

## IJMA

INTERNATIONAL JOURNAL  
OF MANAGEMENT  
APPLICATIONS*Islamic estate Planning and Management: Malaysian experience*Mohd Khairy Kamarudin<sup>1</sup> & Nasrul Hisyam Nor Muhamad<sup>2</sup><sup>1</sup>PhD Candidate, Faculty of Islamic Civilization, Universiti Teknologi Malaysia, and Lecturer, Faculty of Entrepreneurship and Business, Universiti Malaysia Kelantan<sup>2</sup>Senior Lecturer, Faculty of Islamic Civilization, Universiti Teknologi Malaysia

This is an open access article distributed under the Creative Commons Attribution License (CC BY 4.0) which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

<http://creativecommons.org/licenses/by/4.0/>

**Islamic estate Planning and Management: Malaysian experience**

Mohd Khairy Kamarudin &amp; Nasrul Hisyam Nor Muhamad

**ABSTRACT**

*This research explains Islamic estate planning and management for Muslim particularly in Malaysia. This research employs library research which refers to primary sources such as Al-Quran, Hadis and relevant enactments or acts, and secondary sources such as published journals, articles and proceedings related to hibah, wasiyyah and faraid. This study indicates that hibah giving is the first instrument in the estate planning components, followed by wasiyyah and faraid. Hibah is a voluntary gift giving of one or several subject matters to recipient(s) by owners of wealth during their lifetime without any consideration or return. From the legal perspective, there are no special laws or acts which are related to hibah in Malaysia. Meanwhile, wasiyyah is made during the lifetime of testators and the distribution of the estate to beneficiaries becomes effective only after their death. To date, only four states have special enactment related to wasiyyah which are Selangor, Negeri Sembilan, Melaka and Kelantan. Then, faraid is another Islamic inheritance distribution method to legal heirs after the death of a Muslim based on the Islamic law. Faraid jurisdiction is under the Syariah Court which is responsible to produce "Faraid Certificate". The differences among these three instruments can be seen from five aspects namely hukm of implementation, time of enforcement, amount of wealth or estate, recipients and time of making contract.*

**KEYWORDS:** Islamic inheritance law; Islamic estate instruments; Faraid, Wasiyyah; Hibah giving; Islamic Religious Administration

**1. INTRODUCTION**

Islamic estate planning is one of the crucial elements in the Islamic wealth planning and management. Wealth is one part of sustenance given by Allah to all mankind. Islam permits people to accumulate wealth as Allah said in Holy Qur'an, Surah Al-

Isra', verse 12 and Surah Al-Furqan, verse 47 which mean: ".....while the Sign of the Day We have made to enlighten you; that ye may seek bounty from your Lord.... (17:12)"

"And He it is Who makes the Night as a Robe for you, and Sleep as Repose, and makes the Day (as it were) a Resurrection. (25:47)"

At the same time, the acquired wealth must be spent on the right way as stated by Allah in Surah Al-Baqarah, verse 261 and 274 which mean:

"The parable of those who spend their substance in the way of Allah is that of a grain of corn: it groweth seven ears, and each ear hath a hundred grains. Allah giveth manifold increase to whom He pleaseth: And Allah careth for all and He knoweth all things. (2:261)"

"Those who (in charity) spend of their goods by night and by day, in secret and in public, have their reward with their Lord: on them shall be no fear, nor shall they grieve. (2:274)"

However, Allah prohibits Muslim in matters that harm themselves such as to waste or to use wealth excessively based on Surah Al-Isra', verse 26 and Surah Al-Furqan, verse 67 which mean:

"And render to the kindred their due rights, as (also) to those in want, and to the wayfarer: But squander not (your wealth) in the manner of a spendthrift. (17:26)"

"Those who, when they spend, are not extravagant and not niggardly, but hold a just (balance) between those (extremes) (25:67)"

