

## Islamic Estate Planning: Malaysian Experience

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### I. Introduction

From a different angle, Hassan and Yusop (2006: 157) propose that the attainment of a complete understanding and success of the Islamic estate planning relies on the combination of the following three main components; *Shari'a* laws pertaining to the inheritance, civil law and financial planning. Notwithstanding the existence of the civil law as a legacy of the British Administration (Hassan, 2005c: 67; Muhamad, 2007: 64), *Faraid* still stands up as the cornerstone of Islamic estate planning while the rest of the tools are meant for accommodating the estate planning process (Hassan, 2005c: 67). Interestingly, in Malaysia, civil law regulates the procedures of estate administration and settlement which brings significant impacts on estate planning. For instance, dying intestate and testate are dealt differently and under such circumstances, Malaysian Muslims should be well anticipated the consequences and the authorized bodies that they should engage with. Having said that, the constitution of Islamic estate planning is still not complete without the knowledge of the financial planning itself because estate planning is part of it (Hassan, 2005c: 67-68).

This paper is then divided into five sections. The first section is the introduction which is then followed by a brief summary of the process of the administration and distribution of Muslims' estates in Malaysia in the second section. A depth discussion on the Islamic estate planning in Malaysia is in the third section in which it is presented through a several segments covering the current practice of the subject matter particularly on leaving *Wasiyyah*, its significances within the confinement of Malaysian Muslims' scenario and the reasons behind such pattern of practices. It goes further by reviewing the industry of Islamic estate planning in Malaysia nowadays in section four. Finally, it provides conclusion in the last section.

### II. The Administration and Distribution of Muslims' Estates in Malaysia

A glimpse look at the administration and distribution of a Muslim deceased's estates in Malaysia is illustrated by the Figure 1 below. The process starts with the determination of either the deceased died intestate or testate. Small intestate matters<sup>1</sup> will be handled by

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<sup>1</sup> A small estate is defined as "an estate of a deceased person consisting wholly or partly of immovable property situated in any state and not exceeding six hundred thousand ringgit in total value" (*Small Estates*

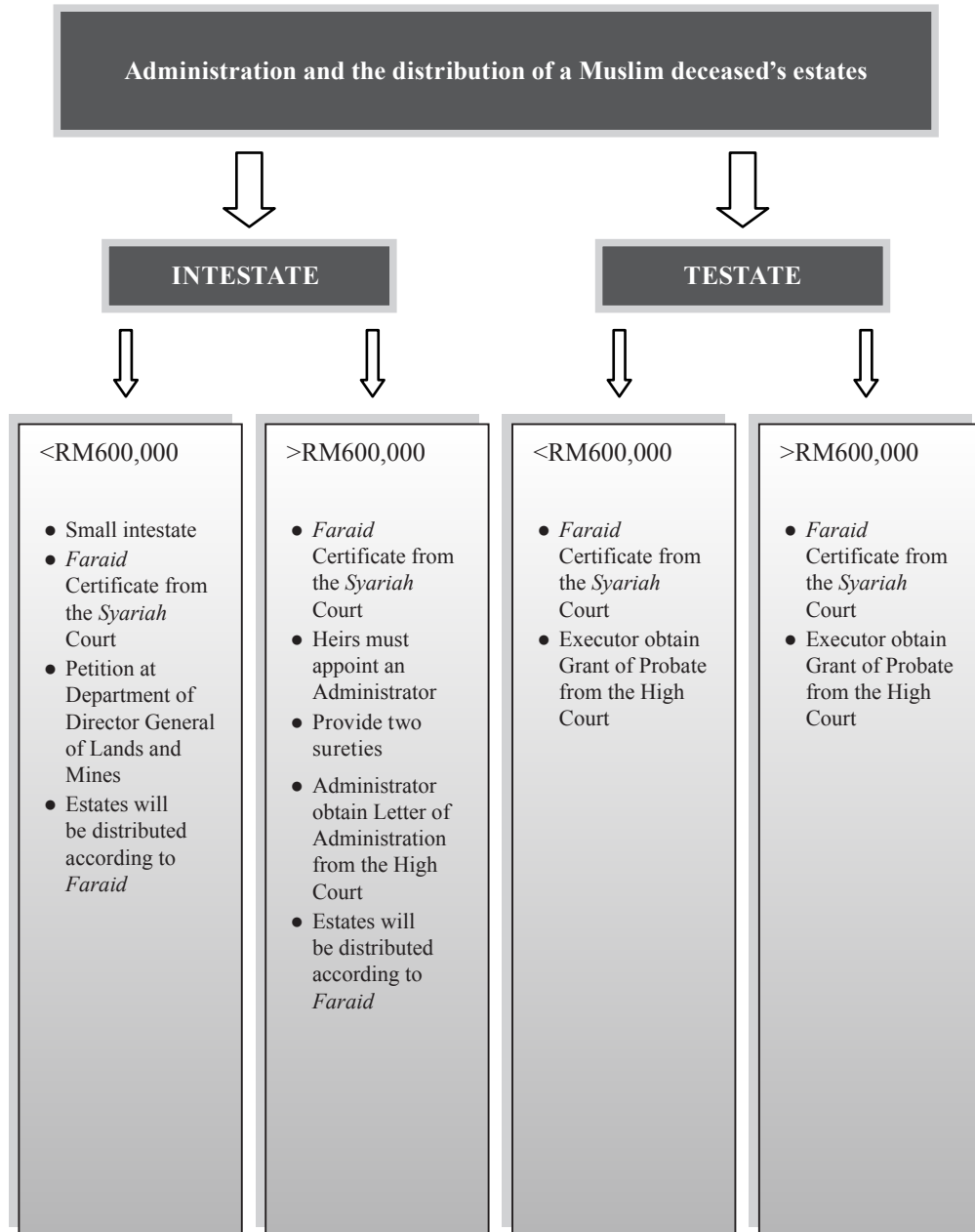
the Department of Director General of Lands and Mines after a petition is lodged by any person claiming to have an interest in the estate (INCEIF, 2006: 263–264; *Small Estates (Distribution) Act 1955 (Act 98) & Regulations*, 2007: 4; Abdul Rahman, 2007: 21–22; Yaacob, 2006: 173). When there is a *Wasiyyah* left, the administration and distribution of an estate less than RM600,000 goes to the High Court. For estates value more than RM600,000 regardless the deceased died intestate or testate have to go through the High Court. The difference between both is that an executor is required to obtain Grant of Probate while an administrator is required to obtain Letter of Administration. In the absence of a *Wasiyyah*, heirs must provide two sureties for the estates value more than RM600,000. The *Syariah* Court in this matter only has rights to determine the eligible heirs and certify their shares by issuing inheritance certificate (*Administration of Islamic Law (Federal Territories) Act 1993 (Act 505) & Rules*, 2006: 22–23; Abdul Rahman, 2007: 25; Marican, 2008: 18).

