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## THE ANALYSIS OF TRUST AS AN ISLAMIC ESTATE PLANNING INSTRUMENT IN MALAYSIA: CHALLENGES AND EFFECTS

<sup>1</sup>Abdul Bari Awang, <sup>2</sup>Muhamad Muizz Abdullah & <sup>3</sup>Nasrul Hisyam Nor Muhamad

<sup>1&2</sup> Department of Fiqh and Usul Fiqh, Islamic International University of Malaysia

<sup>3</sup>Islamic Civilization Academy, Faculty of Social Sciences and Humanities Universiti Teknologi Malaysia, Skudai, Malaysia

<sup>2</sup>Corresponding author: [muizzziela8990@gmail.com](mailto:muizzziela8990@gmail.com)

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### ABSTRACT

Efficient and effective Islamic estate planning not only provides convenience to Muslims, but it is also capable of driving national economic progress and development. One of the instruments of Islamic estate planning is dependent on the trust instrument, which is based on civil law. The effect of not implementing the trust at an early stage can be seen in the status of property acquired, as it may not be managed effectively and may indirectly harm the beneficiary. Therefore, the present study was an attempt to identify the challenges and effects in the implementation of trust; when it

has not been implemented efficiently and to look into the effects of late Islamic estate planning during one's lifetime. The study has applied a qualitative study method by analysing previous articles, related statutes, and looking at the application of the trust instrument by trust institutions in Malaysia. To achieve the objectives of the present study, the researchers conducted interviews with officers from the Amanah Raya Berhad (ARB), which is the largest Public Trustee in Malaysia and it has just marked the 100<sup>th</sup> anniversary of its establishment this year. The finding of the study revealed that the trust instrument has a few challenges in its implementation, whether with respect to the trustee, society, and the inconsistencies of law. For example, the failure in planning when using the trust instrument will affect the family institution and the management of the property itself. In conclusion, the issue of Islamic estate planning during one's lifetime should not be taken lightly by society as it can turn out to be detrimental to the family and the national economy.

**Keywords:** Trust, trustee, property management, Islamic estate planning.

## INTRODUCTION

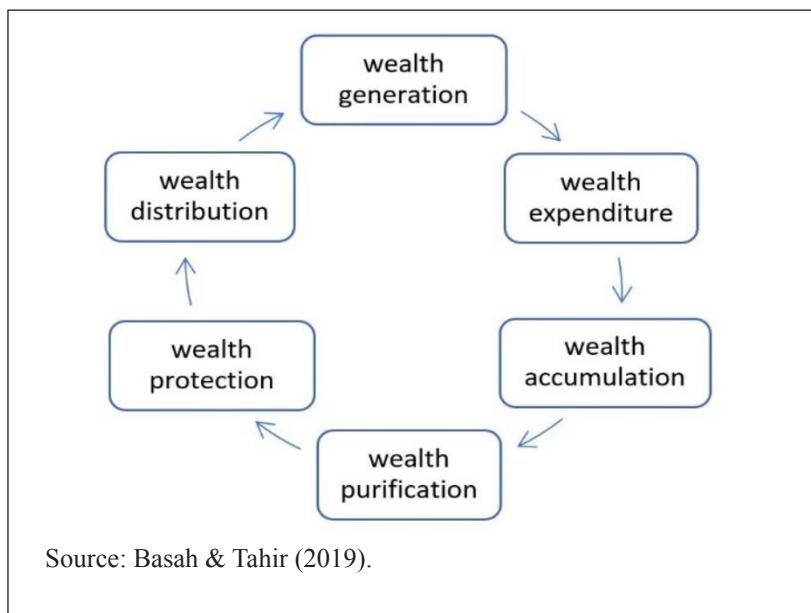
The concept of systematic property management by property owners during their lifetime is crucial in Islam. Therefore, the property accumulated has be managed properly, and inheritance planning for their beloved beneficiary should be done in advance, to avoid any problems arising after the death of the property owner (Kamarudin & Nor Muhamad, 2018). Recklessness, procrastination, and the lack of information about Islamic estate planning instruments should be avoided. These issues will lead to negative impacts for the heirs and at the same time result in losses for the national economy as well.