Based on the understanding of these Allah's words, it can be concluded that Muslims need to seek livelihood in this world. Such a fortune can be in the forms of wealth or material possessions such as income (salary and commission), vehicles and residence. Nevertheless, the wealth must be acquired in a lawful way and not contrary to the Islamic law (Shar'ah). At the same token, Islam encourages Muslims to spend and donate their wealth in the path of Islam. Allah also provides guidance not to spend the wealth in wasteful, miserable or stingy ways. Once the wealth has been accumulated, it is necessary for Muslims to inherit their wealth after their death according to the inheritance system. However, in Malaysia, it is estimated that the amount of unclaimed or frozen estate is at the critical level. Statistics from year to year shows a significant increasing trend. Up to 2014, the total amount of unclaimed or frozen inheritance estate is approximately RM52 billion (Sabirin, 2014). Then, in 2016, the amount increases to RM60 billion (Aziz, 2016). There are various factors that contribute to this phenomenon which can be classified into three, namely heirs factor, wealth owners factor and legal factor. From the viewpoint of heirs factor, it is the difficulty of heirs to get accurate information in the estate claiming process, the absence of relevant estate documents and to some heirs because of their indifference to estate matters (Abdul Rashid, Hassan, & Yaakub, 2014; Md Azmi & Mohammad, 2015; Mujani, Wan Hussain, Yaakub, & Abdul Rashid, 2011a; Zulkafli & Ahmad, 2016). Meanwhile, for the wealth owner factor, he/she does not keep proper important documents for the purpose of future estate inheritance claiming. In fact, some of them are lacking awareness about the estate planning as they think it is unnecessary because Islam has its own system of inheritance called as faraid system (Md Azmi & Mohammad, 2015; Mujani et al., 2011a; Nordin, Ismail, Abd Rahman, Haron, & Abdullah, 2016; Zulkafli & Ahmad, 2016). At the same time, there is confusion of identifying appropriate jurisdiction among members of the community for claiming the estate. This is due to jurisdiction separation between the Federal and State government in Malaysia. For Muslims, the estate inheritance is referred to List II (1), List of States and List I (4) (e) (i), Federal List, Ninth Schedule, Malaysia Federal Constitution. As a result, the process of estate inheritance becomes complicated, takes lengthy and costly procedures (Md Azmi & Mohammad, 2015; Mujani, Rashid, Wan Hussain, & Yaakub, 2012; Mujani et al., 2011a; Nordin et al., 2016; Samori, Khalid, Yaakob, Harun, & Abdul Hamid, 2016; Zulkafli & Ahmad, 2016). For Muslims, the estate that is left behind after death is subjected to faraid distribution. However, Islam permits Muslim to plan the estate division during their lifetime (Mujani et al., 2011a). Several instruments that are often debated among academicians and practitioners are the encouragement to prepare wasiyyah or will (Islamic bequest) (Ghul, Yahya, & Abdullah, 2015; Kamaruddin & Ahmad, 2012; Nor Muhamad, 2017; Roshaimizam & Sulong, 2014; Zaitun, Al Harbi, Al Hudayr, & Duweik, 2013) and hibah or gift giving during the lifetime of wealth owners (Abdul Rashid et al., 2014; Kasim & Ab Rashid, 2015; Nor Muhamad, 2011b; Nordin et al., 2016). Hence, the need of faraid distribution should also be emphasized so that wealth owners will plan their estate accordingly in line to their needs. This study aims to explain the several potential instruments in the Islamic estate planning for Muslims particularly in Malaysia. This study employs library research with focus references to the primary sources of Al-Quran, Hadith and relevant Malaysian Acts, and secondary sources like published journal articles and proceedings which are related to hibah giving, wasiyyah and faraid.