In addition to what has been illustrated in Figure 1, Amanah Raya Berhad (ARB) has an authority to administer the movable estate which the value is not more than RM600,000 either a person dies testate or intestate. Such estate has to go through different procedures depends on the value of the estate. If the value does not exceed RM50,000 in cash, ARB will issue Order and deliver it to the heirs. On the other hand, if the value exceeds RM50,000 but less than RM600,000, Declaration will be issued and afterwards, the assets will be pooled together. After the net estates of the deceased have been determined, ARB will proceed with the distribution according to *Faraid* (ARB, 2006, May 22: 41; Abdul Rahman, 2007: 21; *Public Trust Corporation Act 1995 (Act 532)*, 2008: 82–83; Yaacob, 2006: 173–174).

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(*Distribution) Act 1955 (Act 98) & Regulations*, 2007: 3).

**Figure 1: Administration and the Distribution of A Muslim Deceased's Estates in Malaysia**



Sources: Omar (2006: 4–5); Omar (2009a); with some modifications by the author.

### **III. Islamic Estate Planning in Malaysia**

#### **3.1 Current Practice of Islamic Estate Planning**

In general, the Islamic estate planning among Malaysian Muslims is not widely practiced. According to Hassan (2005a: 78), Malaysian Muslims do not view estate planning seriously. Eventhough it has been appeared in a verbal form agreed among parties involved, but with the absence of the written agreement, this kind of practice has caused family disputes and arguments. Therefore, some of them do plan their estate but not in the proper way it should be carried out (Hassan and Yusop, 2006: 156; Abdul Rahman, 2007: 7; ZAR Perunding Pusaka, 2004a; Muhamad, 2007: 66). Nordin Manan (Poh, 2009: 31) comes up with a concrete insight in which he says that the low level of awareness in Islamic estate planning in Malaysia is a consequence of the low level of Islamic financial planning itself.

#### **3.2 Current Practice of Leaving *Wasiyyah***

The rationalization of the *Wasiyyah* practice in Malaysian Muslim community as contended by Yaacob (2006: 171) is actually driven by their intention either to protect the adopted children or for the reason of the good deeds in the hereafter. Therefore, he concludes that the Malays are most likely not concerned with the estate planning matters compared to the non-Malaysian community. Muhamad (2007: 63–64) assumes that the non-Malays practice leaving will so that their estates are sorted faster while the Malays prefer to remain using the traditional means of estate distribution which he refers to the *Faraid* or consensus among heirs on the ground that there is unbalanced ratio in the number of application for the estates administration and settlement between Muslims and non-Muslims.

ARB (n.d. a) alleges that “generally the level of Malaysian awareness with respects to the importance of will is relatively very low and the evidence comes from the fact that 90 percent of Malaysians currently not having a will”. However, ARB does not differentiate the likelihood level of leaving wills between Malaysian Muslims and non-Muslims for this particular matter. Hence, the number of *Wasiyyah* made by Muslims which have been kept under ARB might be useful to indicate the consciousness of Malaysian Muslims people towards the importance of leaving wills. Table 1 shows that from 1998 until 2005, the number of *Wasiyyah* made by Muslims is repetitively low compared to the wills made by non-Muslims. However the number of wills made by Muslims increase rapidly within five years later and in fact, for each consecutive years, the number of *Wasiyyah* exceed the number of will. This growing trend could possibly due to the growing demand and need for the financial planning products and aggressive educational as well as promotional activities undertaken by will writing service providers (ARB, n.d. a). In addition, according to Omar (2009b) confirms that the number of *Wasiyyah* at ARB has increased due to the new approach taken by the ARB

whereby it has appointed several banks as their agents. New marketing techniques adapted to get more Muslims clients to draw up a *Wasiyyah* in which that banks utilize their clients' database and offer them such service. On top of that, it has been a compulsory for those who apply a personal loan from these banks to take up a *Wasiyyah*. As there is a higher demand on the personal loan in Malaysia, claiming banks as the largest contributor to the increasing number of *Wasiyyah* is sensible.

**Table 1: Number of *Wasiyyah*/Wills at ARB.**

Year	Muslims ( <i>Wasiyyah</i> )	Non-Muslims (Wills)
Pre-1980	-	1024
1980-1997	-	646
1998-2000	13	281
2001	1	108
2002	4	110
2003	131	223
2004	221	652
2005	666	968
2006	8278	1595
2007	11 535	2710
2008	121 731	11 606
Jan 2009	4987	338
Feb 2009	9015	855
March 2009	7321	491
April 2009	12 767	855
TOTAL= 199 132	176 670	22 462

Source: Omar (2009a).