The concept of property management and asset distribution, in compliance with *Syariah* law and its related principles, i.e., through *wasiat*, *waqf*, *hibah* and *faraid* are unique because it is closely related to the principles found under civil law. This interrelationship can be seen in their interconnected conceptual framework, as was explained by Basah & Tahir (2019). According to them, the management of the Islamic estate consists of several elements found in one cycle, namely wealth generation, wealth expenditure, wealth accumulation, wealth

purification, wealth protection, and wealth distribution. Figure 1 describes the cycle of property ownership and management elements that are closely related:

**Figure 1**

*Main Elements in the Cycle of Islamic Estate Management*



All the elements mentioned above, starting from wealth generation to the last one, which is wealth distribution and transfer of ownership to the heirs, corresponds with the *maqasid hifz al-mal* itself (Muhamad, 2015). The failure in the planning of Islamic estate with care will cause the beneficiaries to face difficulties in life. Therefore, the Prophet SAW reminded us through his words:

مَا حَقُّ امْرِئٍ مُسْلِمٍ لَهُ شَيْءٌ يُوصِي فِيهِ يَبِيتُ لَيْلَتَيْنِ إِلَّا وَصِيَّتُهُ مَكْتُوبَةٌ عِنْدَهُ

«It is not befitting for a Muslim who has anything concerning which a will should be made, to abide for two nights without having a written will with him.»

(Sahih al-Bukhari, Vol. 2, No. 2776)

Based on the above hadith, the Prophet SAW suggested making an appropriate preparation for the property owned. It is improper

for a Muslim to ignore and postpone it without due action. A misunderstanding that wills should be made for individuals who own only properties needs to be disregarded. This is because debt is also compulsory to be paid. If it is feared that the debts could not be repaid during the lifetime, then it becomes an obligation to appoint a trustee to manage them. The heirs who are left behind must be provided with sufficient sustenance to continue with their daily lives. The psychological stress experienced by parents or guardians in raising orphans who may belong to the category of disabled people, may be the result of the lack of financial support and thus, financial pressure (Takom et al., 2013). Besides, issues on Islamic estate management will become more complicated, thus adding to the suffering of the heirs of the deceased.

In this regard, various products related to Islamic estate planning are being offered by trust institutions in Malaysia. They include products such as the trust instrument, instead of the traditional *wasiat*, *waqf*, *takaful*, *hibah* and *faraid*, and are designed to provide an opportunity for property owners to appoint a trustee to administer and implement his wishes after his death. However, this trust instrument also faces its own challenges in the context of its implementation. Therefore, the present paper tries to identify the challenges in the implementation of the trust instrument and their future implications if property owners chose to delay property planning during their lifetime.

### TRUST IMPLEMENTATION CONCEPT IN ISLAMIC ESTATE PLANNING INDUSTRY

Generally, trust is a noble trait possessed by a trustee when given a specific trust to perform that responsibility. The nature of trust is evident in our daily lives, such as in the relationship of creatures with Allah SWT and between creatures. The word trust is mentioned many times in the Qur'an and Allah SWT praises this trait. Through surah an-Nisa', Allah SWT said:

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ

*“Allah does command you to render back trusts to those whom they are due; And when you judge between man and man, that you judge with justice.”*

(Surah an-Nisa, 4:58)

Looking at the context of property planning, the trust trait that is discussed in the verse of the Qur'an above has a close relationship with the trustee. This is indeed a profound observation as the responsibility of a trustee is significant and needs to be fully fulfilled. The Prophet SAW was famously known among the *Musyrikin* of Makkah because of his trait of being *al-amin* in carrying out the trust given. Referring to the concept of property management in Islamic Law, trust is formed through three ways. First, Islamic law which includes the protection of property (*al-wilayah al-maliyah*). Second, when present in a contract consisting of *wisayah* or *isa*, *wakalah*, *wadi'ah*, *ibarah*, *wakaf*, gift, and will. And third, that which «happens suddenly» like a *luqatah*, which is the loss of something found by others. Here, it can be concluded that all the instruments of trust in the Islamic Law mentioned include care, administration, *tasarruf*, and transactions that do not involve guarantee (*dhaman*). Its implementation can occur either involving the granting of property or the assignment of duties (Ibrahim, 2009).

The concept of trust that has been applied in the context of property planning in current trust institutions has some similarities with the trust instrument in the Islamic Law mentioned above, especially involving the Islamic entrustment instrument (Nor Muhammad, 2012). It is because, Islamic entrustment is related to the trust and this trust have been given by a testator (*musi*) to a trustee (*wasi*) to manage the will of the testator (*musi*) after the death of *musi* (Zakaria Al-Ansari, t.t). In fact, Islamic entrustment also includes the care of minors (*al-qasir*), execution of wills, payment of debts, the return of lost goods, and the management of alimony (Al-Khin et al., 2012).