## 2. COMPONENTS OF INHERITANCE ESTATE IN MALAYSIA

Prior to inheritance estate being distributed to legal heirs or beneficiaries through faraid system, legal heirs are responsible to sort the estate into some components (Sabirin, 2009). The first component is that legal heirs are responsible to isolate the estate that have been gifted (hibah), trusted (amanah) or endowed (waqf). These types of estate do not belong to the deceased and must be separated from the total estate that needs to be distributed. Then, the balance from the estate should be spent for funeral and mortuary expenses (purchases of shrouds, payment for bath, digging of graves and corpses). The estate is also subjected to debt which is divided into two categories. The first category is debt to Allah which includes zakah (obligatory charity), nazar (vows), fidyah and hajj (pilgrimage to Mecca). While, the second category is debt to mankind which includes loan from financial institutions and debt to friends. After that, the estate is distributed according to Islamic wasiyyah

which is subjected to 1/3 from the estate balance to non-legal heirs if the deceased has prepared will and claims for matrimonial property (*harta sepencarian*). Then, the remaining balance of the estate will be distributed to the right legal heirs according to *faraid* (Alma'amun, 2010; Wan Harun, 2013). Figure 1 is a summary of the components in the inheritance estate in Malaysia.

Figure 1: Components of inheritance estate in Malaysia



### 3. CONCEPT OF HIBAH / GIFT GIVING

Hibah is one of the Islamic transaction (*muamalah*) that has been widely debated whether in the estate and financial planning (Mohd Yusof & Ahmad, 2013), risk management (Md Razak et al., 2015) and its application in financial institutions (Nor Muhamad, 2010). Hibah is a gift giving done voluntarily to one or several subject matters to recipient(s) by owners of wealth during their lifetime without any consideration or return (Nor Muhamad, 2011a). The basic of implementing hibah giving is based on Allah saying in Surah An-Nisa', verse 4 which means:

“And give the women (on marriage) their dower as a free gift; but if they, of their own good pleasure, remit any part of it to you, Take it and enjoy it with right good cheer. (4:4)”

At the same time, hibah giving is also encouraged to be given to the closest family members as a symbol of affection (Buang, 2009; Nor Muhamad, 2009) as Allah said in Surah Al-Baqarah, verse 177 which means:

“.....to spend of your substance, out of love for Him, for your kin, for orphans, for the needy, for the wayfarer, for those who ask.... (2:177)”

Additionally, Prophet Muhammad also said as narrated by Abu Hurayrah (Al-Bukhari, n.d.) :

“Give gifts and you will love one another.”

There are three vital elements to ensure the validity of hibah giving, they are contracting parties, contract (*aqd*) and subject matters. The two contracting parties are donors (owners of wealth) and recipient(s). Donors must have the intention to give his/her wealth, capable of transferring the wealth and able to do the transaction (clear mind and wise in managing the wealth (*rusyd*)). Donors must be the absolute owners of the wealth. Hibah giving must be done willingly without any coercion or undue influence. However, if there are any elements of coercion and undue influence, the contract of hibah giving is void. Furthermore, recipients can be anyone either Muslims or non-Muslims, have the ability and capability to own and manage the wealth and be presence when the hibah giving contract is carried out. In terms of contract, there must be an offer (*ijab*) and an acceptance (*qabul*), have connectivity and similarity between offer and acceptance, donor and recipient(s) must understand the contents of the contract, no hanging condition (*ta'liq*), no changing of the first party before the second party, clear declaration of hibah giving (must be heard by other close party who are near to the contracting parties) and two parties remain qualified while making the contract and clear utterance by mentioning subject matters. Hibah giving contract also must not subjected to any conditions. Subject matters must be transferred physically, lawful, exist during contract is made, valuable, and legally owned (Abdul Rashid et al., 2014; Abdul Rashid & Yaakub, 2010; Azhar, 2017; Azhar, Hussain, Badarulzaman, & Mohd Noor, 2014; Md Yunos, 2015; Muda, 2009; Mujani et al., 2012; Nor Muhamad, 2011a). To ensure the practice of hibah giving goes smoothly, these matters must have law provision. Generally, hibah giving is subjected to the Ninth Schedule, List II, State List, Federal Constitution (Abdul Rashid & Yaakub, 2010; Md Yunos, 2015): “Except with respect to the Federal Territories of Kuala Lumpur and Labuan, Islamic law and personal and family law of persons professing the religion of Islam, including the Islamic law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy guardianship, gifts, partitions and non-charitable trusts; Wakafs and the definition and regulation of charitable and religious endowments, institutions, trusts, charities and charitable institutions operating wholly within the State; Malay customs. Zakat, Fitrah and Baitulmal or similar Islamic religious revenue, mosques

