

Analysis and interpretation of data law equity essay

Law



WE, HUDZAIFAH BIN ASHARI (I/C Number: 890324-10-5579) AND NUR AISYAH BINTI SUZELAN AMIR (I/C Number: 890628-14-5254) Hereby, declare that: This work has not previously been accepted in substance for any degree, locally or overseas, and is not being concurrently submitted for this degree or any other degrees. This project-paper is the result of my independent work and investigation, except where otherwise stated. All verbatim extracts have been distinguished by quotation marks and sources of information have been specifically acknowledged. Signature: Signature: Date: Date:

LETTER OF SUBMISSION

14th June 2013

The Head of Program Bachelor of Business Management (Hons)

Insurance Faculty of Business Management Universiti Teknologi MARA

Kampus Bandaraya Melaka 110 Off Jalan Hang Tuah 75300 Melaka Dear Sir/

Madam,

SUBMISSION OF DRAFT PROJECT PAPER

Attached is the project paper titled " A STUDY ON THE AWARENESS LEVEL OF MPT (MAJLIS PERBANDARAN TAIPING) STAFF ON USING HIBAH AS A TOOL TO REDUCE ESTATE PLANNING RISK to fulfill the requirement as needed by the Faculty of Business Management Universiti Teknologi MARA. We hope that this submission of draft project paper can accomplish the requirement and expectation by the faculty. Thank you Yours sincerely, HUDZAIFAH BIN ASHARI 2010160917 Bachelor of Business Administration (Hons)

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ACKNOWLEDGEMENT

Assalamualaikum w. b. t.

In the name of Allah, the Beneficent, the Merciful. All praises go to almighty Allah S. W. T the sustainers of all the worlds, whose knowledge overtakes all things and grant blessings to our Prophet Muhammad and to all his family and companions. We would like to express my gratitude to Allah the Almighty for the fitness and blessings and giving me the strength of mind, the skills and the will to persist, the good health and the spirit for me to finish this project paper. With His blessings, we have successfully completed my project paper. Long term effort, both large and small are needed from each person to give " life" to this project paper and we gratefully acknowledge their debt to those who contributed to this project paper entitled " A STUDY ON THE AWARENESS LEVEL OF MPT (MAJLIS PERBANDARAN TAIPING) STAFF ON USING HIBAH AS A TOOL TO REDUCE ESTATE PLANNING RISKWe owe a great debt to the following individuals and organization, which has extended their support, time, motivation and guidance, either directly or indirectly. Without their help, this research may not be successfully completed. We gratitude goes to my advisor Miss SITI NURUL AINI BINTI MOHD RODZI for her advices, guidance, and continues support for me to complete my project paper. I appreciate her valuable comments and suggestions. We special thanks to our beloved family and our friends for their concerns, advices, understandings, helps and support especially in financial aids and times in completing this study. This study <https://assignbuster.com/analysis-and-interpretation-of-data-law-equity-essay/>

involved many long hours of hard work, sleepless nights and personal sacrifices. To those who are not mentioned here, my appreciation is in my heart, although it is indirectly or directly. Without all of you this project paper will be unsuccessful. We have tried my best to produce a quality research. It is generally hoped that it will satisfy individual mentioned above. Lastly, we hope this project will meet the requirement and standard and will be used as a reference in the future. Best regards.

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ABSTRACT

The topic on this research is " A STUDY ON THE AWARENESS LEVEL OF MPT (MAJLIS PERBANDARAN TAIPING) STAFF ON USING HIBAH AS A TOOL TO REDUCE ESTATE PLANNING RISK. Legacy management might sound like an unnecessary tool for the average Malaysian. However, professional legacy management is probably one of the most vital wealth distribution systems easily available to all individuals. Here have Amanah Raya, As Salihin or professional asset planning consultants and fund manager that manage a legacy to help the distribute assets after death and will be at hand to offer advice. Every one seeks security and peace of mind in life. Naturally, we want to know that when we pass on that our asset is distributed safely and without any dispute between our beloved. The future is unpredictable and it would be prudent to plan for any unforeseen eventualities. Plan for loved ones with hibah as a tool reduce estate planning to give peace of mind in life and the hereafter. Thus employees in the company play a vital part on <https://assignbuster.com/analysis-and-interpretation-of-data-law-equity-essay/>

company performance, growth and profitability. This study identifies and determines factors that have lack an awareness using a hibah as an estate planning to reduce the risk.