Despite the large number of *Wasiyyah* made with ARB, this is actually not an enormous achievement after taking into account that Islam is the main religious in Malaysia and Malays are the largest ethnic. In fact, Omar (2009a) proves that RM31 million values of estates is waiting to be distributed at ARB.

### 3.3 The Significances of Islamic Estate Planning and *Wasiyyah* in Malaysian Muslims Case

At a glance, the provision of several legislations and the existence of various authorized bodies seem are able to cater the different cases and different needs of the Malaysian Muslims

but, unfortunately these do not fully guarantee the smooth process of the estate administration and settlement. Therefore, within this issue at hand, the crucial roles of Islamic estate planning and *Wasiyyah* are fully recognized. The significances of Islamic estate planning and *Wasiyyah* as part of the structure for Malaysian Muslims are not much different from what have been discussed in the previous chapter but, viewing these significances from the Malaysian Muslims standpoints, then these significances can be elaborated further as follows.

Loosing economic value and frozen estates problem have been cited as common consequences when Malaysian Muslims are not really concerned about planning their estates and leaving no *Wasiyyah*. The former is really obvious in the case of landed properties which are divided into many portions according to the shares that each heir is entitled to. Hence, in this condition, when the *Faraid* is followed closely, the landed properties are now become uneconomic land size and all parties lose out (Hassan, 2005a: 78, Hassan and Yusop, 2006: 154). The most popular example which usually cited is Kampung Baru, Kuala Lumpur which a piece of land the size of 809.345 square meters valued at RM1000 per square meters is inherited by 141 heirs and everyone in the end only entitles to a share values RM13.35 (Hassan and Yusop, 2006: 150).

The latter refers to the delay of the settlement period to some extent it might take years to sort it out. Until April 2007, there are 16,771 pending cases of the estate settlement at the Department of Director General of Lands and Mines and 5,200 cases out this number have been tried to be solved more than two years (Muhamad, 2007: 68–69). A general assumption by Muhamad (2007: 63) states that 90 percent out of the number of application for the estates administration and settlement comes from Malaysian Muslims.<sup>2</sup> It should be noted here that the period of extracting a Probate for testate estates is shorter than the period for extracting a letter of administration for intestate estates. It normally takes less than six months which means that the estates is unfrozen faster (Hassan and Yusop, 2006: 154; Hassan, 2005b: 79–80). On the other hand, the cases may take about three to ten years to be settled and it is possible to reach more than twenty years (Yaacob, 2006: 172–173).

Apart from not leaving *Wasiyyah*, other various reasons could explain this situation. One of them has to do with the heirs such as no consensus among heirs to that extent they are reluctant to attend the hearing, some heirs are untraceable due to the lacking information and refuse to continue the process of the administration of the estates as so many barriers keep coming up along the process (Muhamad, 2007: 66–69). By taking Kampung Baru as an example again, it is obvious that early application for the distribution of the estates is crucial to avoid the increase of the number of substitute and untraceable heirs (Muhamad, 2007: 68, ARB, n.d. b).

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<sup>2</sup> This trend actually does not in line with the race ratio between Malays and non-Malays which 45 percent of the total Malaysian populations are non-Muslims and it supports Muhamad's (2007) view that non-Muslims are more likely to utilize the function of will in their estate planning.

Other reasons are associated with the regulations and existence of various bodies to address the estates matters which inevitably lead to the overlapping power of duties and public confusion towards the responsibilities of each bodies. These probably could be portrayed by some cases which have been brought to the wrong place and then have been transferred to the right institutions (Muhamad, 2007: 65).

There is also a clear link between the delay of the settlement period and the status of estates. Any cases which involve an estates without certificate of the title, certificate of the strata title<sup>3</sup> have not been issued yet or only hire purchase agreement is available, then consequently there is a strong possibility that such estates will go through a complicated administration procedures or will be pending (Muhamad, 2007: 68). The cost factor may play a part in the delay of the settlement especially when a huge value of estates involved. Beneficiaries who claim the estates are required to present two guarantors and each of them should possess properties that have an equal value to the estates. Most of the time, they fail to meet the requirement and the High Court will appoint the ARB to administer the estates only with the agreement of heirs (Yaacob, 2006: 174–175). The long period of process tends to increase the multiple heirs and again it leads to the loosing economic value problem.

Disputes over the estates matters may arise due to the several problems related to the nominees and such problems are quite relevant in the case of the insurance policies, *Tabung Haji* saving and Employment Provident Fund (EPF) saving. A fatwa on the EPF saving had been issued and it states that EPF saving of any deceased Muslims is an estate which is obligatory to be distributed according to *Faraid* and the person who has the obligation to do so is the nominee who also acts as an executor. However, this does not guarantee that the estates will be distributed according to the *Faraid* and some cases also involve nominees who are relatives to the deceased but are non-Muslims<sup>4</sup> (Osman, 2007: 108–111; Mohd. Awal, 2007: 133). With regards to the *Tabung Haji* saving, the nominee or anybody who is entitled to the shares of the money in the absence of the nominee also acts as executor (Muhamad, 2007: 72; Saidali, 2007: 101–102). A fatwa also had been issued regarding the nominee of the insurance policy in which the effect that takes place is similar to the EPF saving (Osman, 2007: 112).

Problems could come from the family structure itself in the sense that adopting children, practicing polygamy and having another marriage secretly are quite common in the Malaysian Muslims cultures which in the end create problems in the administration and settlement of the estate. As have been discussed previously, adopted children do not entitled to inheritance and without stating a bequest out of the one-third will leave nothing for them. Unregistered

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3 Certificate of the strata title is given to the owner of the house living in the apartment and flat.