Nevertheless, the trust instrument discussed in this debate gives a broader meaning as provided for in the Federal Constitution, the Ninth Schedule, the Legislative List, List 1, and the Federal List, 4 (e) (i). This is because the implementation of trust is based on the concept of equity. Its formation can occur in either of two forms:

1. Express / declared trust: that is as a gift in the form of inter vivos.
2. Implied Trust: permission by the court to control the trust property of others.

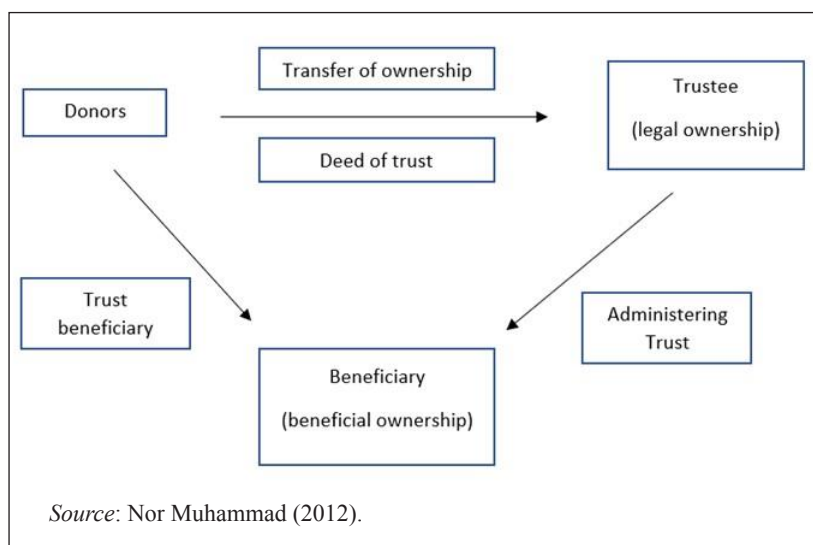
Nor Muhammad (2012) explained that there was no specific definition to explain the meaning of trust and as to how it was with Islamic entrustment. Unless the definition can be known through the interpretation of the judge in court involving a case, such as in the precedent in the case of *Parmeshiri Devi & Anor v Pure Life Society* (1971) MLJ 42 (Pawancheek Marican, 2009):

*“An equity obligation binds a person that is called a “trustee” to manage a property under his control is called trust property, for the benefit of a person or some people referred to as the “beneficiary” of which he or she may be one of them and any person which can enforce the obligation.”*

Through the interpretation of trust based on the case stated above, one can understand that trust consists of the following five main elements: donor (settlor), beneficiary, trustee, trust deed, and the property (moveable and immoveable assets). Figure 2 explains the concept of trust that is currently practiced:

**Figure 2**

*Trust Concept that is being Practiced in Trust Institutions*



Referring to Figure 2, the implementation that takes place in trust institutions at this point begins when the donor hands over an asset either in the form of an immovable property such as land, or a movable property such as cash, shares, jewellery and vehicles to be entrusted on behalf of the beneficiary. For example, for a trust involving an immovable property, this trust will be signed through a deed of trust between the donor and the trustee. The trustee will hold the owner's grant for the property for the period specified in the deed of trust for the benefit of the beneficiary. Meanwhile, the named beneficiary is only entitled to own the trust property in the event of the death of the donor, or based on the conditions set out in the deed of trust.

### TRUST PRODUCTS FROM TRUST INSTITUTIONS

Every trust institution that currently exists is established under the Companies Act 2016 (Act 777). Previously, it was known as the Companies Act 1965 (Act 125). For example, referring to the Companies Act 2016 (Act 777), Sections 14 (a) to (j) clearly mention that any application for incorporation must include the details of the proposed company, private or public, nature of business, the proposed address of the registered office, the name, identification, nationality, and the principal place of residence of every person who is to be a director or secretary. Its establishment can either be registered under the Trust Companies Act 1949 (Act 100) or be unregistered. Among the trust institutions in Malaysia today which are registered under the Trust Companies Act 1949 (Act 100), they include the Amanah Raya Berhad (ARB), Wasiyyah Shoppe Berhad, as-Salihin Trustee Berhad and MyAngkasa Amanah Berhad. Each of this trust institution has its uniqueness in offering property management products that are based on the trust instrument.