or any Islamic public places of worship, creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the Federal List; the constitution, organisation and procedure of Syariah courts, which shall have jurisdiction only over person professing the religion of Islam and in respect only of any of the matters included in this paragraph, but shall not have jurisdiction in respect of offences except in so far as conferred by federal law\*, the control of propagating doctrines and beliefs among persons professing the religion of Islam; the determination of matters of Islamic law and doctrine Malay custom.” The terms of ‘gifts’ in this provision is referred to hibah giving practices. This provision also indicates that any transaction regarding to gift giving is subjected to ‘Islamic Religious Administration’ for each state in Malaysia and Syariah Court jurisdiction (Azhar et al., 2014; Md Yunos, 2015). However, to date, there is no special provision related to hibah giving in Malaysia except the general provision which gives the jurisdiction to the Syariah Court to handle hibah giving cases based on Section 46(2)(b)(v) and (vi), Administration of Islamic Law (Federal Territories) Act 1993 (Act 505) (Abdul Rashid & Yaakub, 2010; Azhar et al., 2014; B. Ibrahim, 2017; Md Yunos, 2015; Nordin et al., 2016).

#### 4. CONCEPT OF WASIYYAH (ISLAMIC BEQUEST)

Wasiyyah is a contract that is made during lifetime of testators to distribute their estate to beneficiaries which is effective only after their death (Nor Muhamad, 2017). However, there are two main limitations in which wasiyyah is only for non-legal heirs and the total amount of wasiyyah is not more than 1/3 of the total estate. Besides that, legal heirs should not be named as recipients unless other heirs give their consent (Azhar et al., 2014; Isa, Othman, Azizan, & Mohd Daud, 2017; Md Yusof, 2009; Nor Muhamad, 2011b; Nordin et al., 2016; Ramli, 2013; Samori et al., 2016; Wan Harun, 2009).

Initially, it is compulsory for Muslims to leave wasiyyah based on Surah Al-Baqarah, verse 180 which means: “It is prescribed, when death approaches any of you, if he leave any goods that he make a bequest to parents and next of kin, according to reasonable usage; this is due from the Allah.fearing (2:180)” However, this law has been amended by Surah An-Nisa’, verse 11 and 12 which revealed faraid distribution (Nor Muhamad, 2012) and Prophet Muhammad’s Hadith narrated by Imam Ahmad, Abu Dawud and Ibn Majah (Al-Asqalani, 1995; Al-Shawkani, 1995) which means: “Allah, Mighty is His Name, has given every person who has rights his due, and there is no bequest to an heir.” Based on the consensus among Muslim scholars, wasiyyah has four main pillars namely testator, beneficiary(ies), subject matter(s) and contract (offer and acceptance) (Mohamed, Jusoh, Mohd Burhan, & Awang, 2017; Muda, 2009; Nor Muhamad, 2012). Conditions for testator are mukallaf (puberty and sensible), independent, owner of subject matters and done voluntarily. While for beneficiaries, they must be known, (except for charity wasiyyah), alive after the death of testator, capable to own and manage the estate, and only for non-legal heirs. For subject matter(s), it could be movable, immovable property or usufruct which is valuable in Islam, could be transferred after the death of testator and exist in the ownership of testator if the subject matters are specified or exist after the death of testator for unspecified subject matters. Offer and acceptance could be manifested (sarih) or symbolized (kinayah). Wasiyyah could be verbally such as, “I bequeath to you my property to .....” and written by themselves or through any agencies which provide written wasiyyah services (Hussain & Sulaiman, 2013; Kamaruddin & Ahmad, 2012). However testator is preferred to prepare wasiyyah through authorized agencies to ensure that wasiyyah can be enforced after the death of testator.