CHAPTER 1:

INTRODUCTION

CHAPTER 1: INTRODUCTION

Background of Study

As the devolution of property after death based on fara'id rules as practiced in Malaysia is often a long, complicated and costly process, there is a need to formulate an Islamic model to avoid these difficulties. It was approve by Mohd Kamil Mokhtar , muslims are not so particular or do not take seriously the management of their properties while they are alive. Knowing that after their death, their heirs and beneficiaries will be taken care of, as there is existing system of law such as faraid that will take care with the property disposition of the deceased. With the increasing emergence of well-off and rich Muslims in Malaysia as the result of economic prosperity, family property management related to the above is becoming important and should be taken seriously by the Muslims in Malaysia. Hibah is one of the forms in Islamic wealth management. Every Muslim may hibah the property to anyone during life whether a part or the whole his property. In Islam, it is encouraged (sunnat) to perform hibah. Hibah is not subject to law relating to deceased estate. Thus, the time taken to distribute the donor's assets according to his wishes would be easier and faster. In doing so, the donor is also ensuring that well-being and harmony of his family. This can happen to

them a does not have biological children a did not want to freely move in faraid to other relatives. Hibah can be made with change the name to the land grant / home / car. According to Ahmad Hidayat Buang in this respect, hibah is seen as the best solution to the above proposal since property can be transferred to family members with terms chose and decided by the donor. Hibah is one of means to distribute one's assets in Islamic financial planning. It may be used either in one's lifetime or in estate distribution of the deceased. It is very simple, yet influential tool in estate planning in the sense it may influence the portion of some heirs if one executes the hibah when one is about to die. Regarding by Zulkifly bin Muda, hibah is a form of gift in the same category as hadiyyah and sadaqah. According to Nurul Hazira Binti Rahmat the method of estate planning through hibah this less known by society compared with testamentary whereas testamentary will be but nasal one than instrument that can be made to distribute the estate of heirloom. Then testamentary is not a methods that can solve all problem in property heirloom. Apart from that no provision is or act specifically relating to the hibah except some states which allocate in in state legislature they for example such as state of Selangor. By that, knowledge about hibah's narrative must be expanded and enhanced anymore by the government as well as parties who practice the hibah.

Problem Statement

AlMa'amun Suhaili (2010) and Hassan (2005) mentioned generally estate planning is not taken into consideration by Malaysian Muslims seriously as a method for managing their assets. While according to AlMa'amun Suhaili (2010), Hassan and Yusop, (2006) Abdul Rahman (2007), ZAR

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PerundingPusaka, (2004), Muhamad, (2007) some Malaysian Muslims do not follow the legal and correct method for managing their asset. ZAR

PerundingPusaka, (2004) explained that one of the reasons such situation occur is due to lack of awareness among Malaysian Muslims regarding the proper practice of Islamic estate planning. Malaysian Muslims poor estate planning awareness are reflected also in their awareness regarding hibah as a method to manage their assets (Bernama, 2007). As a result 42 billion of assets are frozen due to poor estate management causing difficulties to their heirs (The Star, 2011). Poor estate planning also cause a problem to heirs where in 2010 a total of RM 72 billion of inheritances have not been claimed by their rightful heirs (Berita Harian, 2010). Thus the aim of this study is to identify the level of awareness of Majlis Perbandaran Taiping staff towards hibah as a technique to reduce estate planning risk.

1.3 Research Questions

There are several outlined as follows in order to collect information data for this study:-What is the level of awareness of staff at Majlis Perbandaran Taiping towards hibah as a tool to reduce estate planning risk. What is the major factor that has the greatest influence on the level of awareness of Kg. Jambu residents towards hibah as a tool to reduce estate planning risk.

Research Objectives

The objectives of the study are:-To identify the level of awareness of staff Majlis Perbandaran Taiping(MPT) towards hibah as a tool to reduce estate planning risk. To determine what is the major factor that has the greatest

influence on the level of awareness of towards Majlis Perbandaran Taiping(MPT) hibah as a tool to reduce estate planning risk.

