

AWARENESS OF WASIYYAH AS ISLAMIC ESTATE PLANNING
INSTRUMENT AMONG MUSLIM ACADEMICIAN IN UNIVERSITI
TEKNOLOGI MALAYSIA

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UNIVERSITI TEKNOLOGI MALAYSIA

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DEDICATION

Special thanks to my family, parents, my supervisor and friends for their endless helps, support and encouragement.

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ABSTRACT

Islamic estate planning is about making plans for the distribution of one's Wealth that are consists of fixed assets (such as land, residential or commercial building) and movable assets (such as cash, saving or current account, investment account, shares and vehicles) to their rightful heirs. In Malaysia, Muslim community is bound by Islamic Inheritance Law called Faraid when it comes to estates distribution when a person demise. Muslim community has taken Faraid system for granted and completely ignored that there are civil law and a lengthy estate administration process to go through before the Faraid can be implemented. Wasiyyah (Islamic Will) come from "wassa" which means to order, advice and promise or give away property after death. Furthermore, Shafi'e Scholars defined Wasiyyah is the granting of a right which is implemented after the death of the testator, either verbally or otherwise. Therefore, the purpose of this research is to look onto the Muslim academic staff awareness towards Wasiyyah as Islamic estate planning instrument. The objectives of this research are to identify the level of awareness among Universiti Teknologi Malaysia's academicians towards Wasiyyah as Islamic estate planning instrument, and to determine the influence factors for making Wasiyyah among UTM's academicians. Questionnaire were distributed to the academic staff of UTM's Skudai Campus, Johor. The data collected through research instrument were then analysed by the interpretation of percentage and mean score. The result indicated that UTM's academicians are aware and strongly aware that Wasiyyah is an Islamic estate planning instrument. Respondents are strongly aware (84%) on Wasiyyah as a protection of rights, while (79.3%) aware on Wasiyyah as religious claim, Wasiyyah involved law and processes (77.20%), and Wasiyyah as an administration solution (77.19%). UTM's academicians also agreed the influence factors for making Wasiyyah are perceptions (80%), estate administration processes (75.2%), knowledge (73%), value of estate and applicable costs (80%), and media awareness (63%). While the respondents are not influenced by attitude (59%), family influence and Faraid structure (54%). As a conclusion, majority of respondents are aware that Wasiyyah protecting the rights of their family, providing administration solution to their estates and acknowledging that Wasiyyah as Islamic estate planning instrument. Furthermore, the result also shows that the biggest influencing factor for making Wasiyyah among UTM's academicians staff is perception.

ABSTRAK

Perancangan harta secara Islamik adalah perancangan pengagihan kekayaan / harta seseorang yang terdiri daripada aset-aset tetap seperti (tanah, bangunan kediaman atau komersial) dan aset-aset cair dalam bentuk (wang tunai, akaun simpanan dan akaun semasa, akaun pelaburan, saham dan kenderaan) kepada waris-waris yang berhak. Di Malaysia komuniti Islam tertakluk kepada Hukum Faraid apabila seseorang itu meninggal dunia. Akan tetapi komuniti Islam Malaysia tidak mengambil berat akan sistem pengagihan secara Faraid dan tidak sedar bahawa terdapat lagi undang-undang sivil serta proses-proses pentadbiran yang perlu dilalui sebelum Faraid boleh dilaksanakan. Wasiat Islam berasal dari perkataan “wassa” yang bermaksud mengarah, menasihati dan berjanji memberi harta selepas kematiannya. Imam Shafi’e mentakrifkan Wasiat adalah suatu tindakan membenarkan pemindahan hak selepas kematian pewasiat, sama ada melalui lisan atau sebaliknya. Objektif kajian ini adalah untuk melihat tahap kesedaran di kalangan ahli akademik Universiti Teknologi Malaysia yang beragama Islam terhadap Wasiat sebagai satu instrumen dalam perancangan harta secara Islamik dan untuk menentukan faktor-faktor yang mempengaruhi ahli akademik UTM untuk membuat Wasiat. Soalan soal selidik diedarkan kepada Pensyarah di UTM, Kampus Skudai, Johor. Data yang diperolehi dianalisa menggunakan kaedah interpretasi peratusan dan skor nilai purata. Hasil kajian menunjukkan Pensyarah UTM sebenarnya sedar dan sangat sedar bahawa Wasiat adalah satu instrument perancangan harta Islam. Jumlah responden sangat sedar adalah (84%) terhadap fungsi Wasiat sebagai pelindung hak kepada ahli waris. Dimana (79.25%) sedar bahawa Wasiat adalah suatu tuntutan agama. Sebanyak (77.20%) Pensyarah sedar bahawa Wasiat melibatkan proses dan undang-undang, dan sebanyak (77.19%) sedar bahawa Wasiat sebagai solusi pentadbiran. Pensyarah UTM juga bersetuju bahawa faktor-faktor yang mempengaruhi mereka untuk membuat Wasiat adalah pesepsi (80%), proses pentadbiran (75.2%), Pengetahuan (73%), nilai hartanah dan kos yang terlibat (80%), dan kesedaran media (63%). Sebaliknya terdapat responden yang tidak terpengaruh oleh faktor sikap (59%) dan pengaruh keluarga serta struktur Faraid (54%). Secara kesimpulannya dapat dirumuskan bahawa, majoriti daripada responden sedar Wasiat melindungi hak-hak ahli keluarga dan menyediakan solusi pentadbiran harta mereka dan mengakui bahawa Wasiat adalah satu instrumen perancangan harta Islam. Hasil kajian juga menunjukkan bahawa pesepsi adalah faktor utama yang mempengaruhi Pensyarah di UTM Kampus Skudai untuk membuat Wasiat.

