

THEMATIC ANALYSIS ON TAKHARRUJ DIVISION IN ISLAMIC INHERITANCE ESTATE DISTRIBUTION

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Abstract: *Takharruj* division is one of the methods for inheritance estate division among Muslim heirs. This type of division could facilitate the process of inheritance estate management which is a major problem for Muslims in Malaysia. Therefore, this study aimed to identify the factors that inspire the heirs to succeed inheritance estate via *takharruj* division based on authority perception and experience. Semi-structured interview was conducted among officers at Small Estate Division Unit. Thematic analysis was employed to determine potential factors of *takharruj* for inheritance estate distribution. The result highlight that the foremost reasons of *takharruj* division being chosen as the inheritance estate division were relationship among the heirs and the position of inheritance estate. Relationship among heirs can be defined as siblings' affection, strengthening relationship' and needs of other heirs. Whereas position of inheritance estate referred to land scarcity and multiple ownership. Thus, it was suggested that policy makers should formulate specific guidelines related to inheritance estate management which could assist the heirs to manage the estate effortlessly and effectively.

Keywords: *Takharruj, Thematic Analysis, Islamic Inheritance, Faraid, Multiple Ownership*

Introduction

Cooperation among heirs who are responsible for dealing the inheritance estate plays a vital role in inheritance estate management. However, the heirs are seen to have failed in handling the estate. As the evidence, there is an increasing trend of unclaimed inheritance estate every year. Based on a report in 2020 by Department of the Department of Director General of Lands and Mines through Department of Inheritance Division, Malaysian Ministry of Energy and Natural Resources, there is approximately RM70 billions of unclaimed inheritance estate (Fazlul Haque, 2020). The number is estimated to increase persistently if there is no attempt to address this problem.

Islam has set the division of inheritance estate in accordance with the particular heirs and the allowed portion in *faraid* division. *Faraid* can be explained as the calculation and distribution method of inheritance for every heirs according to Islamic law (Abdul Rahman & Hassan, 2020). Although, Islam has set wealth inheritance method, the problem of unclaimed inheritance estate still arises. One of the major obstacles comes from the attitude of the heirs who believe they do not require the inheritance estate. They decline to cooperate in administering the inheritance estate (Zulkafli & Ahmad, 2016). Consequently, it results to the inheritance estate not being claimed and partitioned among the entitled heirs. The effect of delaying the management of inheritance estate for a long time will eventually be a factor to layered death (*munasakhah*) issue which causes the increasing number of heirs and the process of claiming inheritance estate will become more complicated (Mohd Noor, Ismail, Mohd Noor, & Mahamood, 2018; Wan Mohamad Ali & Ahmad, 2013).

Thus, a number of studies (e.g. Ahmad, 2017; Ahmad *et al.*, 2017, 2018; Muhamad Noor, Wan Mokhtar and Rashid, 2019) have reported that *takharruj* division is an appropriate method to address this problem. This type of division is defined as a permission of one or several heirs to withdraw their *faraid* portion from the inheritance estate. In other words, the heirs discard their portion that will be succeeded by *faraid* division (Wan Mohamad Ali & Ahmad, 2013). Therefore, *takharruj* division can facilitate the process of claiming inheritance estate for the reason that it does not encompass many heirs (Taha, Sulong, & Ayub, 2015).

Wan Mohamad Ali and Ahmad, (2017) reported that many complicated inheritance cases were resolved through *takharruj* division. In fact, in the case of FELDA land, 77% of heirs agreed to withdraw their *faraid* portion from inheritance estate and offer their portion to the heirs who are in need. On the other hand, the surviving heirs tended to divide the inheritance estate by *faraid* division rather than to withdraw their right. Nevertheless, an in-depth study on *takharruj* division from the inheritance estate is lacking information. Thus, the aim of this paper is to critically explore the potential factors that contribute to *takharruj* division based on Small Estate Division Unit officers' perceptions and experiences to bridge the gap. Hopefully, this study's findings will encourage policy maker to provide a detailed guideline to promote *takharruj* practice to address the increasing trend of unclaimed inheritance estate.