As can be seen from Table 1, all the trust products offered are voluntary, which can be an option for donors to select as their trust product of choice. The donor can create a trust account and set any desired objectives for the benefit of the beneficiary and a more systematic management of the trust property. This includes the creation of a trust account for the relief of poverty, the advancement of education, the advancement of religion and other purposes beneficial to the community (Ismon et al., 2021). Also, this trust contract is not a standard contract (*al-'aqd ghair lazim*) and does not bind the two parties, namely the donor and the trustee. Hence, the donor has the

right to cancel the signed contract or amend any of the terms and conditions that have been set. Even the donor is entitled to the benefits of the property and has absolute power over the property for the rest of his life (Sarkawi, 2019).

**Table 1**

*Describes the Trust Products Offered by Some Trust Institutions in Malaysia*

No.	Trust Institutions	Trust Products Offered
1	Amanah Raya Berhad (ARB)	<ul style="list-style-type: none"><li>• Voluntary Trust<ol style="list-style-type: none"><li>1. Normal Trust</li><li>2. Safe Care Trust / Safe Care Premier</li><li>3. Property Trust</li><li>4. Institutional Trust (ITA)</li><li>5. Welfare Trust</li><li>6. Gift Trust</li><li>7. Declaration of Trust</li><li>8. Takaful/Insurance</li><li>9. Edu Care</li><li>10. Bare Trust</li></ol></li><li>• Mandatory Trust<ol style="list-style-type: none"><li>1. Inheritance Management</li><li>2. Small Estate Office Order</li><li>3. Court Order</li><li>4. Land Compensation</li><li>5. Pension</li><li>6. Trust Declaration</li><li>7. Workers Compensation</li></ol></li></ul>
2	Wasiyyah Shoppe Berhad	<ul style="list-style-type: none"><li>• Real Estate</li><li>• Investment (Amanah Saham Nasional Berhad - ASNB )</li><li>• Cash</li><li>• Takaful Policy</li></ul>
3	as-Salihin Trustee Berhad	<ul style="list-style-type: none"><li>• Education</li><li>• Cost of living</li><li>• Corporate</li><li>• Welfare</li><li>• Insurance</li><li>• Takaful/Insurance</li></ul>
4	MyAngkasa Amanah Berhad	<ul style="list-style-type: none"><li>• Amanah Takaful / Amanah Insurance</li><li>• Cash Trust (Individual/Corporate)</li></ul>

*Source:* Amanah Raya Berhad (2021), Wasiyyah Shoppe Berhad (2021), as-Salihin Trustee Berhad (2021), MyAngkasa Amanah Berhad (2021)



As for the Mandatory Trust products offered by the Amanah Raya Berhad (ARB), there are significant differences compared to the other trust institutions. The implementation of the Mandatory Trust is based on the Public Trust Corporation Act 1955 (Act 532), which gives sole authority to the Amanah Raya Berhad (ARB) as the trustee of the trust property in its charge. These trusts are in the form of cash and property involving minors, disabled beneficiaries, and undetected beneficiaries. Among the jurisdictions that detail the duties of trustees involving the Mandatory Trusts are as follows:

*Section 12(1):*

*“The Corporation may be appointed to be the trustee of any will or settlement or other instrument creating a trust or to perform any trust or duty belonging to a class which it is authorized to accept...”*

*Section 20:*

*“Where, upon the conclusion of the administration of the estate of a person dying testate or intestate, there remains with the Corporation funds of which it is unable to dispose immediately by distribution in accordance with law by reason of the inability of the person entitled to give a discharge, through lack of legal capacity or otherwise, or by reason of any other cause which to the Corporation appears sufficient, the Corporation may apply the same for the benefit of that person...”*

*Section 21(1):*

*“The Corporation may, on its own application or on the application of any other person by summons, be appointed by the Court to act as next friend of any minor for the purpose of instituting any suit or proceeding in the name of the minor”.*

Referring to Section 20 above, the Amanah Raya Berhad (ARB) will be named as the trustee, as stated in the Division Order (Form E), issued by the Small Estate Office. For an administration of an estate, whether it is a testate or intestate that has been administered, trust property which involves minors, disabled beneficiaries and undetected beneficiaries will be administered at the Amanah Raya Berhad (ARB). The administration of this trust is in accordance with Sections 19 (1) and 19 (3), which explain in more detail the role of the trustee and

allow any payment of the trust property to be paid to the appointed guardian. This consent involves the need of the beneficiary, such as alimony, education, and any welfare benefits of the beneficiary (Mohd Nizamudin, 2020). It is spelt out below by the relevant sections:

*Section 19(1):*

*“...the Corporation may at its sole discretion, during the minority of any such person, make payments of the whole or such part of the income and capital money of the property as may in all the circumstances be reasonable for that person’s maintenance, education or benefit.”*

*Section 19(3):*

*“Payments under subsections (1) and (2) may be made to the parent or guardian of such person or otherwise as the Corporation may, in its discretion.”*

Details of the Mandatory Trust products are as shown in Table 2.