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LIST OF ABBREVIATIONS

UTM	-	Universiti Teknologi Malaysia
ARB	-	Amanah Raya Berhad

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CHAPTER 1

INTRODUCTION

1.1 Background Information

Islamic estate planning is part and parcel of personal financial planning where it is normally being considered and prepared at the retirement age of an individual or before his or her death. Islamic estate planning involves making plans for the distribution of one's Wealth that are consists of fixed assets (land, residential building or commercial building) and immoveable assets (such as cash, saving accounts, current account, investment account and vehicles) to their rightful heirs. Islamic estate planning is a definite plan for the administration and disposition of one's property during his or her lifetime and at his or her death.

Horkey (2009) explained that the purposes of estate planning are to help protect the individual and family in case of incapacity, to provide for minor children and loved ones, to have an individual's wishes carried out and to keep the estate liquid to help with distribution and taxes. As such, comprehensive estate planning requires individuals to put the time and energy into preparing against the possibility of their own death, as well as own incapacity, and for facing difficult decisions about the distribution of their assets and their choices for medical care.

There are currently five Islamic estate planning instruments that were adopted or engaged by the Malaysian Muslim, namely Wasiyyah (Islamic Will), Hibah (Gift), Declaration of joined assets (Deklarasi Harta Sepencarian), Waqf (Charity) and Trust (Amanah) (aS-Salihin Trustee Berhad, 2017). These five instruments form a comprehensive way of Islamic wealth distribution and management while a person is still alive and if none of these instruments were prepared during his/her entire life, therefore when he or she dies, the whole estates will be administered based on the

Islamic Law of Inheritance called the “*Faraid Law*” which is in accordance to *Shariah Laws*.

Among five Islamic estate planning instruments that are available in the market for Muslim public in Malaysia, Wasiyah is the most popular document among Malaysian Muslim. However, comprehensive Islamic estate planning instrument is not widely practiced couples of years back. Wasiyah implementation for the Muslim in Malaysia is still subjected to Faraid Law, therefore there were more demand for the other instruments of Islamic estate planning such as Hibah, Declaration of Joined Asset, Waqf and Trusts in the market that are not subjected to Faraid Law (aS-Salihin Trustee Berhad, 2017).

In Malaysia, established trustee companies like Amanah Raya Berhad (ARB), As-Salihin Trustee Berhad, Rock Will Trustee Berhad, Wasiyyah Shoppe Trustee Berhad and some other Will writing company which did not carry the Trustee status such as Mypusaka Sdn Bhd were the most sought after when it's come to preparing an estate planning documents. However only few trustee companies that focuses on Malaysian Muslim customer with the comprehensive Islamic Estate Planning as a holistic view that covers all 5 instruments and administered the estate of the deceased end to end.