Literature Review

Takharruj division offers a room for heirs to solve the problem of inheritance estate management in a tolerant and mutually agreeable way (Wan Mohamad Ali & Ahmad, 2013) and provides a balance distribution of the inheritance estate (Ramli, Jamaludin, & Jamaludin, 2018). This type of division is not contrary to Islam as it is a part of *faraid* division (Ahmad *et al.*, 2017; Wan Mohamad Ali & Ahmad, 2017). Through this division, the heirs are permitted

to accept or withdraw their *faraid* portion in inheritance estate after they understand their right portion (Mohd Yusuf, Umar, & Mat Tabiee, 2019). Consequently, there should be no further dispute related to the validity of this division in the inheritance management. However, before the process of withdrawing from the *faraid* portion, all heirs are obliged to identify the portion that will be succeeded. It is a compulsory action in order to ensure that the heirs are withdrawing from *faraid* division voluntarily and will circumvent dissatisfaction in the future (Ahmad, 2017; Gusasih & Harahap, 2018).

There are two key conditions to certify that this division can be enforced successfully, firstly, the heirs must be informed of their entitled *faraid* portion from the inheritance estate and secondly, they agree and give consent that the portion will be withdrawn and handed over completely to particular heirs. Conversely, if one of these conditions is not complied with, *takharruj* division cannot be enforced (Sulong, 2015, 2016). At the same time, this method can be applied when one, several or all heirs agree to perform *takharruj* (Muhamad Noor et al., 2019).

Whereas *takharruj* division may be void when the debt left by the deceased is higher than the amount of the inheritance estate of the deceased. This is since the heirs are required to clear all the debts first as it is an obligation for the heirs. In addition, *takharruj* division can also be void if there is any claim from a third party that causes changes in *faraid* portion. This situation may arise due to the existence of unknown heirs during the division of inheritance estate. When the heirs are present, then the *faraid* portion will also change. Thus, *takharruj* division becomes void (Nik Hussain & Abdul Razak, 2014).

Despite the absence of specific legislation related to *takharruj* division (Ahmad, Wan Ali, & Omar, 2019), it is practiced in Small Estate Distribution Units which is known as equal distribution, withdrawal with reciprocity or without rewards and division based on agreement among heirs (Aziz, 2015). Wan Mohamad Ali and Ahmad, (2017) discovered that the practice in Small Estate Distribution Units is not defined by the term *takharruj*. Instead, it is applied through the method which is known by the terms 'agreement', 'consensus', 'hand over the portion', and 'equal' division. Despite the lack of specific legislation on *takharruj* division, it is permissible to be practiced as accordance to Section 15 of the Small Estate Distribution Act 1955 (Wan Harun, 2010).

Under certain circumstances, the heirs should withdraw their *faraid* portion especially the distribution of inherited land under the Land (Group Settlement Areas) Act 1960 as section 14 stipulates that only two owners' names will be registered for a land ownership. This requires the heirs to choose particular heirs who will be registered for the ownership (Ahmad et al., 2018). The same is required for the division of inherited land under Malay Reserve Land (MRL) in which the non-Malay heirs are not permitted to succeed the land. Accordingly, *takharruj* division enables them to acquire compensation or reward that is equivalent with the value of inherited land (Zulkafli & Ahmad, 2016).

Takharruj division also can indefinitely lessen the division of non-economic inheritance. The rigid understanding on *faraid* division results to multiple ownership of a small plot of land, reduces the size of the land lot, reduces the value of the land and eventually makes it difficult to develop (Abdul Rashid & Ahmad, 2010; Abdul Rashid & Yaakub, 2010). Due to multiple ownership of a land, it also complicates the process of transferring ownership and declines

payment of land taxes to local government (Ahmad et al., 2018). The situation will be different if the heirs agree to withdraw and fully hand over their *faraid* portion to a particular heir without any compensation for the reason that there will be single ownership on the inherited land (Wan Harun, 2010).

Research Methodology

Data Collection

The purposive sampling was implemented through 11 main Small Estate Distribution Units which are the authorities for managing inheritance estate process in Malaysia as referred in <https://www.jkptg.gov.my/my/>, one of Malaysian Federal Government's website. This type of sampling allows the researchers to address key information on particular phenomenon or issue (Parker & Northcott, 2016). Sample for this paper was consisted of the authorized officers who are knowledgeable or experienced in inheritance estate process.

Prior to the interview, all potential respondents were contacted by telephone call by first researcher to acquire consent from the respondents and determine the appropriate date and time to conduct the interview. Respondents were also briefed on the purpose of the current study. Researchers emailed the related questions that will be questioned during the interview to aid them to be well-prepared.