**Table 2**

*Characteristics of Mandatory Trust*

No.	Trust Cause/Source	Act
1	Estate Administration (Administration of Islamic testate estate or intestate estate)	Sec. 20, Public Trust Corporation Act 1995 1995 (Act 532)
2	Small Estate Office Order	Sec. 16 (3) & (4), Small Estates (Distribution) Act 1955 (Act 98)
3	Court Order	(Referring to the court order issued to appoint Amanah Raya Berhad (ARB) as trustee)
4	Land Compensation	Land Acquisition Act, 1960
5	Pension (Public Service Department-JPA)	Sec. 86, Probate And Administration Act 1959
6	Trust Declaration (Received from third parties like TNB, KWSP, and Insurance)	Sec. 86, Probate And Administration Act 1959
7	Workers Compensation (Issued by labor commissioner)	Workmen’s Compensation Act 1952

Source: Noorhajar (2020)

Implementation of the trust refers entirely to English law as it is applied in England and other Commonwealth countries including in Malaysia (Ismon et al., 2021). Examples of related acts in Civil law include the Public Trust Corporation Act 1995 (act 532), Trustee Act 1949 (208), Probate and Administration Act 1959, Small Estates (Distribution) Act 1955 (act 98), and many others. Thus, the implementation of the trust in these trust institutions are different from the concept of Islamic Banking, which is subjected to the Islamic Financial Services Act 2013 (IFSA). The fundamental focus is on governance under *shariah* principles. This *syariah* governance provides a framework, policies and operating manuals. Other than that, the IFSA contains provisions that enable the Central Bank of Malaysia (BNM) to perform its oversight role effectively. In general, this includes authorizing BNM to set standards, as well as to issue directives, for the purpose of security, integrity, efficiency and reliability of payment systems and payment instruments (Hamat & Ghazali, 2019).

However, there is also a relationship between the implementation of the trust and IFSA. For example, the Amanah Raya Berhad's (ARB) responsibilities as a Public Trustee in Malaysia are clearly stated in the IFSA which involves payment of policy moneys for takaful policies. This can be referred to in Table 10, Section 9 (a) (ii) which states that payment of policy moneys amounting to more than RM50,000 can be paid to a Public Trustee, specifically involving minors, those of unsound mind, and when no committee of his estate has been appointed, or he has been found to be incapable, by reason of infirmity of mind or body, of managing himself and his property. This provision is consistent with the Amanah Raya Berhad's (ARB) responsibilities as a trustee, as set out in Section 12 (1), 20, and 21 (1) of the Public Trust Corporation Act 1995 (act 532) above.

## **CHALLENGES IN IMPLEMENTING THE TRUST INSTRUMENT**

Although property planning through trust is seen as having a good potential for the Muslim community in Malaysia, there are also some challenges and limitations in its implementation. The following are two key challenges that the researchers encountered in the implementation of the trust instrument that is currently being practiced.

## Challenges to Trustee

### *No Automatic System to Trace Dead Beneficiaries*

The main challenge and limitation faced by trustees is the absence of an automated system to track the deaths of the beneficiaries who have trust accounts, mainly involving Mandatory Trusts. Some documents and information submitted by a third party are insufficient and it is the responsibility of the trustee to administer and trace the whereabouts of the beneficiary until all trust money is handed over beneficiary upon his reaching the age of 18 or 21. However, if the beneficiary cannot be traced or no claim is made to the trustee during the trust period, the trust money will remain in the Amanah Raya Berhad (ARB) until it reaches decades. Although the review of beneficiary information can be made through the Agency Link-Up System (ALIS) under the supervision of the National Registration Department (JPN) (Berita Harian, 2020), there are also situations whereby the information obtained is not updated, for example the latest residential address. It also complicates the duties of the trustee as an administrator to the minor trust property (Noorhajar, 2020).