1. 5 Significance of Study

The findings of this study will be practical to the following parties:

1. 5. 1 Government

Findings from this research can be use as an indicator on the awareness of hibah and estate planning among Malaysian Muslims. This information can be crucial as it can be use to predict future asset that will be frozen due to lack of awareness and understanding on estate planning. The findings will also show whether government effort in cultivating proper estate planning is fruitful or require more effort.

1. 5. 2 Respondent

This research able to increase the awareness on hibah as an estate planning tools and will be able to make prudent judgement in managing their estate.

1. 5. 3 Researcher

Through this research, the researchers able to understand more about hibah and estate planning. At the same time it also help to boost the awareness on making prudent estate planning.

1. 6 Scope of Study

The study will be conducted at Majlis Perbandaran Taiping (MPT). The location covered for the study is limited at Majlis Perbandaran Taiping (MPT). For the purpose of this study, the respondent are choosen by the department

at Majlis Perbandaran Taiping (MPT) within the time period given to the researcher.

1. 7 Limitations of Study

1. 7. 1 Information

Researcher encounter problem in collecting journals on hibah as the topic is rarely researched. There are only few studies had been done as most of the estate planning related topics is about will. Thus the researchers suffer limitation in terms of sufficient amount of information to be use in the research.

1. 7. 2 Time Constraint

The researchers need to balance the time for both working and report writing.

1. 7. 3 Inexperience

The researcher still new in conducting a resea

1. 8 Definition of Terms

1. 8. 1 Estate Planning

According to Mathis and Jackson (2006), it i

1. 8. 2 Hibah

According to Mathis and Jackson (2006),

1. 8. 3 MPT

MPT is a stand for Majlis Perbandaran Taipng

CHAPTER 2:

LITERATURE REVIEW

CHAPTER 2: LITERATURE REVIEW

2. 1Definition of Estate Planning

Islamic estate planning is a legally effective arrangement for the disposition and management of a person's estate according to Syariah and Civil law.

2. 1. 1 Important of Estate Planning

Death is certain. The important of estate planning is to ensure that estate will be administered and distributed property according to syariah and civil law. " Every sould shall have a taste of death....." (Surah Al-Anbiyaa' : 35)

2. 2Definition of Hibah

A hibah (gift) is a gratuitous transfer of property by which the proprietor bestows a thing without the intention of receiving anything exchanges. In general, property can either be acquired through a person's own effort or by way of inheritance. A person, acquiring a property or obtaining its possession, can sell or dispose of it in any way he likes, provided that it does not go against the principles of the law and his transaction is given effect during his life time. (Ali, 1965: 3)

Ingredients of Hibah

There must be a declaration of the gift by the donorThe Donee to whom the gift is given must accept it either by himself or through a representative. The possession of the gift should be delivered by the donor to the done

The Concept of Hibahs

The Conditions of Hibah

The subject matter must exist
 The subject matter must be halal
 Owned by the party that offer the hibah
 Legal capacity of the parties
 Must be accepted by the other party
 The subject matter in a good condition
 Legal to transacted
 There is no limitation in terms of time
 Completing of Hibah

The types of acceptance

Acceptance through origin method
 Acceptance through Wakalah (Hibah must be without substitution)

Impediments to take back the subject matter of Hibah

Substitute before finish the Hibah meeting
 Substitute after finish the Hibah meeting

The Pillars of Hibah

A hibah contract will not be formed unless the following pillars and conditions are met :-

The Giver / Donor/ Provider (Al- Wahib)

The giver is the ones who give the good. If he is original owner, he has the right to give the good. However if he sick or died the giving is only 20% from his wealth. Regarding by Mohd Zamro Muda (2008) a hibah provider must be a person of worthiness with a sound mind, has attained puberty (baligh) and obeys the rules (rushd). A hibah provider must be the genuine owner of the items intended for hibah. As a property owner has full authority over his/her property, hibah can be made in unlimited rate and be given to anybody

he/she pleases, including to non-Muslims, as long as the intention does not violate Islamic law.