They were interviewed through Google Meet between April 2020 and June of 2020. Second and third researchers were recruited to avoid any missed information during interview session. Semi-structured interview was applied to allow the respondents to express their experiences evidently in managing inheritance estate process. The main question for this interview was "What are the factors that contribute to *takharruj* practice?". Interviews were carried out on their own chosen date and time where they feel most convenient and comfortable with (Ahmad Ramli, Tilse, & Wilson, 2017). The interviews were audio-recorded with permission from the respondents and were carried out in Malay as it is the official language within Malaysian government agencies. The interviews' duration was between 15 to 30 minutes, depending on respondents' willingness to answer the questions and elaborate on it.

Data Analysis

The audio recordings were transcribed verbatim by second and third researchers and sent back to respondents via email for verification or any alteration. The verified transcriptions were then translated into English by two qualified language experts to gain reliable and accurate translations. Next, the transcription was analysed and encoded by using Atlas.ti version 8. The fourth and fifth researchers were responsible to encode the transcripts separately and then compare their codes to reach inter-coder reliability (Campbell, Quincy, Osserman, & Pedersen, 2013). The identified codes were arranged to develop themes that explain the factors of *takharruj* practice while unrelated codes were dropped. Thematic analysis was employed by sixth and seventh researchers through six phases (familiarizing, generating, searching, reviewing, defining and producing) as proposed by Braun and Clarke, (2006).

Finding

Based on the interviews, this study divides the factors that lead the heirs to apply *takharruj* division into two themes namely 'Relationship among heirs' and 'Position of inheritance estate'.

Theme 1: Relationship among Heirs

This theme refers to the interactions or feelings among the heirs. The interactions demonstrate that the heirs put effort together in inheritance estate division so that they can apply *takharruj* division. Respondent 1 proposed that the heirs who agree to withdraw their *faraid* portion from inheritance estate is due to affection.

"Among the factors that the heirs withdraw (*faraid* portion from inheritance estate) is as a sign of affection to others (heirs). For example, the wife *takharruj* (from inheritance estate division) by giving her portion from her late husband's inheritance estate to her children as a sign of affection."

(Respondent 1)

At the same time, *takharruj* division can also strengthen relationship within family as agreed by Respondent 2 and Respondent 3.

"Among the benefits of *takharruj* (division) is to strengthen the relationship (among family members) and to support other heirs who are more in need."

(Respondent 2)

"The advantage of *takharruj* (division) is to strengthen the relationship between the other heirs."

(Respondent 3)

Meanwhile, in terms of needs, there are some among the heirs who are already wealthy and no longer need to succeed any inheritance estate. Thus, the heirs decline their *faraid* portion and give the portion to the more in need or unfortunate heirs.

"They aim to support other heirs who require the inheritance estate more to survive due to their poor life. For example, the elder brother works as an accountant and have a younger brother who has a physical disability. Later, the elder brother gives (his *faraid* portion) to his younger brother who has physical disability (to support his younger brother)."

(Respondent 4)

"The heirs do not need the inheritance estate and are willing to give (their *faraid* portion) to the other siblings because they have their own resources."

(Respondent 5)

Theme 2: Position of Inheritance Estate

This theme refers to the position of the inheritance estate which conveys two main situations; 'land scarcity' and 'multiple ownership'. There are among the heirs who see the inheritance estate as inadequate to be distributed to all heirs. Hence, some heirs perceive that the long and complicated inheritance estate management causes them to feel that they do not need it. As

stressed by Shenk *et al.*, (2010) that when the inheritance estate is inadequate, then all heirs are more likely to tolerate certain heirs to succeed.

“Land scarcity (the inheritance estate) leads the heirs to withdraw their *faraid* portion because for them, the procedure of claiming the inheritance estate takes a long time and is complicated.”

(Respondent 6)

“Limited inheritance estate causes the heirs to *takharruj* (withdraw their *faraid* portion) because it is possible that the heirs are wealthy or to provide an opportunity (to succeed more portion) for other heirs.”

(Respondent 7)

“If the inheritance estate is little, it is better to *takharruj* (by some heirs).”

(Respondent 8)

Takharruj division also can avoid multiple ownership that arises from the rigid and misunderstanding of *faraid* division (Hakimi, Shafiai, & Moi, 2017; Khalid, 2014). However, multiple ownership is practically allowed when the land is divided according to *faraid* division. Additionally, National Land Code 1965, Section 342(1) shows that there is no limitation on a land ownership (Termizi & Ismail, 2018).