### *Ad Valorem Duty*

Ad valorem duty is a type of tax imposed on legal, commercial, and financial instruments based on the First Schedule of the Stamp Act 1949. The ad valorem duty imposed includes the transfer of ownership documents, lease documents and statutory leases, letters of guarantee of repayment money and capital market instruments (Inland Revenue of Board, 2020). Table 3 shows the calculation of the ad valorem duty imposed according to the current market value:

**Table 3**

### *Calculation of the Ad Valorem Duty*

Stage	Amount (RM)	Percentage
First	RM 100,000.00	1%
Next	RM 100,001.00 to RM 500,000.00	2%
Next	RM 500,001.00 and RM 1,000,000.00	3%
Next	RM 1,000,000.00 and above	4%

Source: Inland Revenue Board, 2020

For instance, the Hibah Trust product which has been implemented by the Amanah Raya Berhad (ARB), has stated that if a father wants to donate his property to his adopted child worth RM 700,000.00 through Form 14A, it will mean that the tax imposed on the property is RM15,000.00. It indirectly adds to the beneficiary's burden with the taxes imposed, that is in addition to having to pay fees and other management costs. Therefore, many people have delayed their intention to make Hibah Trust during their lifetime to their beloved beneficiary, and let the property be divided according to Islamic inheritance after their demise (Azhar et al., 2014; Rosmah Mansor, 2020). However, a 50 percent discount is given for the transfer of ownership from parents to their children. Meanwhile, there are no charges for the transaction between husband and wife.

## **Challenges to Society**

### *Confusion Over Islamic Inheritance Law (Faraid)*

There is no doubt that the law of Islamic inheritance is a just law because the rate of division has been set in the al-Qur'an. In fact, Islamic inheritance is used as one of the procedures by the Syariah Court in the Islamic estate administration process, which involves the validity of the heirs and division property rate (Mat Abdullah et al., 2020). Apart from that, Islamic inheritance is also the best solution when there is a dispute among the heirs, especially when each of them does not agree on the division rate. Therefore, there is a stigma among the Malay Muslims that a trust instrument is not required. On the other hand, Islamic inheritance law is enough as the only solution. Because of that, property planning is not considered important during one's lifetime.

This can be seen through several studies conducted by previous researchers on the needs of property planning. For example, a study conducted by Sarip (2017) on the concept of trustees in the EPF. The finding from his research showed that the level of knowledge of contributors on the appointment of trustees is still at a moderate level. The concept of naming a nominee or trustee is basically to help speed up the Islamic estate distribution. However, if the community still thinks Islamic inheritance is everything, it does not fit the context of Islamic estate management according to Islam. Ab Rahman et al. (2019) also explained that, although Islamic inheritance law has

been practiced for centuries in Malaysia, its implementation still needs review, especially involving the management system and the administration of inheritance processes that are still vague and confusing.

### *Problem Appointing Individual Trustees*

The concept of trust applied today is similar to the concept of nomination practiced in takaful companies, Tabung Haji, EPF, banks, and cooperatives. The named individual only acts as a trustee, who is responsible for distributing the inheritance received to the beneficiary after the death of the testator. It is in line with the resolution by the National Fatwa Committee of 1973 in the Conference of Rulers on 20 September 1973 and 19 September 2020 (Halim & Arshad, 2014). However, there are still many in the community who do not understand the true concept of trustees and appointments that comply with the Islamic law. It can be proven by the trust cases received by the Amanah Raya Berhad (ARB). According to Noorhajar (2020), several testators have named minors as trustees on the insurance they had purchased. There is even a case where a disabled child has been appointed as a trustee. When he has reached the age of 18 years old, the final payment of the trust money could not be exercised to him due to the legal constraints for property ownership based on the Child Act 2001 (Act 611) and the Age of Majority Act 1971 (Act 21). The issue was: How can a disabled child act as a trustee to distribute trust property according to Islamic inheritance?

In addition, the appointment of trustees who are not qualified to administer the trust property also caused controversy after the testator's death. This is because a trustee is not bound by any punishment if he does not distribute the Islamic inheritance property. Therefore, there is a breach of trust by the individual trustee of the Islamic estate, which by law is compulsory to be distributed according to Islamic inheritance principles to the entitled heirs (Rosmah Mansor, 2020).

