can be appointed, the task of these two appointed administrator is only to look after and managing the deceased's property. The deceased is still the owner of the property. They are not considered as the owner of the land. FELDA can place restrictions on the next generation in order to grant them the owner's status since the application to become a settler is subject to certain requirements (Olena V. Kokhanovska, Anastasiia O. Verbytska & Veleonin O. Kokhanovskyi, 2021). This is different from normal land because if the transfer of ownership has been carried out, the named heir can become the new owner of the land. The appointment of these two people must be done properly in order for them to manage and administer the property as per their responsibility.

Last but not least, if the heirs do not agree with the appointed administrator, the administrative bodies namely Estate Distribution Division and Civil High Court has the right to appoint two nominees in the grant as property administrators (Ikbal Salam, 2020). This is important because nowadays, many cases occur involving administrators acted improperly (Saifuldin Aziz @Abdul Aziz, 2009). Some of the appointed administrators abused his position as administrator by not carrying out the proper responsibilities or not making a good distribution to the proper heirs thus causing conflict between the heirs. There are also those who are unfair in carrying out their duties which leads the heirs started fighting among themselves. This eventually disturb harmony of the settler's family (Harakahdaily,2018) and cause dissatisfaction among other heirs.

### **ISSUES REGARDING ESTATE ADMINISTRATION OF FELDA**

After almost 66 years of its establishment, FELDA which has been seen in high position for so long is now entangled in various issues especially regarding administration of FELDA on death of a settler. Based on the previous discussions in inheritance for FELDA, the restrictions imposed by Land (Group Settlement Areas) Act 1960 actually have caused many adverse effects on the people at FELDA. Although these imposed restrictions cause a lot of problems, but the settler and their heirs have to comply with all the conditions set in section 25 Land (Group Settlement Areas) Act 1960 because they are afraid of being penalized according to section 22 of Land (Group Settlement Areas) Act 1960 and because they are afraid that no compensation will be paid to them like in section 23 Land (Group Settlement Areas) Act 1960. Although any settler who is dissatisfied with FELDA and its rules is given the flexibility to appeal, but most of them can only remain silent and have to comply because more problems will arise if they disobey the conditions that have been set. Therefore, for this section, the author will explain the effect that will occur based on the restrictions imposed in FELDA related to inheritance.

First and foremost, the heirs who have the right to transfer FELDA after the settler's death are the father, mother, wife, ex-wife or ex-husband and the settler's children only. Even if the challenger is an heir who shares a bloodline with the deceased and is a settler, other than the stated types of heirs, no claim can be made. Even though this restriction prevents

unrelated heirs from receiving FELDA and prevents the FELDA from becoming unprofitable (Kamarul Zaman Habib, 1988), it will generate a lot of complications in the future. For instance, what will happen if the heirs of the types described have passed away or cannot be located. The issue will be worse if there is layered of death or if the settler dies without leaving any descendants. It is more complicated if there is a family dispute or a conflict between the heirs that results disagreement between them, causing FELDA deceased to be delayed for up to years (Wan Halim Wan Hassan,2006). Although events like this do not frequently occur, they could nevertheless happen. In the end, the inheritance in FELDA could not be managed and divided because of the multiple heirs and it was difficult to get agreement and consensus among the heirs.

Secondly, based on the restrictions imposed by the Land (Group Settlement Areas) Act 1960, no sale, purchase, transfer Form 14A, pledge, rental, grant and bequest can be made on FELDA, except with the written consent of FELDA as they have a contractual relationship with FELDA at the beginning. This shows that the perfect title granted to the original settlers on the land cannot be enforced because of a binding agreement between the original settlers and FELDA pursuant to subsection 40 (1) Land (Group Settlement Areas) Act 1960. With these restrictions, it shows that the settlers and heirs are not free to do anything for their property. Everything must get approval from FELDA. Although this is good because it prevents the FELDA from falling into the wrong hands, but in practical terms, the settler and his heirs seem to just sit in the house that was given to them. In addition, when agricultural land is concurrent with the settler's lot, it will also make it difficult for the settler if there is a problem on the agricultural land. Since the agricultural land is under the settler's name, any problems that arise have to be faced by the settler. This would be an injustice for the settler if the problem that arose was not caused by the settler himself and beyond his power.