4 This commonly happens when a deceased was someone who converted to Islam and left his/her ex-spouse, parents and children who are not Muslims.

marriage, on the other hand places wife and the children in a trouble to claim their rights over the estates of the deceased due to the absence of legal documents verifying the marriage while being polygamous but does not settle jointly acquired properties among his wives in advance lead to dissatisfaction among them (Hassan, 2005a: 78, Mohd. Awal, 2007: 132).

Taking into account the following cases related to women, the Islamic estate planning is strongly encouraged. Firstly, the current and modern situation in which a wife provides more to the family financial matters. If she died first, she ends up with leaving half or a quarter of her estates to her husband according to the *Faraid* and sometimes the situation creates unhappiness among other heirs particularly when she leaving no children. Secondly, when a mother re-married and they have children from different marriage ties but unfortunately this couple does not plan their estates wisely, the same outcome happens. Thirdly, husband died leaving his wife and children who are minor. Fourthly, does not have information about her husband's loans, assets and nominees (Mohd. Awal, 2007: 129–133). A glimpse look on the women rights in Malaysia with respect to the inheritance matters, the right of claiming the jointly acquired property is provided by the state Islamic Family Law Enactment and *Syariah* Court is the institution that has the jurisdiction power to hear and decide such case (Lembut, 2007: 8).<sup>5</sup> Jointly acquired property is defined by Hassan (2005a: 78) and Lembut (2007: 8) as 'property jointly acquired by the husband and wife during the subsistence of a marriage in accordance with the conditions stipulated by *Hukum Syara*'. Sadly, Malaysian Muslim women have been identified to be less knowledgeable about the procedures of estate distribution and settlement which to the large extent they do not even take initiative to obtain information regarding these and their rights over the estates (Mohd. Awal, 2007: 129 & 132–134).

The fact that the Malays privileges are protected through the several provisions of special legislations is an interesting point to be elaborated here and one of them is related to the Malay reservation lands under the Malay Reservations Enactment. The implication of this enactment on the settlement of the estates is implied by its banning on the transfer of Malays' lands to non-Malays regardless parties involve are Muslims (Disa, 2007: 57).

From the government point of view, the development projects which involve the inherited lands technically have to go through such a long period of settlement dealing with large number of heirs. Based on the experience, 10 to 20 percent of the landlords had already passed away and even some of them died before the Japanese occupation. Apparently, the country losses in terms of unproductive assets which actually could be developed if they were quickly transferred to the heirs. Otherwise, negotiating and taking over these inherited lands are time consuming in order to achieve a consensus among heirs (Muhamad, 2007: 66).

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<sup>5</sup> EPF is not a jointly acquired property and therefore the provision in the Muslim Family enactment does not apply here (Lembut, 2007: 36).



### 3.4 The Reasons Behind the Poor Practice of the Islamic Estate Planning and Leaving *Wasiyyah*

Omar (2009a) claims that Malaysian Muslims particularly Malays do not really want to write *Wasiyyah* due to three reasons; they are not really knowledgeable about *Wasiyyah* and its significances, they are reluctant to write *Wasiyyah* eventhough they are well informed about it or they cannot afford to draw up a *Wasiyyah* eventhough they are well informed about it. The first group refers to those people who have misconception towards *Wasiyyah* in which they think only *Faraid* applies in the estate distribution and hence, either leaving *Wasiyyah* or not will not have any impact on the distribution. Those in second group on the other hand, take this matter lightly and keep postponing in drawing up a *Wasiyyah*. Cost is the main consideration for the third group of people and this is largely contributed by their zero knowledge on the actual charge imposed by ARB as well as other *wasiyyah* writing providers.

The lack of awareness and knowledge could be the reasons behind these situations and they are interrelated as well. Pertaining to the lack of awareness, the Malaysian Muslims do not actually fully realize the significances (ZAR Perunding Pusaka, 2004a: 8) and methods (Hassan and Yusop, 2006: 156) of the Islamic estate planning and to the large extent they are not aware to the significances of writing *Wasiyyah* as the main tool in the Islamic estate planning itself (Mohyin, 2004: 10). This poor level of awareness then can also be associated to the lack of knowledge among Malaysian Muslims whereas this insufficient of knowledge is reflected by their misunderstanding towards the concepts of the Islamic estate planning, *Faraid* and *Wasiyyah*.

Malaysian Muslims hold a perception that the function of Islamic estate planning only comes into play when there is an intention and planning to make a *Wasiyyah* for the purpose of charity or for non-heirs (Ahmad and Pyeman, 2008: 1). The importance of Islamic estate planning seems only relevant to those who leaving estates and who probably receiving inheritance (ZAR Perunding Pusaka, 2004a: 8; ZAR Perunding Pusaka, 2004c: 11).

The wrong perception goes deeper to the extent that they believe the *Faraid* system is already provided to ensure the entitlement to the shares and it is obligatory in the sense that the provision in *Faraid* should be strictly followed. Therefore the estate planning is not necessary for Muslims (ZAR Perunding Pusaka, 2004a: 8; ZAR Perunding Pusaka, 2004c: 11; Hassan and Yusop, 2006: 155). Hassan (2005b: 80) claims that there has been a serious misconception on the *Wasiyyah* while Ahmad and Pyeman (2008: 1) add that Malaysian Muslims are alert and familiar with the term of *Wasiyyah* but they have no clear idea or enough understanding about *Wasiyyah* and they claim this is a result of the lack sufficient knowledge of *Wasiyyah*. Hassan and Yusop (2006: 154) explain further that the confusion

towards *Wasiyyah* comes in a form which Muslims define *Wasiyyah* as a bequest up to one third to non-heirs. If the potential estates to be left were enough for the needs of the family, therefore there should be no reason for them to leave a bequest to non-heirs. In other words, Malaysian Muslims fail to understand the significances of having *Wasiyyah* especially for the purpose of the estates administration and settlement in the future as they interpret it in the wrong way.