Generally, wasiyyah jurisdiction is subjected to the Ninth Schedule, List II, State List, Malaysian Federal Constitution. This indicates that the jurisdiction to amend and implement wasiyyah is the State Authorities. Each state in Malaysia has one provision that includes the Syariah Court jurisdiction related to wasiyyah through Islamic Religious Administration (in states that do not have any special statute provision of Syariah Court) and Syariah Court Statutes (Nor Muhamad, 2012, 2017) based on Section 46(2)(b)(viii) Administration of Islamic Law (Federal Territories) Act 1993 (Act 505). To date, there are one only four states in Malaysia that have special provision or enactment related to wasiyyah as illustrated in Table 1.

Table 1: States and related enactments regarding Wasiyyah

Negeri	Enactment(s)
Selangor	Muslims Wills Enactment (Selangor) 1999 (No.4/1999)
Negeri Sembilan	Muslims Wills Enactment (Negeri Sembilan) 2004 (No.5/2004)
Melaka	Muslims Wills Enactment (Negeri Melaka) 2005 (No.4/2005)
Kelantan	Muslims Wills Enactment (Negeri Kelantan) 2009

Resource(s): Mohamed, Jusoh, Mohd Burhan, & Awang, (2017) and Nor Muhamad, (2012, 2017)

#### 5. CONCEPTS OF FARAIID DISTRIBUTION

Islam has established a division method which must be inherited by heirs after the death of estate owners. Knowledge related to faraid is an important instrument in shaping Muslim society who are concerned and proactive to the Islamic economic development of the country (Hamidi, 2008). Faraid can be defined as Islamic inheritance distribution method to legal heirs after the death of a Muslim based on the Islamic law (Ab Aziz & Nordin, 2015). Faraid distribution stresses two main aspects, namely who are the legal heirs and the portion that will be inherited (Kamarudin & Abdullah, 2016).

Prophet Muhammad encourages Muslim to learn faraid based on Hadith which means (Al-Hakim, 1998): “Learn the Qur’an and teach it to the people, acquire the knowledge of faraid (laws of estate distribution) and teach it to the people, for I am a person who has to depart this world and the knowledge will be taken away and turmoil will appear to such an extent that two people will not agree in regard to a case of estate distribution and find none who would decide between them.” Prophet

Muhammad also stresses that all wealth that is left by the deceased should be divided as the heirs have the due rights as indicated in Hadith (Muslim, 1994): “Distribute the property amongst Ahl Al-Faraid, according to the Book of Allah, and what is left out of them goes to the nearest male heir.” Faraid distribution is compulsory as Allah stated in details in Surah An-Nisa’, verse 11 and 12 which means: “Allah (thus) directs you as regards your Children's (Inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased Left brothers (or sisters) the mother has a sixth. (The distribution in all cases (s) after the payment of legacies and debts. Ye know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by Allah. and Allah is All-knowing, All-wise. (4:11).” “In what your wives leave, your share is a half, if they leave no child; but if they leave a child, ye get a fourth; after payment of legacies and debts. In what ye leave, their share is a fourth, if ye leave no child; but if ye leave a child, they get an eighth; after payment of legacies and debts. If the man or woman whose inheritance is in question, has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third; after payment of legacies and debts; so that no loss is caused (to any one). Thus is it ordained by Allah. and Allah is All-knowing, Most Forbearing. (4:12).” Based on these verses, legal heirs can be divided into two categories, Asbah Al-Furud heirs and Asabah heirs. Heirs in Ashab Al-Furud are legal heirs who are entitled by Allah based on those verses. They are spouse (husband or wife(ves)), parents (mother and father) and daughter(s). While Asabah heirs are son(s) or any other male heirs (Abd Wahab, Ab Hamid, Che Man, & Nordin, 2017; Abdullah, Mohd Radzi, Johari, & Dastgir, 2014; Nik Hussain & Abdul Razak, 2014). However, this study only focuses on the deceased’s spouse, father, mother, daughter(s) and son(s) because these heirs are basic heirs in the faraid system and they are not overshadowed by other heirs (hijab). Table 2 explains heirs in Ashab Al-furud heirs, portions and conditions.