Thirdly, the appointed administrators are merely administrator of the said FELDA and not the owner of the FELDA. The administrators cannot do anything at the FELDA unless they get permission from FELDA or obtain the letter of consent signed in front of the Commissioner of Oaths in accordance with section 12,14 and 15 Land (Group Settlement Areas) Act 1960. This restriction clearly shows that FELDA still has absolute power over the FELDA even though the FELDA an administrator has been appointed (Dewa Nyoman

Sadguna, Ni Putu Anom Sulistiawati & Ni Komang Alit Astiari, 2017). Things like this should not happen because inheritance will be difficult to implement. If it is normal land, the appointed administrator will divide the land to the heirs according to mutual consent. Although FELDA allows mutual agreement to be carried out, it is still not free since FELDA can still interfere in inheritance matters. The administrator must still rely on FELDA even though he has been authorized to manage the deceased's FELDA.

## **WAYS TO OVERCOME THE CHALLENGES IN ESTATE ADMINISTRATION INVOLVING FELDAS**

Based on inheritance in FELDA and the effects of restrictions imposed, many ways must be done so that inheritance in FELDA can be carried out effectively. These steps are also important to ensure that the heirs who are eligible with FELDA get the rights that they should get. If this issue is allowed to continue, it is feared that FELDA will become an abandoned land and inheritance cannot be carried out since FELDA has the power to take back the FELDA.

First and foremost, the author suggested that the settler himself make a will during their lifetime. Considering the many restrictions imposed on FELDA, the settler needs to be wise in making preliminary plans by making a will or *hibah* to put two nominees who will manage his FELDA. The settler also needs to plan the name of the heir who can inherit his property since there is limitation regarding the heir. Not only that, if the settler has an issue related to marital property, the settler must resolve it before they die to ensure that their ex - partner does not make a claim in the future. Early planning by the deceased is actually very good to practice because many issues can be avoided, especially fights between heirs. When this preliminary planning is done, all parties will agree and comply with what has been left by the deceased.

Secondly, the author suggested that Land (Group Settlement Areas) Act 1960 needs to be amended. There is no clear guidelines or regulations imposed in the Act. There is also lack of information on what is the duties of the administrator of FELDA should adhere to. This amendment is important as all people must have a better comprehension regarding FELDA precisely on estate administration. This issue must not be taken lightly because nowadays there are many cases regarding FELDA that must be resolved. If this Act is not reviewed and amended, FELDA will continue to face problems in the future. Conditions and guidelines or clear procedures should be specified in detail. To prevent problems in the future, this Act also need to be clarified and applied uniformly to all FELDA so that there will be no abuse of power. Not to forget, the exclusive rights and interests of FELDA administrators should be detailed to distinguish between FELDA administrators and ordinary land administrators. The powers and responsibilities of the administrator also must be specified in detail. When there is a clear provision and guideline in the Act, then the public will understand better about their rights in regards to FELDA. Additionally, the original agreement between the settlers and FELDA also needs to be reviewed. Most of the settlers or heirs of FELDA might not have clear understanding about the terms of the agreement. In fact, only a few FELDA settlers have the original letter of the agreement. This issue must not be taken lightly as status of FELDA's 99-year leased land is not long and some of them are already 60 years old. FELDA's estates lease status only has about 30 years remaining. Therefore, it is important for the authorities to amend the Act and review the old agreement so that this problem can be resolved immediately.

In addition, the author suggests the authorities can increase the awareness by organizing talks or campaigns regarding FELDA particularly regarding estate administration of FELDA. This is because not all settlers or the heirs have enough knowledge or information on how estate administration of FELDA works (Rohayu Abdul Majid, 2019). Majority of settlers are unaware of how to handle FELDA's inheritance in the event of death. FELDA settlers need to have knowledge and be aware that early planning needs to be implemented so that no problems occur in the future. Settlers also need to be told about the importance of making careful plans during their lifetime so that their heirs do not conflict with each other. Since they have less awareness and lack of knowledge regarding FELDA, some of them also might not satisfied why only two names can be appointed as administrators even though all their siblings are eligible. This matter actually seems trivial but in reality, many cases are

brought to the court just because they disagree on the appointment of only two nominees as administrators. Advisory service program related to administration of FELDA must be held consistently to provide comprehensive understanding to the public especially to the settlers. Clear explanation is very important because most of the settlers or their heirs feel the process of estate administration of FELDA is very complicated.