The Acceptor /Donee/ Recipient (Al- Mawhub lahu)

The acceptor is everyone and the giver must give the good according to agreement. The giver can't give his wealth to his children and it is makruh according to jumhur ullaama'. A hibah recipient can be of anyone as long as he/she has the capability to own property, either accountable (mukallaf) or non-accountable. If the hibah recipient is not a mukallaf such as has not reached puberty or disabled, the hibah is to be given to a guardian (wali) or a trustee on his/her behalf. The hibah recipient must receive the hibah property and has the authority to hold on to the property. In other words, ownership and control over the property must be given to the hibah recipient by Mohd Zamro Muda (2008). The donee can be any person regardless of sex, age or creed. However, when a gift is made to an individual the donee must be actually or legally in existence (Rahim, n. d: 299). The donee must be legally in existence in the time of the gift. Thus a gift to an unborn person, the one not in existence either actually or presumably, is invalid.

The Subject Matter

Every good the giver has. Anything over which dominion or the right of ownership can be practiced, or can be reduced to possession, or anything which comes within the meaning of the word mal, may form the subject of gift. The subject matter of gift should fulfill the following conditions in order to be valid.

Existence at gift time

The property should be in existence and capable of delivery. (Al-Zuhayli, 2003: 546) Therefore, the gift of all valuable properties, usufruct, negotiable instrument, proprietary rights and landlord's rights are valid. A gift of a debt to a person other than a debtor is valid, although it is not عين , at the present; it is capable of becoming property in the future. (Ali, 1965: 5) Rights may also form the subject of gift, for example, a person may give his right to collect the rent as a gift to another person. Probable or non-existent items are not eligible for being offered as gift. For example, an unborn calf, flour in the form of wheat, butter within milk, etc. cannot be gifted due to their non-existence at the time of the contract. In all these cases the contract is invalid according to the Hanafis.

Ownership of the owner

The subject matter should be owned by the donor. Giving another person's property as a gift according to Hanafis cannot be executed, unless the owner permission is obtained. This is because; the non-owning donor's is unable to transfer the ownership of what he does not own. However, the Hanafis allow debtor to give his debt as a gift, because of the deliverability of the liability. It is also permissible to give the debt as a gift to a third party, by authorising him to collect the debt.

Must not be common property

The subject matter of the gift cannot be a common property. Thus, it is not permissible for a person to give a public property as a gift to another.

Similarly, he cannot give a property that is rented or pledged or usurped as a gift to others, due to incomplete ownership and absence of possession.

Must be possessed by donee

The gift should come into the actual or constructive possession of the donee.

The ownership of the donee is not established unless he receives and possesses the gift. For, gift is not permissible without possession. The

Hanafis and Shafi'is argue that قبض (possession) is a condition that binds the contract of hibah (gift). If either the donor or the donee dies before the

receipt, the gift is void. Since gift is completed by the delivery of the possession, the death of either the donor or the donee before the delivery of

the possession of the property renders the gift void. If the donor dies before it is collected, then it becomes part of the inheritance, unless it is made

during his final illness, death illness. (Al-Zuhayli, 2003: 547) Then it is paid

out of the disposable third as long as it is for other than an heir. The Malikis,

however do not insist on قبض (possession) assuming that it is not a condition for its validity. To them the donee becomes the owner of the gift by the

contract. Other schools, however, argue that a donee becomes the owner only after obtaining its possession.

The gift must be separated

The possession to be delivered must be separate otherwise it is invalid. It is not valid to give a share in a divisible common property as a gift. Hence, gift of musha' (undivided share) in a thing capable of division is nullified. Musha' means confusion. In legal terms it stands for the mixing up of proprietary rights of more than one person in a thing, where each co-owner has a right

until partition in every particle of the property. (Rahim, n. d.: 298). However, subsequent delivery of separate possession after partition is sufficient for the completion of the gift contract. Thus, according to Hanafis, gift of standing trees and corps apart from the land, of wool on the back of the sheep stand on the same basis as a gift of musha'. In contrast to Hanafis' view, Malikis, Shafi'is and Hanbalis hold that giving an unidentified share in a common property is permissible, based on its analogy to the permissibility of selling such a share. Thus, to them receipt in the case of such a share given as a gift is actualised in the same manner as its delivery in a sale. In both cases, delivery of the share is actualised through delivery of the entire property; from which donee can collect his right and the rest of property remain as a trust in his possession.