### **Challenges Over the Inconsistencies of Law**

The existence of various institutions that manage the trust property of Muslims has always been a debate. This is due to the separation of powers between Civil law and Syariah law, as enshrined in the Federal Constitution, Ninth Schedule, Legislative List, List 1,

Federal List, 4 (e) (i). Therefore, this brings to the fore the role of certain jurisdictions involving the administration of Islamic estates in Malaysia, such as the Civil High Court, Land Office, and Amanah Raya Berhad (ARB). Meanwhile, the Syariah Court is responsible for certifying and confirming the rate of division of the Islamic estate through the Islamic inheritance certificate issued (Nasrul et al., 2017; Mohd Noor & Abd Aziz, 2019).

In fact, the matter of obtaining an Islamic inheritance certificate in the Syariah Court is also the responsibility of two departments, namely the Syariah Subordinate Court and the Syariah High Court, and is according to the value of the assets left behind the testator (Zulkaffli & Ahmad, 2016). For example, the division of civil jurisdiction of the Syariah Court can be seen in section 62 (2) (b), Selangor Islamic Religious Administration Enactment 2003.

*Jurisdiction of the Syariah Subordinate Court:*

*“(b) in its civil (mal) jurisdiction, hear and determine all such actions and proceedings as the Syariah Subordinate Court is authorised to hear and determine in which the amount or value of the subject-matter in dispute does not exceed one hundred thousand ringgit or is not capable of quantification in monetary terms (excluding hadhanah claim or matrimonial property).”*

This is a reference to the Ninth Schedule, Legislative List, List II, State List, Paragraph 1, which clearly states matters regarding the affairs of Muslim trust property including wills and non-wills, engagements, marriages, divorce, dowry, alimony, adoption, legitimacy, care, gift, breach of trust and non-charitable trusts, *zakat*, *fitrah* and *baitulmal*. However, the overlap of power remains, for example, the Wills Act 1959 and the Probate and Administration Act 1959, will be used as a reference compared to wills enactments in most states, such as the Muslim Wills Enactment (Selangor) 1999 and the Muslim Wills Enactment (Negeri Sembilan) 2004. This is especially so when a decision does not coincide with the Federal Constitution. Apart from that, there are also cases such as the one involving *TM Feroze Khan & Ors v Meera Hussain TM Mohamed Mydin* [2006] 3 CLJ 616. In its judgement of this case, the Court of Appeal has ruled that all matters relating to trust need to be referred to the Civil law, whether they involve Muslims or non-Muslims (Halim & Ahmad Bustami, 2017).

## **The Effects of Failure in Property Planning through Trust**

### *The Effect on Family Institutions*

The failure to plan for property owned, especially through a trust instrument, will have a significant impact on the family institutions. This can be seen in situations where the deceased leaves his unemployed wife, underage children or with disabilities, parents who are ill or adopted children who then find out that they cannot inherit the Islamic estate. What are the guarantees for their future and the maintenance that needs to be paid? For example, the failure to exercise trust by appointing a trustee during a lifetime may lead to fights and dissatisfaction among the heirs left behind. Also, the potential impact will be that their welfare will be neglected, as there will no longer be adequate financial assistance. This reminder rings loud and clear in the words of the Prophet SAW:

إِنَّكَ أَنْ تَدَعَ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَدَعَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ فِي أَيْدِيهِمْ

*“Indeed, it is better for you to leave your heirs wealthy or sufficient than to leave them in poor condition holding out their hands to people.”*

(Sahih al-Bukhari, Vol. 2, No. 2780)

The effect of not implementing property planning at an early stage can also be seen more clearly if it involves the case of Felda Land (GSA). Referring to the Land (Group Settlement Areas) Act 1960, Felda land cannot be inherited through Islamic inheritance to the entitled heirs. Ownership cannot be transferred to more than two people who only act as trustees. This is in stark contrast to land not gazetted under the GSA 1960 Felda Land. If the appointment of the trustee is inaccurate, it will invite breach of trust and other heirs will not be able to enjoy the goods obtained (Ishak & Ahmad, 2014).

## **The Effects on Property**

### *Complicated Problems in Managing Islamic Estate*

The process of Islamic estate management is not complicated if the heirs immediately take action by appointing an administrator or trustee who knows the process of claiming the estate from the beginning to



the completion of the estate division process (Nasrul & Salim, 2018). However, the administrative process will be complicated when the value of an asset and the property left is higher. Besides, another effect that can be seen is that the property ownership documents left by the deceased are insufficient. Furthermore, even the heirs were not informed of the assets the deceased owned. For example, trust money that is mandatory when sent to a trust institution such as the Amanah Raya Berhad (ARB) needs to be administered for the benefit of the beneficiary. Once the trust period has matured, the final payment of all the remaining trust funds must be paid to the beneficiary. However, the payment becomes complicated when the relevant documents such as beneficiary information, latest bank account, birth certificate, and complete asset information is insufficient. This indirectly affects the life of the beneficiary.