Table 2: Ashab Al-Furud heirs

Heirs	Portion	Condition(s)
Husband	1/2	Deceased has no children
	1/4	Deceased has children
Wife	1/4	Deceased has no children
	1/8	Deceased has children
Mother	1/6	Deceased has children or Deceased has two or more brothers or sisters (full, consanguine or uterine)
	1/3	Deceased has no children or Deceased only has one brother or sister
Father	1/6	Deceased has son(s) (one or more)
	1/6 + Asabah (balance)	Deceased only has daughter(s) (one or more)
Daughter	1/2	Deceased only has one daughter and no son.
	2/3	Deceased only has two or more daughters and no son.
	Asabah bi al-ghayr. Ratio 1:2 (Daughter(s) =1, Son(s) = 2)	Deceased has son(s) (together with daughter(s)).

Sources: Ismail, (2013), Mahad Musa & Hasbullah, (2015) dan Wan Harun, (2013)

For calculation method, this study provides an example in which the deceased has one wife, mother, father, daughter and son, one respectively. Right for fardhu rate for wife is 1/8 because the deceased has children. While, mother and father inherit 1/6 from total estate respectively. The total portion for these heirs is 11/24. The balance after deducting this portion (13/24), will be divided to the daughter and son through ratio 1:2 as according to Asabah bi Al-Ghayr distribution. Hence, the portion for the daughter is 13/72 and the son is 26/72 from the total estate. Table 3 illustrates the summary of the faraid calculation.

Table 3: Example of faraid calculation

Heir(s)	Fardhu rate	Shares	Recalculate (tashih)
Wife	1/8	1/8	9/72
Mother	1/6	1/6	12/72
Father	1/6	1/6	12/72
Daughter	Asabah bil al-ghayr (Daughter = 1, Son = 2)	13/72	13/72
Son		13/36	26/72

In Malaysian context, jurisdiction on faraid distribution is subjected to the Ninth Schedule, List II, State List, Malaysian Federal Constitution which provides that related matters to Muslim inheritance is under the State Jurisdiction. At the same time, Section 46(2)(b)(ix), Administration of Islamic Law (Federal Territories) Act 1993 (Act 505) states that jurisdiction related to Muslim inheritance is under the Syariah Court. In other words, Syariah Court is responsible to handle and decide any cases regarding to Muslim estate inheritance. Additionally, Section 50, gives the power to the Syariah Court to manage matters related to ‘Faraid Certificate’ (Sijil Faraid) (Disa, 2009; Halim & Arshad, 2014; Mohd Yusof & Ahmad, 2013; Noordin, Shuib, Zainol, & Mohamed Adil, 2011; Wan Harun, 2009). This certificate is applied to identify legal heirs and

their right portion, prior to submitting inheritance estate distribution application at the Small Estate Distribution Unit, Amanah Raya Berhad or High Court.

## 6. DIFFERENCES AMONG HIBAH, WASIYYAH AND FARAIID

This study underlines five main differences for these three Islamic estate planning instruments. They are hukm of implementation, time of enforcement, amount of estate, recipients and time of making the contract. Basically, hukm of implementation of faraid is compulsory because every heir has their own right from the estate. As for wasiyyah, 1/3 of the wealth is to non-legal heirs and hibah giving is recommended (mandub).

In terms of enforcement time, faraid and wasiyyah distribution will only be enforceable after the death of testators or estate owners. Accordingly, wasiyyah distribution must be enforced prior to faraid distribution. In contrast, hibah giving must be enforced during donor lifetime. If hibah giving is associated with death such as hibah giving based on maradhul mawut, this gift is subjected to wasiyyah rules. The amount of estate that should be distributed according to wasiyyah is less than 1/3 from the total estate after deducting funeral management expenses and the deceased's debt. Meanwhile, the amount of estate that will be distributed according to faraid is only 'net estate'. The formula of distribution is subjected to faraid distribution method. On the contrary, hibah giving is not subjected to the amount of estate because donors have the absolute right to the wealth, hence they are free to do any transactions without any limit during their lifetime. In faraid distribution, the recipients are legal heirs as stated by Allah in Surah An-Nisa', verse 11 and 12. Major legal heirs are spouse (husband and wife), mother, father, son(s) and daughter(s). However, recipients of wasiyyah must be non-legal heirs such as dhawi al-arham heirs, shielded heirs (hijab) especially for Compulsory Wasiyyah (Wasiat Wajibah), adopted children or any charity organizations. Hibah giving is not subjected to this rule. Donors are free to give their wealth to anyone either to legal heirs or non-legal heirs. For time of making contract, contract of wasiyyah and hibah giving must be done during testators or donors lifetime. This is because the owners need to plan their estate. However, faraid distribution will automatically apply after the death of the estate owners because Allah has stated about the legal heirs and how much portion they will inherit. Table 4 summarizes the differences among faraid, wasiyyah and hibah giving.