2. 5. 5`The Sighah (Ijab) and grant (qabul) or Expression

The most important in ijab and qabul was expression. The expression of ijab can be state clearly or sometime unclear. The clear statement likes ' I give this good to you' and unclear statement is ' I already gave the good to you'. In Islamic law, a certain hibah is made valid with the presence of ijab and qabul either verbally or in any manner which carries the meaning of giving away of property ownership without repayment (iwad). According to the Maliki and Syafi'e sects, acceptance (qabul) must be taken into consideration to determine the validity of the hibah. On the contrary, the Hanafi sect assumes that the consent alone is sufficient to determine the validity of any such grant.

Revocation

The prophet pbuh has extremely disliked the revocation of gift as is clear from his saying narrated by Ibn 'Abas" the man who takes back what he has gifted is like one who return to his vomit" (Al-Muslim, n. d. 790) Imam Shafi'i, commenting on this narration, says; as swallowing the vomiting is forbidden in the same manner revoking one's gift is forbidden, due to the similitude drawn between them by the prophet pbuh. Furthermore, he argues that through the contract of gift the ownership over the property is transferred. This transfer of ownership must be absolute as is the case in sale and which cannot be revoked. However, the Shafi'is and the Hanbalis make exception to their general rule in case where the donee is a child of the donor. Thus, they agree in this case with the Hanafis view. On the contrary, according to Hanafis gift can be revoked by the donor even after possession has been delivered to the donee, who however, until such revocation may lawfully exercise proprietary rights over it. They argue that this tradition implies mere impropriety and not prohibition.(Rahim, n. d.: 302) However, majority of the fiqh schools, are of the view that revocation of the gift after making over possession to the donee, is unlawful. If the possession of the gift has not yet been made over to donee, the donor may revoke it. If the donor, after making gift but before, delivery of its possession, passes away, the gift should be included in his legacy and the donee has no right in it. Hanifis make exception to their general rule of revocability of gift after its delivery in the following situations: (Al-Zuhaily, 2003: 563)The donor is the husband and the donee is the wife or vice versa. If either the donor or the donee has died. If the donee has sold the gift property to another or has given it as a gift to

another person and its possession is made over to him. If the gift is with exchange. Some other thing is mixed up with gift property in a manner that its separation is impossible. The basic character of the gift property is changed. His gift property is either lost or wasted. The donee is blood relation within prohibited degree. In these cases Hanafis agree with the majority's view of non-revocability of the gift property after delivery of its possession. However, according to the accepted Maliki view, revocation of a gift after its delivery is not allowed in any circumstances.

Theoretical Framework

Independent Variable Dependent Variable
Demographic Knowledge Awareness
on hibah Attitude Advertising

Figure 2. 9: Theoretical Framework

Demographic

In a research paper titled *Analysing the Practice of Wasiyyah (Islamic Will)* by Alma'amun, Suhaili, demographic factors such as age, gender, monthly income, marital status and also having children are among the factors that influence decision to have a proper estate planning. Alma'amun, Suhaili mentioned that a Muslim estate planning should be beyond just faraid and bequest to ensure that in the event of death it will ensure that the deceased family members will be able to continue their lives. In Malaysia, Muslim women's are categorized as having less knowledge on estate distribution until to the extent that their rights are not being upheld by themselves (Mohd. Awal, 2007 , Alma'amun, Suhaili, 2009). Age, gender and marital status are also significant factor in influencing one decision to have will and

thus estate planning, (Hayati, Noryati & Faziatul, 2012). Based on the research they found interesting information such as male respondents, respondents who are married and those between the ages of 41-60 have a higher rate for will possession. This is relevant as according to Alma'amun, Suhaili (2010) wealth distribution can only exist after the process of wealth accumulation which can either come from inheritance or working. In wealth distribution it includes payment of zakat, sadaqah and also estate planning accumulation of wealth through working will takes time until it reach the state where estate planning is critical. Azizon Salleh (2007) in his research The Practise of Hibah among The Malays: A case study in Klang Valley found that majority of the respondents within 25-35 years old, married and with monthly income ranging from RM 1001- RM 2000 do not have sufficient knowledge about hibah and also misconception on aspects of hibah