1.2 Problem Statement

Leaving a proper Islamic estate planning instruments for the heirs or loved one's is not really a normal practice by majority of Malaysian Muslim in order to avoids assets from continuously remain frozen after they dies. Despite the existence of the Islamic Inheritance Law (Faraid) which was being practiced in Malaysia for the past decade, many of the Muslim in Malaysia has a misconception's about leaving a legal Islamic estate planning instruments and the functions of Faraid distribution system when they die. Majority assumed that with Faraid in place, the estate administration process will start automatically without having them to engage or adopt the Islamic estate planning instruments before death occurs. Muslim community in

Malaysia has taken Faraid system for granted and completely ignored that there are Civil law and a lengthy administration proses to go through before the Faraid can be implemented.

Apart from Faraid as a guidance for Muslim community to distribute their wealth to the rightful heirs upon their death, yet many of them are unaware of the importance of distributing their wealth using Islamic estate planning instruments while there are in good health condition and mentally capable of doing so. Majority of Malaysian Muslim Community did not really understand the basic functions of the Islamic estate planning instruments. Lack of continuous awareness program to educate Muslim community in Malaysia has led to a very serious problem among the heirs and directly contributed to an increase in the amount of frozen assets left by the dead.

In July 2017, the total number of Malaysian populations is 31,381,992 million people. The total Muslim population in Malaysia are 19,237,161 people who represent 61.3 percent and the remaining balance (38.7 percent) are Non-Muslim (Department of Statistics Malaysia, 2017). It is estimated that 70 percent out of the Muslim population are considered attainable legal age for engaging in any Islamic estate planning instruments (age of 18 years and above). Basically, 13,466,012 people could adopt or engage in Islamic estate planning instruments before they die. However, less than 10 percent of 13,466,012 people are preparing their documents for their heirs should they demise.

Suhaili Al Ma'amun (2012) has conducted a study on variations across control variables on the practice of *wasiyyah* (Islamic will) within the contextual form of Islamic estate planning in Malaysia. According to her, the number of Muslims who making a *wasiyyah* is very low. Her opinion was supported by (Omar, 2006; Hayati Mohd Dahan et al., 2012) who claimed that the practice of Islamic estate planning among Malaysian Muslims was not widely practice. The lack of understanding and importance of Will is reflected in the proportion of the population who possessed Will in Malaysia. The Malaysian population total 28.31 million in July 2009 (Department of Statistics and Economic Planning Unit,2009), but only 10% of the eligible

population (those above 18 years old) have prepared their Wills, as reported by Amanah Raya Berhad, Shahanaaz (2010), Dahan et al. (2012).

There has been an increasing trend in volumes of unclaimed inheritance properties over the years beginning 2005 onwards (Ahmad & Laluddin, 2010). The increasing trend of frozen assets has become unresolved issues faced by the Muslim community in Malaysia (Ariffin Sabirin, 2013). Many unclaimed assets worth RM40 billion in 2009 has increased to RM42 billion in 2011 and further increased to RM60 billion in 2014 (Fazira, Wan Zahari & Syed Muhamad Dawilah, 2014). There were over 1 million land titles still under the name of the deceased and some of them are traced back in year 1957. This phenomenon has led to much bigger problems where the country had huge economic losses over frozen assets that some of them are strategically located within the country prime economic area. No future development can be done on these frozen estates unless all parties really demonstrate the urgency and seriousness in unlocking this RM60 billions worth of frozen assets.

The issues pertaining to the high number of unclaimed inheritance properties and the volume of freezing assets faced by the Muslims are increasing in Malaysia. These valuable assets have been frozen and become unproductive for the economy. This is a depletion to the nation if the scenario is allowed to continue, the values of these properties and assets amounting to billions of ringgit can be used as a source of economy and be able to solve the issues of financial difficulties or poverty among the heirs and the community as a whole.