The major cause for the lack sufficient of knowledge could lay in the Malaysian education system particularly on the Islamic studies. The Islamic studies in Malaysia are compulsory for Malaysian Muslims and they begin from the primary education till the higher level of education. After leaving school, the Islamic studies continue at the higher level education. However, emphasis is given more on the *Tawhid*, *Fiqh* and *Ibadah*. Those who go to the Islamic secondary school have the opportunity to get a basic knowledge of the Islamic inheritance while a depth studies on this subject only available for those who are specialize in Islamic studies in the college or university. The other means obtaining such knowledge is by attending a series of lectures, talks or courses run by individuals or private companies such as at the mosques or workplaces.

Apart from this, Ahmad and Jaafar (2008: 1) contend that the lack of awareness and knowledge is correlated to the dissemination or promotion from corresponding institutions. This factor could possibly relevant for the past several years. However, this claim is not that profound enough at this point of time as the current number of *Wasiyyah* at ARB has shown an impressive progress due the huge promotions undertaken by a large number of ARB's agents as well as other *Wasiyyah* writing providers.

Behavioural norms are also important aspect of the underdevelopments of will writing. In other words, the upbringing of the Malays has been cited to be another reason for the poor practice of Islamic estate planning among the Malaysian Muslims. They are brought up to be courteous and well mannered which they end up being either reluctant to discuss or take a very cautious manner with respect to the estate matters (Hassan, 2005a: 78; Wan Harun, 2008: 332–333; ZAR Perunding Pusaka, 2004a: 8; ZAR Perunding Pusaka, 2004b: 8).

#### **IV. The Islamic Estate Planning Service in Malaysia.**

The industry of Islamic estate planning in Malaysia recently is growing and more players from banking sectors and private companies are coming into this industry. Yet, ARB is well known as the established and the only public authorized agency that offers a range of comprehensive Islamic estate planning since 1995.<sup>6</sup> Bank Rakyat, CIMB Bank and BIME are among several

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<sup>6</sup> It used to be one of the government agencies known as Jabatan Pemegang Amanah Raya dan Pegawai Pentadbir Pusaka Malaysia founded in 1921 (Bakar, 2006:133).

banks that are heading towards grabbing the potential market. With respects to the private companies, most of the companies are agents of the ARB or agents of other major *Wasiyyah* writing providers namely ‘As-Salihin Trustee Berhad and Wasiyyah Shoppe’. A few of them operate without appointing agents such as ZAR Perunding Pusaka and Amanah Hibah. Below, all the Islamic estate products available in Malaysia are elaborated (See Appendix 1 for the summary of the products and costs across various *Wasiyyah* writing providers in Malaysia).

#### **4.1 Appointment of an Executor (*Wasi*)**

Drawing up a proper designed *Wasiyyah* and appoint an executor could be seen as the essence product of the Islamic estate planning as it is the main procedure any Muslims should prepare with before proceeding with other means of estate planning. Terminologies used for the document of the appointment of an executor are different among *Wasiyyah* writing providers as they differ in defining the word ‘*Wasiyyah*’ itself. However, generally most of them use terminology of ‘*Wasiyyah*’ to refer to the document of the appointment of an executor while a few of others such as ZAR Perunding Pusaka strongly believe that the correct terminology should be used is ‘*Wisoyah*’ instead of ‘*Wasiyyah*’ because from its point of view the word of ‘*Wasiyyah*’ actually refer to the ‘bequests’. Wasiyyah Shoppe also stresses out that ‘*Wasiyyah*’ means ‘bequests’ and it is not the terminology that should be used when referring to the appointment of an executor in a will. Accordingly, Wasiyyah Shoppe rather to name the document for such purpose as ‘Document of Appointment of Executor’. ARB (ARB, n.d. e) define basic *Wasiyyah* as a document that includes the appointment of the executor without mentioning any specific assets and instruction for distribution while comprehensive *Wasiyyah* contains clauses mentioning client’s specific assets and instructions for distribution without any additional cost for the comprehensive one. Other *Wasiyyah* writing providers however, do not differentiate these two types of *Wasiyyah* as ARB does. For them, the only difference between both is just a matter of the exclusiveness of a *Wasiyyah* (See Appendix 1 for the details). Drawing up a *Wasiyyah* with ARB does not give a client any other option to appoint other party to be the executor apart from ARB itself. Meanwhile, other *Wasiyyah* writing providers give fully authority to the client to choose anybody or any trustee companies to be appointed as an executor.

#### **4.2 Allocation for Bequest**

This allocation for bequest is only allowed up to one third. This could be included and mentioned in the client’s *Wasiyyah* (either in basic or comprehensive *Wasiyyah* depends on the *Wasiyyah* writing provider that the client choose to draw up the will) at extra charge or at no additional fee at all (See Appendix 1 for the details).

### 4.3 *Hibah*

Applying *Hibah* into a client's estate planning can be either in the form of Direct *Hibah* or *Hibah* Trust.<sup>7</sup> The structure of the Direct *Hibah* is simpler than the *Hibah* Trust in which it is valid and concluded with the acceptance of the gift by the donee followed by the technical procedure which is transferring the property right between parties involved as shown in Figure 2. *Hibah* Trust however is the modification and combination between *Hibah* and trust features (Yaacob, 2006: 191–194). Accordingly, some restrictions in *Hibah* can be eliminated and its application is more flexible in the sense that this new form of *Hibah* is now allowed to be given conditions either '*Umra* or *Ruqba*'<sup>8</sup> (Yaacob, 2006: 184–185). Indeed, *Hibah* Trust it is now more efficient in terms of the legal procedures, cost and time as there is no longer requirement for the application of the letter of administration, probate or Order from any of the various authorized bodies which at the same time bringing down the costs and time for such settlement (Yaacob, 2006: 197).