These factors occur as a result of not appointing a trustee as an administrator at an early stage and submitting all property ownership information in advance. This matter becomes worse when the listed assets consist of property. Loss of documents involving land ownership grants and unclear ownership such as the occurrence of border overlap will make it difficult for the heirs to locate the land to be administrated (Wan Hassin et al., 2016). Administrative costs will also increase as the Official Search needs to be done; the administration period of the estate has to be extended; and it will become more complicated when there is no commitment among the heirs involved.

### *Increased Unclaimed Property and its Effect on the Economy*

The current scenario of unclaimed property or frozen property is increasingly worrying. Abdullah et al., (2019) explained that according to statistics released by the Malaysian Syariah Judiciary Department, unclaimed property until 2014 amounted to RM66.6 billion compared to only RM52 billion in 2013 (Zulkafli & Ahmad, 2016; Halim et al., 2018), which is an increase of 28.07 percent. More worrying is that this figure is expected to increase even more by 2020. This amount includes properties such as houses and land, as well as money from various financial institutions in Malaysia (Nik Wajis et al., 2018). For unclaimed assets in the Amanah Raya Berhad (ARB) itself, as of June 2017, the amount has reached RM315 Million (Kamarudin et al., 2019).

This large number of claims has a massive impact on the national economy and society. For example, the management of the Malay Reservation Areas (KRM) such as the Kampung Baru, measuring 101.02 hectares, which has no solution until today, even though several recent offers from the government have been proposed to the beneficiaries involved (Malaysia Gazette, 2020). This issue also involves the Malay Traditional Village (KTM), as shown in Table 2 below (Rashid & Yaakub, 2010).

**Table 3**

*Area (in Hectare) of the Malay Tradisional Village (KTM)*

No.	Place	Area (hectare)
1.	Kampung Batu Muda	52.51
2.	Kampung Cheras Baru	13.34
3.	Kampung Delima Sri Delima	13.08
4.	Kampung Malaysia Raya	27.90
5.	Kampung Melayu FRI	12.74
6.	Kampung Pasir	21.51
7.	Kampung Petaling Bahagia	33.74
8.	Kampung Segambut Dalam	5.42
9.	Kampung Segambut Tengah	33.23
10.	Kampung Segambut Bahagia	17.81
11.	Kampung Pasir Segambut	34.71
12.	Kampung Pandan	25.20

Source: Structure Plan Kuala Lumpur 2020, Dewan Bandaraya Kuala Lumpur

Based on the Kuala Lumpur Structure Plan 2020, the above land areas owned by the KTM experienced similar environmental, economic, and sociological problems. The property faced difficulties in initiating development as a KRM. All these valuable assets involve areas in the city that have the potential to be developed for the national economy and entail huge benefits for the heirs themselves. For example, if an individual want to work on a piece of land that has the potential to be developed, the difficulty he will face is to get financing from the bank. It is because the land is still in the possession of the deceased (Rashid & Yaakub, 2010). This matter becomes even more serious when there is an overlap of heirs (*munasakhat*) and this complicates the process of Islamic estate administration (Salleh et al., 2017).

## CONCLUSION

Although there are some challenges in the implementation of the trust instrument, this matter needs to be given due attention by trust institutions in Malaysia. Also, the Muslim community needs to be made aware and understand the responsibility to implement property planning at an early stage. This is to avoid negative effects on the family institutions and the national economy, as highlighted in the preceding discussions. Based on the explanation of the concept of trust and its importance, the authors view that the trust instrument should be given greater importance. Thus, there is a need for a mechanism of innovation and to introduce Islamic products that combine the trust instrument with other products, such as the Hibah Amanah and Amanah Takaful products (Abdullah et al., 2020). The trust instrument, when combined with other Islamic instruments, has the potential to give property owners the freedom to plan and maintain an oversight of the property to be entrusted. It is hoped that the concept of trust applied today, along with the trust products offered can provide options to the community for a more systematic Islamic estate planning other than the will, Islamic inheritance, and gift.

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