Knowledge

Oxforddictionaries. com defines knowledge as (i) " facts, information, and skills acquired through experience or education; the theoretical or practical understanding of a subject" (ii) " awareness or familiarity gained by experience of a fact or situation". Both of the definition are closely related to awareness and understanding of a subject. Cindy (2010) states that correct information or knowledge about a subject is important in order to prevent cognitive bias Cognitive biases are thinking pattern influenced by observation and generalization of a subject or situation (Dietrich, Cindy. (2010). " Decision Making: Factors that Influence Decision Making, Heuristics Used, and Decision Outcomes." Student Pulse, 2(02). Knowledge about estate planning is important for Muslim as the primary reason why most

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overlook such topic is due to lack of understanding and knowledge about it (Aidil Daudi . (2011). " Estate Planning: Important, Yet Ignored by Muslim Americans". The Muslim Observer). Alma'amun, Suhaili (2010) and Hassan (2005) unanimously agree that knowledge is critical in influencing decision of formulating ones estate planning programme. This is also proven in a research by Hayati et. Al (2012) whereby knowledge shows a positive relationship in adopting Will which can be relate to formulation of estate planning. The research shows that the greater one understanding the higher the rate of adoption. Fatin Afiqah and Dr. Mohamad Tahir (2011) explain that many Muslims do not have sufficient knowledge on estate planning and its technique such as hibah. This is proven when they think that by adopting such technique in managing their estate is acting against faraid. The same result is also found in a research done by Alma'amun, Suhaili whereby Muslims have the misconception that only faraid is applied in estate distribution. They also do not understand the significant of estate planning due to such misconception until to the extent that in their opinion faraid is sufficient for such purpose. They failed to understand the needs of deploying hibah and other estate planning techniques. Alma'amun, Suhaili also explain that among the reason for lack of knowledge is due to Malaysia education that only focus on certain area of Islam.

Attitude

Dictionary. com define attitude as " manner, disposition, feeling, position, etc., with regard to a person or thing; tendency or orientation, especially of the mind: a negative attitude; group attitudes". Saul Mcleod (2009) states that attitude is comprised of 3 components which are affective component

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(individual feelings), behavioral (how attitude influence action) and cognitive component (a person's belief and knowledge). Alma'amun, Suhaili (2010) explain that attitude is one of the main reasons for low level of awareness regarding estate planning. The respondents in the research do not take seriously of will and estate planning, always procrastinate and also did not make any effort in obtaining information. In a paper titled " The Causes of Unclaimed, Late Claimed or Distributed Estates of Deceased Muslims in Malaysia", it mentions that Malaysian Muslim still have a low level of awareness on estate planning and also their right in inheritance. Palmer et al.(2006) and Hayati et al. (2012) mention that older people have a much more positive attitude towards estate planning and will as compared to the younger one. Alma'amun, Suhaili states that attitude of the Malays are one of the contributing factors of lack awareness. Basically it is due to the upbringing of the Malays that stress on being courteous until to the extent they are reluctant to have discussion on any matters related to estate planning.

Advertising

Philip Hans Franses and Marco Vriens (2004) in their research found that advertising affect awareness and also choice until certain extent. It is proven in the research that newspaper advertising is the most influential while competitive advertising is effective in creating brand awareness and purchase. Advertising is important in creating advertising effects such as cognitive effects, affective effects and behavioural effect. Example of cognitive effects is awareness on a product or subject. Type of media used for advertising will also influence the effectiveness of advertisement whether

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short term or long term impact. For example Philip Hans Franses and Marco Vriens (2004) explain that television have a big impact when the advertisement is on display but will subside as time pass but on the other hand magazine advertisement will have a weaker impact initially but can grow as it can be read multiple of time. Therefore it shows that each choice of media has its own strengths and weaknesses. Alma'amun, Suhaili (2010) in her research titled Islamic Estate Planning: Analysing the Malaysian Perceptions on Wasiyyah (Will) and Bequest Practices found that the existing institutions have poor advertising programme in increasing public awareness on estate planning. Ahmad and Jaafar (2008) and Alma'amun, Suhaili (2010) explains that lack of awareness of estate planning is due to insufficient dissemination of information whether in the form of promotion or advertising.