“The advantage of *Takharruj* is to avoid a multiple ownership of an estate (land) as well as it facilitates the process of division of inheritance estate if the ownership of the estate is only to a small number of heirs.”

(Respondent 9)

“By *Takharruj*, it can facilitate the distribution of the (inheritance) estate where the ownership of such estate is among the few heirs.”

(Respondent 10)

“Upon death, it is compulsory to divide all the estate according to *faraid* (division) but from *Takharruj* maybe we can do it for the reason that it can avoid from multiple ownership.”

(Respondent 11)

Discussion

Takharruj division is a method of inheritance management that can give benefits to the heirs, especially in solving the problems of inheritance and ensuring the welfare of other heirs. Firstly, this study indicates that the heirs apply *takharruj* division to resolve inheritance division due to the element of affection. The feeling of affection inspires an heir to hand over his or her *faraid* portion to other heirs in the same way as the division of inheritance estate itself illustrates ‘affection’ of the deceased to the heirs (Banks, 1976; Kamarudin et al., 2020; Taha et al., 2015). The accumulated wealth during lifetime is for the benefits of heirs after the death of the breadwinner. It becomes a necessity among the heirs to show their affection in order to create a good relationship (Sulong, 2016) and to boost social support in society (White & Riedmann, 1992). Furthermore, affection among heirs can reduce stress in relationships and increase feelings of mutual protection as stressed by (Gass, Jenkins, & Dunn, 2007; Ponti & Smorti,

2020). It can be applied by good relationship, optimizing conflicts and positive interactions among parents and children, and in turn reducing siblings hostility (Ruff, Durtschi, & Day, 2018). Islam also promote affection among family members as Allah mentioned in Surah Ar-Ruum, verse 21.

“And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquillity with them, and He has put love and mercy between your (hearts): verily in that are Signs for those who reflect.”

Secondly, the heir who withdraw his or her *faraid* portion feels that it is a necessary action to strengthen the relationship with other heirs as poorly managed inheritance estate can damage family relationship (Wan Harun, 2010; Yaakub & Othman, 2012). Hence, being tolerant can support the heirs in solving the inheritance estate management more harmoniously and effectively. On the other hand, if the heirs issue any dispute on the division of inheritance estate, it will complicate the claiming process. Close relationship between heirs should be initiated during the childhood life such as sharing the toys and problem together (Ruff et al., 2018). Although close relationships sometimes contribute to conflicts between siblings, parental responsibility is very important in creating a harmonious family environment (Odudu, Williams, & Campione-Barr, 2020) such as having leadership qualities and controlling conflict to reduce hostility among siblings (Putung & Azahari, 2020).

Thirdly, the result supports Frankenberg, Lillard and Willis, (2002) stated that generous siblings will help each other. In the context of altruism motive, the donor cares about the welfare of family members. Thus, the transfer is done to the more needful recipient based on their lower source of income and employment. In fact, parents also expect less fortunate children to succeed a greater portion of inheritance estate than successful children (Cigdem & Whelan, 2017; Erixson & Ohlsson, 2019; Hamaaki, Hori, & Murata, 2019; Izuhara & Köppe, 2019). Therefore, siblings who have a better economic position are responsible to will help other siblings to replace the parents who have died. Instead of financial support, they also foster emotional and physical support especially who are affected after the death of their parent (Milevsky, 2020) and siblings with disabilities (Lee & Kim, 2021; Redquest et al., 2020).

For the position of inheritance estate, table 1 illustrates the impact of *faraid* division for land scarcity. In this case, the size of inheritance land is only one acre and will be succeeded by five sons; which is 0.2 acre for each son. Based on this area, it is difficult for the heirs to gain any benefits from the land. In other words, when this land is developed for the purpose of agriculture, then the production should be distributed according to the prescribed portion. Then, there is the difficulty of determining on who should be responsible for managing the inheritance land.

Table 1: Impact of *Faraid* Division for Land Scarcity

Heirs	Portion	Land size (acre)
Son 1	1/5	0.2 acre
Son 2	1/5	0.2 acre
Son 3	1/5	0.2 acre
Son 4	1/5	0.2 acre
Son 5	1/5	0.2 acre

While, figure 1 illustrates the practice of multiple ownership. When an acre inheritance land is divided according to *faraid* division of five sons, then each will get 1/5 of the ownership. It will result to multiple ownership of a small land size. However, if four from five withdraw their *faraid* portion over the land, then this matter will maintain the sustainability of the land. The land can be cultivated without having to be shared by other heirs and maintains its economic value.