## **CONTRIBUTION**

This research is very important because it examines the development and legal challenges in FELDA management, analyses the estate administration process of FELDA and suggests ways on how to overcome the issues of estate administration in FELDA. At the first part of this article, the author make analysis and compare the estate administration for FELDA with normal land. For instance, in FELDA, when the settler died, the heirs must immediately report to the FELDA's office. This does not apply to other land. Then, the FELDA cannot be transferred or leased to other party unless received permission from FELDA or letter of consent signed in front of the Commissioner of Oaths. Moreover, only two names can be appointed as administrator.

Although be appointed as administrator, the right of the administrator is only to be the administrator and not the owner of FELDA. This shows that FELDA still have absolute power on the FELDA. As for the second part of this article, the author list down the issues created from the restrictions imposed by FELDA. As discussed earlier, the restrictions imposed by FELDA have caused many problems. Among them are there is no absolute guarantee for the heir's rights as the estates will forever belong to FELDA. The appointed heirs just be an administrator of the said FELDA and not the owner of the FELDA. Not only that, there is lack of awareness among the society regarding estate administration of FELDA. Therefore, as for the last part, the researcher suggests ways on how to overcome the issues.

## **IMPLICATIONS**



This research was conducted to contribute not only from an academic point of view but also from the practical perspective in the estate administration of FELDA. Among the parties that can take advantage of the input given by the author in this paper is FELDA itself and also administrative bodies namely Estate Distribution Division, Amanah Raya Berhad (ARB) and Civil High Court. Besides that, it is hoped that this research can achieve all the objectives set at the beginning of the research namely to examine the development and legal challenges in managing FELDA, to analyse the estate administration process in FELDA and lastly to suggest ways on how to overcome the issues of estate administration in FELDA. The author hopes that the comprehensive research that has been conducted will provide a guideline to resolve issues in estate administration pertaining to FELDA.

## CONCLUSION

In conclusion, the establishment of FELDA actually helps the community a lot, especially in eradicating poverty. As the main objective of its establishment, FELDA can be said to be a good platform in reducing the poverty rate in Malaysia by opening up a lot of land that can be cultivated by the underprivileged while also opening up a lot of job opportunities. Although it has been established in Malaysia for a long time, FELDA is still strong and intact in the Malaysian economy in line with current developments. Until today, there are still many people who tend to own FELDA since FELDA brings a lot of benefits to the public, especially improving the economy of the community itself. Many incentives and assistance are given to FELDA settlers which these benefits are given to increase their enthusiasm to work under FELDA in addition to improving their standard of living

Even so, now FELDA is under pressure where the issue of inheritance or estate administration in FELDA is often politicized. A lot of incitement and slander have been thrown at FELDA claiming that FELDA only wants to make a profit instead of helping people in distress. If seen from the restrictions imposed by the FELDA itself, there are many negative effects that the settler can have, especially in matters related to inheritance. Settlers seem to lose power in FELDA's ownership since they all have to get permission from FELDA. This has caused many settlers to refuse to continue ownership of FELDA for fear of the fate that will befall their heirs if they die. Although this happens, the author suggests that the settler to look

at the positive side of these restrictions are implemented. Although it is a bit biased and in favor of FELDA, but it actually brings good to the settler himself. For example, the settler's right to FELDA will not fall into the wrong hands. FELDA will ensure that a truly deserving person will inherit the FELDA. Also, despite the restrictions in FELDA, it is actually good to ensure that the price of the land does not go down and continues to give a lot of income and returns to the settlers. If FELDA can be transferred to many parties, it is feared that the quality of the agricultural land cannot be guaranteed and can cause losses to the settler himself. Not only that, the purpose of FELDA to allow only two administrators to be appointed to manage the deceased FELDA is relevant. This is because it can prevent unqualified administrators from being appointed and prevent fights between heirs. FELDA is so committed to helping the heirs that the appointment of an administrator can be made with FELDA's own intervention. In this way, FELDA can ensure that the FELDA belonging to the settler falls under truly worthy hands.

Therefore, the author would like to emphasize here that although inheritance at FELDA is quite complicated to implement, but if seen from the positive side, there are actually many benefits that can be obtained. Therefore, it is hoped that with a paper like this, the public can open their eyes to accept inheritance in FELDA in a positive way and ignore the slander and insults thrown at FELDA. Based on the steps proposed by the author earlier, it is hoped that all parties, especially FELDA, can take these steps into account and apply them so that the issue related to FELDA's inheritance can be resolved effectively and efficiently.

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