As illustrated by the Figure 3 below, the construction of the *Hibah* Trust comprises two stages. After completing the first stage which is exactly similar to the Direct *Hibah*, the second stage is the procedure that involves the assets to be entrusted to a trustee for a certain time frame according to the Trust Deed which is agreed between the donor and the beneficiary. The declaration of the *Hibah* Trust takes place during the lifetime of the donor but however the transfer of ownership of the assets is after the demise of the donor. Between the two periods, the termination of the *Hibah* Trust is allowed except for a contract that involves a gift from a husband or wife (Yaacob, 2006: 193–194; ARB, n.d. d).

Either moveable or immovable assets may be placed under *Hibah* Trust and most of the Islamic financial planning agencies put a condition that the properties are not collateral or pledged properties because if it involved landed properties the transfer of the ownership could not be completed as according to the Land law in Malaysia, (ARB, n.d. b; Hassan and Yusop, 2006: 163). But, however, ZAR Perunding Pusaka does deal with the *Hibah* Trust for

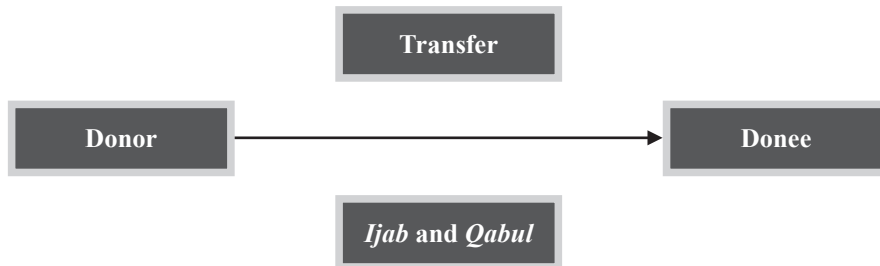
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<sup>7</sup> *Hibah* Trust is also called Trustee *Hibah*.

<sup>8</sup> Looking details on the types of gift in Islamic view, in general, it can be two kinds of gift; unrestricted and restricted. Unrestricted gift is given without any condition attached to it. However, restricted gift is a gift with certain conditions imposed on it and there are three types of them. The first type of restricted gift is temporal gift or a lifetime-gift called '*umra*'. A temporal condition imposed on the gift is normally stated as if the gift was given for the duration of the recipient's life, then it would be returned to the donor or his heirs upon the recipient's death and if the gift was given for the duration of the donor's life, then it must be returned to the donor's heirs upon his death. Accordingly, the transfer of property from the donor to the donee is effected but the temporal condition is voided. Second type of restricted gift is conditional gift (*ruqba*) whereby the donor lays down that the gift will belong to donee if the donor dies first. On the other hand, if donee predeceased the donor then the gift must be returned to the donor. Only the Hanafis and Malikis forbade conditional gift and on the other hand most of the jurist allow temporal gift. The last type of restricted gift is usufruct gift. According to Hanafi, it depends on whether or not the object itself survives after the donee collects its usufruct. Usufruct of non-fungibles object is considered as a type of loan to the donee. Usufruct of fungibles object which the usufruct is to be derived can only be used by consumption is tantamount to a full gift (Al-Zuhayli, 2003: 544).

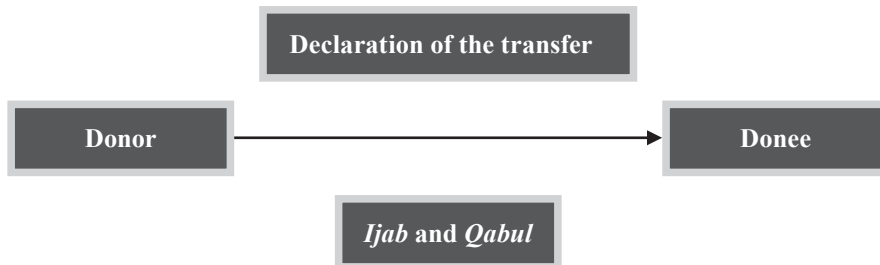
the collateral and pledged properties provided that there is consent from the lender (Hassan and Yusop, 2006: 163–164). Apart of that, several conditions imposed by certain agencies such as the minimum value of the assets for *Hibah* and who can be the trustee. Some agencies impose a condition that the trustee appointed is neither than the agency itself while other give flexibility to the clients to appoint any favoured individual according to their preferences or appointing someone from eligible heirs.

**Figure 2: Direct Hibah**

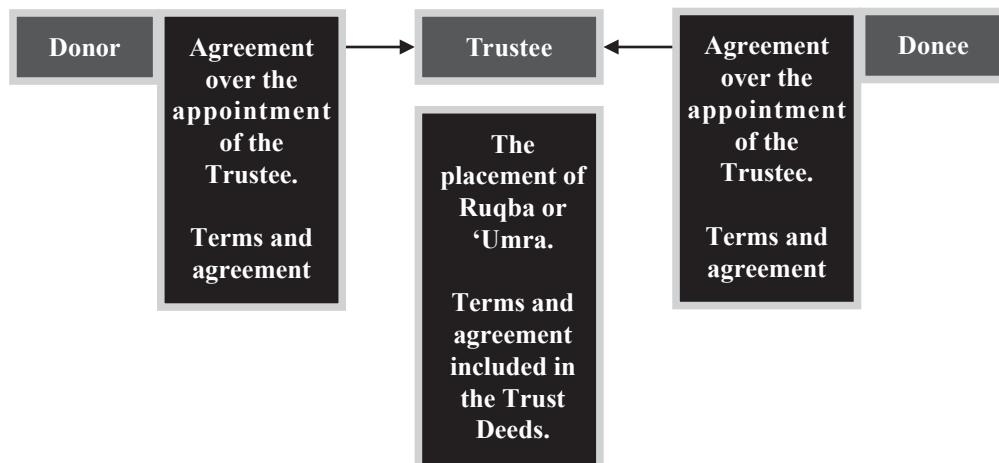


**Figure 3: Trust Hibah**

Step 1: Declaration of the transfer



Step 2 (Immediately after Step 1: Setting up Trust Deeds Among Parties)