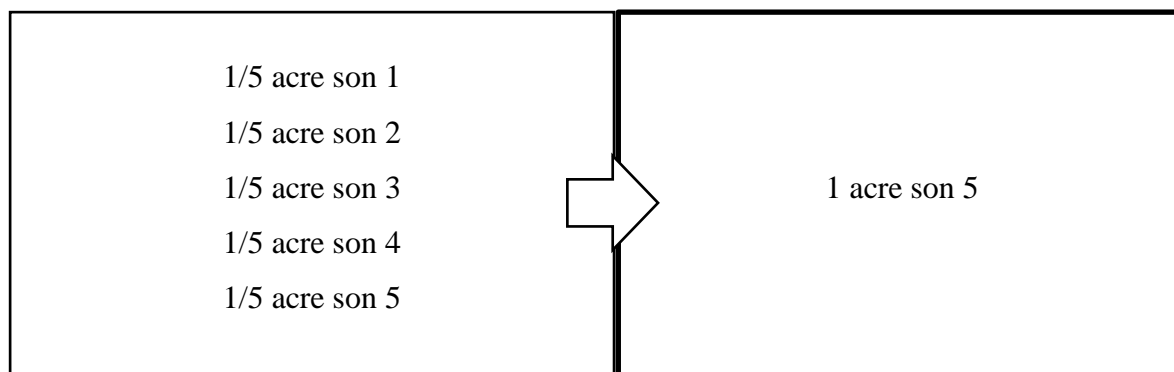


Figure 1: Multiple and single ownership

Therefore, this study is in line with the findings by Taha, Sulong and Ayub, (2015) and Sulong and Taha, (2016) of which to practice *takharruj* division to avoid multiple ownership. In fact, the officers at Small Estate Distribution Office are encouraged to prevent multiple ownership for inheritance estate as it contributes to uneconomic land development as provided in Section 15(4), Small Estate Distribution Act 1955. Practically, according to Section 136(1)(f)(i), National Land Code 1965, original landowner could not transfer during lifetime, his or her single piece of land to new multiple owners to avoid this issue particularly in case of 'agricultural land' status. The transfer is only allowed when the owner have more than 2 acres to transfer to two or more new owners (Kamarudin, Zaman, & Meor Razak, 2019). However, for inheritance propose, this practice is permissible even though it seems contravene this section. While, the land under Group Settlement Areas (Land Act) 1960 such the transfer during lifetime or through inheritance, is not authorized to registered more than two new ownership. Even though this practice seems violate *faraid* rules, but it will maintain the economic values of the land for next generation. As a solution, the legal heirs for this type of land must *takharruj* their portion as enforced by law (Arifin & Hussain, 2015; Nasrul & Mohd Salim, 2018; Nor Muhamad et al., 2020; Nor Muhamad & Mat Hussain, 2014)

Conclusion

The division of inheritance estate through *takharruj* division is part of *faraid* division. This study indicates that the heirs withdraw their *faraid* portion from the inheritance estate due to two factors; which are the relationship between the heirs and the position of the inheritance estate. Relationships among heirs can be demonstrated through affection, strengthening relationships and the needs of other heirs. Affection among heirs should be paid attention to so that the inheritance estate will be succeeded certainly and rapidly. It can be nurtured from early stage of the children by consistently spending time with family members. Time with the family should be emphasized so that there are no heirs who feel disregarded. At the same time, head of the family is responsible to strengthen the relationship among family members by inspiring them to work together in solving any issues or disputes. This can also encourage the attitude of

helping each other out among the heirs particularly for the needful or unfortunate heirs. Meanwhile, the position of inheritance estate refers to land scarcity and to avoid multiple ownership. In case of land scarcity, the heirs must manage the inheritance estate wisely in order to provide continuous benefits to particular heirs. On the other hand, when each heir succeeds a small portion and it becomes smaller after their death, the inheritance estate will no longer be utilized by the next generations. Simultaneously, multiple ownership contributes to the difficulties of land development such as to obtain loans, to sell or to rent. To conclude, this study recommends that policy makers should provide a specific set of guidelines or law related to the *faraid* and *takharuj* division so that the heirs will be able to succeed the inheritance estate pleasantly. In addition, this guideline can gain heirs' consensus in managing the inheritance estate smoothly and effectively. Cooperation among heirs may ensure the inheritance estate will be benefitted appropriately by the next generation.

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