Under the Malaysian law, all assets of a person will be frozen upon the person demise until there was valid probate granted by High court. Therefore, it is important to prepare a plan on how to distribute the assets before the demise in order to avoid assets from frozen. When a person dies intestate, there may be a delay in unlocking his estate frozen assets due to one or more following reasons: 1) choosing an administrator, 2) identifying, locating and valuing the assets of the estate 3) finding two sureties (Muhammad Ridhwan Ab. Aziz, 2012). Delayed in distributing the estate to the beneficiaries can arise since this process could take 2 to 8 years and in between, family contentions could occur. In a complex situation, longer period is needed, and it

might take more than 10 years to solve frozen assets. At worst, the estate may remain in frozen state forever.

Tan Sri Ibrahim Lembut (2013) stated that the Syariah Judiciary Department of Malaysia is seeking for a solution on how to resolve the issues of frozen assets. The wealth owned by Muslims is valuable assets that can be used for socioeconomic development and should be utilized for the glorious of Islam in this country (Wan Harun, 2011). If these properties are not being well managed and developed, it will be a loss for the Muslims (Abdul Hakim, Abdul Hamid & Adibah, 2009). These assets should be utilized for socioeconomic development. The administration and management of assets in Islam are crucial and must comply with the concept and regulations that has been outlined (Muhammad Ali Ash-Shabuni, 1996).

Many studies found that the practice of Islamic estate planning among Malaysian Muslims was not widely practice, among others academician (Omar, 2006; Hayati Mohd Dahan et al., 2012). An academic is a member of an academy for promoting science, art, or literature. He/she mostly have a role combining research, teaching and administrative responsibilities. A common grade progression for permanent academic jobs is lecturer, senior lecturer, and professor. Universiti Teknologi Malaysia (UTM) is one of the public universities in Malaysia. As of December 2018, the number of UTM's academic staff are 1,708 (UTM, 2018). Assets are 'trust' from Allah lent to humankind to achieve a blessed life. Owning assets without benefiting the others is contradicting with the Islamic practices (Amir Bahari, 2012). Therefore, the effort to find a solution towards the frozen assets is very crucial to enable it to contribute to the economic prosperity of the Ummah starting by making Wasiyyah.

1.3 Research Questions

To develop the area of the research as well as to get the better view regarding the final results of the research, the research questions are generated. The following are the research questions that have been generated for the research:

- (a) What are the level of awareness among UTM's academicians towards Wasiyyah in Islamic Estate Planning Instruments?
- (b) What are the influence factors for making Wasiyyah as Islamic Estate Planning Instruments among UTM's academicians?

1.4 Research Objectives

In order to answer the above research questions, the objectives of this research are formulated. The objectives of the research are as follows:

- (a) To identify the level of awareness among UTM's academicians towards Wasiyyah as Islamic estate planning instrument;
- (b) To determine the influence factors for making Wasiyyah among UTM's academicians.

1.5 Scope of Research

The scope of study for this research only involves with Muslim academic staff of UTM Skudai, Johor Bahru. The respondents are limited to the academic staff only as this is to cope with the short time frame to complete this research via a specific sampling technique. Other than that, this study adopted quantitative survey which involves distributing questionnaire and is analyzed by using statistical tools (SPSS).

1.6 Significance of the Research

From this research, current and future academicians can get the benefits, as well as the relevant organizations relating to Islamic inheritance. This is because this

research will be discussing about the awareness among UTM's academician towards Wasiyyah as Islamic estate planning instrument as well as the influence factors for making Wasiyyah among UTM's academician.

This research would help the academicians to reflect their preparation with regards to inheritance. The existing organisations such as Amanah Raya Berhad would become more aware with the discussed awareness and should find better ways to disseminate information regarding Islamic estate planning instrument if required.

1.7 Chapter Organization

This research will be divided into 5 chapters as follows:

(a) Chapter 1 – Introduction

Chapter 1 gives the overview of the research which includes the background information, problem statement, research questions, research objectives, the scope and limitation of the research, its significance and the chapter organization for this research.

(b) Chapter 2 – Literature Review

Chapter 2 reviews the literature of the research. It provides definition clarification of some keywords that are related to this research, faraid as Islamic Law of inheritance, Islamic estate planning instruments, parties involve in estate administrations process in Malaysia, overview of studies on inheritance and Islamic estate planning, and awareness and influence factors for making Wasiyyah.

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