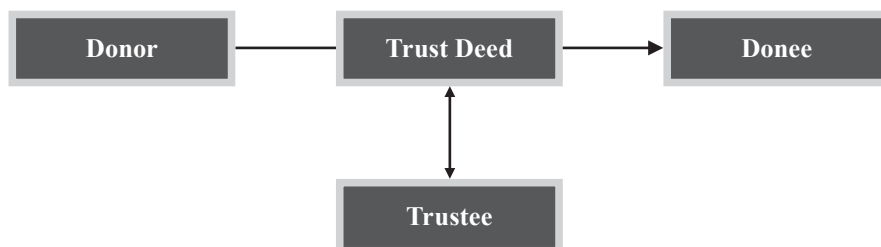


Sources: Yaacob (2006: 200–201) ; Warisan Mukmin (n.d) ; Zulhazmi (2006) ; with some modification by the author.

#### 4.4 *Waqf*

For the purpose of *Waqf*, the separate document can be prepared upon the request from the client and some agencies prefer to put a clause of this matter in the *Wasiyyah* document. In Malaysia, administration of *Waqf* properties are under State Government which make the *Waqf* itself as not really preferable to be suggested to the client as one of the potential Islamic estate planning product that should be utilized to accommodate other products. As far as this matter is concerned, many *Wasiyyah* writing provider are reluctant to offer a viable *Waqf* product that can be fully integrated into the Islamic estate planning. However, they advise their clients to deal directly with the Islamic State Council or suggest the client to make cash *Waqf* rather than opt for the types of *Waqf* that involved landed properties. Nevertheless, *Waqf* could appear in the form of *Waqf* trust as offered by the BIMB Trust Limited. The product structure is shown in Figure 3 below in which it starts with the appointment of a trustee via a Trust Deed by the donor. Then, the *Waqf* asset for the benefit of the named beneficiary will be handed from the donor to the trustee followed by the sign of the Trust Deed by the trustee for the constitution of the trust to be accomplished (Zulhazmi, 2006; BIMB Trust Limited, n.d.).

**Figure 3: *Waqf* Trust**



Source: Zulhazmi (2006).

#### 4.5 Trust Account

Trust Account is another options offered and it has several features which make it more attractive. First, if the donor has been declared as bankrupt, all the trust assets will be kept safe from creditors. Second, the Trustee has to control on both processes to ensure the account is safe for long term for the benefits of the beneficiaries. The purpose of the Trust Account is to ensure the beneficiary's benefits will be taken care continuously through a responsibility created between donor and trustee as they agreed in the Trust Deed. The immovable and moveable assets<sup>9</sup> can be deposited in Trust Account. Trust Account for individuals can be subdivided to the various categories which are normal, property, charitable, family, education, maintenance and insurance (ARB, n.d. c).

<sup>9</sup> EPF without nominee can be placed under Trust Account (ARB, n.d. c).

#### 4.6 Mutually Acquired Property

Other service available in the industry is Mutually Acquired Property Document. Claiming over the jointly acquired property can be carried out at the Syariah Court even without the Mutually Acquired Property Document but however, early and proper preparation can speed up the settlement period as well as reduce the legal cost. The product enables the client to declare and allocate to each spouse by way of a written declaration of this right to their jointly acquired property provided that the spouse's share in the document should not exceed than half of the value of the estates (Hassan, 2007:163).

#### 4.7 Faraid Value Distribution Document

This product is offered by ZAR Perunding Pusaka. Claiming over the jointly acquired property can be carried out at the *Syariah* Court even without the Mutually Acquired Property Document but however, early and proper preparation can speed up the settlement period as well as reduce the legal cost. The product enables the client to declare and allocate to each spouse by way of a written declaration of this right to their jointly acquired property provided that the spouse's share in the document should not exceed than half of the value of the estates (Hassan, 2007: 163).

Any client who would like to protect their assets from being split into many portions and hence diminish the assets value, *Faraid* Value Distribution Document<sup>10</sup> could be the solution. The procedures begin with the identification of the heirs, their entitlement shares and followed by the determination of the assets that will be given to heirs which equal to their entitlement shares. However, it should be noted here that jurists differ in this matter in the sense that they argue either the document is a trust that should be carried out or it should obtain consent from the heirs before it can be proceeded (ZAR Perunding Pusaka, 2004d: 8; Hassan and Yusop, 2006: 165–167). Eventhough this product is available but technically it seems hard to be implemented within the Malaysian's circumstances and due to that reason, ZAR Perunding Pusaka does not have any client who take this product so far.

## V. Conclusion

Given the findings from the previous researches and observations from credible people who have actively been involving in the Muslims estate administration and Islamic estate planning service, it is not surprising that Malaysian Muslims are still far behind in this particular matter in the aspects of knowledge and implementation. They seem rather to take for granted as

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<sup>10</sup> This document should be prepared together with the *Wisoyah* Document and only executed with the heirs consent. It should be noted here that ZAR Perunding Pusaka is the only agency that uses the *Wisoyah* term while other use *Wasiyyah* term.

the provision in terms of the legislation has been designed for them and their heirs instead of preparing themselves with the knowledge of the Islamic estate planning. Their ignorance finally leads to emergence of the estate administration and settlement problems. Eventhough the Islamic estate planning service has grown rapidly recently with the various types of product, there is still lot of space need to be addressed in the future and educate public should be the main priority.

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**Appendix 1**

Products of Islamic Estate Planning in Malaysia

Amanah Raya Berhad (ARB)	ZAR Perunding Pusaka	As-Salihin Trustee Berhad	Warisan Mukmin	Wasiyyah Shoppe	Bank Islam Malaysia Berhad (BIMB)	CIMB Malaysia Berhad
<b>1. Products for the purpose of appointment of an executor (<i>Wasi</i>)</b>						
<p>Basic <i>wasiyyah</i> (RM350) in which clients agree to:</p> <ol style="list-style-type: none"> <li>1) appoint ARB as their executor.</li> <li>2) distribute estate according to <i>faraid</i>.</li> </ol> <p>After a client writes a basic <i>wasiyyah</i>, ARB will register his/her name and ask them to make a comprehensive <i>wasiyyah</i> at no additional fee (if he/she has any special requests or instructions to make).</p> <p>Executor must be the ARB itself.</p>	<p>Known as <i>Wisoyah</i> document (RM350)</p> <p>Executor will be other party, not ZAR Perunding Pusaka.</p>	<p>Basic <i>wasiyyah</i> (RM560):</p> <p>Writing = RM380</p> <p>Custody = RM100</p> <p>Safe-keeping cost = RM80/per year</p> <p>Comprehensive <i>wasiyyah</i> (up to RM2000 but normal charge is RM1200-RM1800). Lifetime custody which is RM800 only offered to those who opt for comprehensive <i>wasiyyah</i>.</p>	<p>Same as ARB (Agent of ARB).</p> <p>But for the comprehensive <i>wasiyyah</i> to be completed, ARB will contact the corresponding client.</p>	<p>Known as the Document of Appointment of Executor (Free of charge provided that clients subscribe for the estate management product that will charge the clients as follows):</p> <ol style="list-style-type: none"> <li>1) Estate &gt;RM600k = RM400 for 17 years</li> <li>2) Estate &lt;RM600k = RM150 for 17 year</li> </ol> <p>Executor either AM Trustee Berhad or any family members.</p>	<p>Same as ARB (Agent of ARB).</p> <p>But for the comprehensive <i>wasiyyah</i> to be completed, ARB will contact the corresponding client.</p>	<p>Basic <i>wasiyyah</i> (From RM390, charge for the writing of the <i>wasiyyah</i>).</p> <p>Comprehensive <i>wasiyyah</i> (from RM500, and the highest charge so far is RM1000)</p> <p>Plus the following cost:</p> <ol style="list-style-type: none"> <li>1) Appointment CIMB as executor= RM200</li> <li>2) Lifetime custody= RM500</li> </ol> <p>Executor is either CIMB itself or other parties.</p>

Amanah Raya Berhad (ARB)	ZAR Perunding Pusaka	As-Salihin Trustee Berhad	Warisan Mukmin	Wasiyyah Shoppe	Bank Islam Malaysia Berhad (BIMB)	CIMB Malaysia Berhad
<b>2. Products for the purpose of making bequests (up to 1/3 to non-heirs)</b>						
Included in the comprehensive <i>wasiyyah</i> .	In <i>Wasiyyah</i> document (RM500).	Can be either in basic or comprehensive <i>wasiyyah</i> .	Included in the comprehensive <i>wasiyyah</i> .	This is included in the estate management product which is subscribed by the client.	Included in the comprehensive <i>wasiyyah</i> .	Can be either in basic or comprehensive <i>wasiyyah</i> .
<b>3. Products for the purpose of making <i>hibah</i></b>						
Temporarily suspended.	Direct <i>Hibah</i> (Fixed charge RM3000).	<i>Hibah</i> Declaration (minimum cost is RM900 for three properties that want to be declared).	Direct <i>Hibah</i> : 1) <RM150k = RM1875 (does not include cost of the name transfer) 2) Trust <i>Hibah</i>	Direct <i>Hibah</i> (Charge depends on property's value).	NA	Trust <i>Hibah</i> only (charge depends on property's value).
<b>4. Products for the purpose of making <i>waqf</i></b>						
Stated in comprehensive <i>wasiyyah</i> .	NA	Amount of <i>waqf</i> mentioned in the comprehensive <i>wasiyyah</i> . However, <i>waqf</i> in terms of movable assets (e.g: cash) is preferable).	Client is advised to go direct to the Islamic State Council.	Client is advised to go direct to the Islamic State Council.	Under its subsidiary, Bank Islam Trustee Berhad.	NA

Amanah Raya Berhad (ARB)	ZAR Perunding Pusaka	As-Salihin Trustee Berhad	Warisan Mukmin	Wasiyyah Shoppe	Bank Islam Malaysia Berhad (BIMB)	CIMB Malaysia Berhad
<b>5. Trust Account</b>						
No fixed price. Case by case basis.	Prepare the trust document and trustee is an individual.	Cost to set up account RM1000. No minimum amount set up to be placed in the trust account. Annual fee applies (not less than RM2000).	NA	Minimum amount to open account is RM100k (RM2000, fixed charge) for the case where the cash money comes from any sources except ASB/ASN.	NA	No fixed price. Case by case basis.
<b>6. Mutually Acquired Property</b>						
NA	RM2000 (Fixed charge)	Minimum cost is RM900 for three properties that will be declared.	NA	RM500	NA	NA
<b>7. Faraid Value Distribution Document</b>						
NA	This is only available at ZAR Perunding Pusaka.	NA	NA	NA	NA	NA