Table 4: Differences among faraid, wasiyyah and hibah giving

	<b>Faraid</b>	<b>Wasiyyah</b>	<b>Hibah</b>
Hukm of implementation	Compulsory (wajib)	Recommended (mandub)	Recommended (mandub)
Time of enforcement	After the death of owners	After the death of owners	During lifetime
Amount of wealth/estate	'Net estate' (after deducting other components)	1/3 from total wealth	No limitation
Recipients	Based on legal heirs	Non-legal heirs	Anyone
Time of making contract	Automatically after death of owners	During lifetime	During lifetime

## 7. CONCLUSION

This research aims to explain several instruments in the Muslim estate inheritance especially in Malaysia. The major instruments are hibah, wasiyyah and faraid. This study indicates that deceased's estate distribution is divided into six components, namely wealth that has been gifted, trusted or endowed during lifetime, funeral expenses, payment of debt to Allah and mankind, wasiyyah distribution, matrimonial wealth claiming and faraid distribution. Furthermore, hibah giving is recommended in Islam. Even though hibah giving is subjected to the 'Islamic Religious Administration' in each state, special enactment or act regarding to hibah giving has still not yet established. Meanwhile, wasiyyah only permits 1/3 from the estate and allows non-legal heirs only as recipients. To date, there are only four states have special enactment related to wasiyyah which are Selangor, Negeri Sembilan, Melaka and Kelantan. Finally, faraid distribution is the last instruments for 'net estate' distribution. Provision in Malaysia clearly states that estate distribution for Muslim is referred to faraid through 'Faraid Certificate' produced by Syariah Court. This study recommends other instruments in the Islamic estate planning such as waqf, trust and matrimonial property be explored in terms of hukm, dalil (evidence from Al-Quran and Hadith) and their jurisdiction in the Malaysian context.

## 8. REFERENCES

- [1] Ab Aziz, M. R., & Nordin, N. I. (2015). Perception towards planning of waqf, wasiyyah and faraid in Islamic wealth distribution : Malaysian perspective. *Journal of Scientific Research and Development*, 2(12), 13–18.
- [2] Abd Wahab, N. A., Ab Hamid, N., Che Man, N., & Nordin, R. (2017). Faraid dan hibah: Persediaan ke arah pencen hakiki. In *5th South East Asia International Islamic Philanthropy Conference 2017* (pp. 21–35).
- [3] Abdul Rashid, R., Hassan, S. A., & Yaakub, N. I. (2014). Gift inter vivos as an alternative method of property distribution for Muslim woman. *The Social Sciences*, 9(2), 126–128.
- [4] Abdul Rashid, R., & Yaakub, N. I. (2010). Hibah: Isu pindah milik dan pembatalan hibah hartanah di bawah Kanun Tanah Negara. *Syariah Law Reports*, 1, 14–29.
- [5] Abdullah, R., Mohd Radzi, W., Johari, F., & Dastgir, G. (2014). The Islamic legal provisions for women's share in the inheritance system: A reflection on Malaysian society. *Asian Women*, 30(1), 29–52.

- [6] Ahmad, K., & Zainol Abidin, A. P. (2017). Kedudukan dhawi al-arham di dalam sistem pembahagian pusaka Islam: Satu sorotan di Negeri Kedah Darul Aman. In *Persidangan Antarabangsa Sains Sosial & Kemanusiaan*. Bangi: Kolej Universiti Islam Malaysia.
- [7] Ahmad bin Ali bin Muhammad bin Hajar Al-Asqalani. (1995). *Talkhis al-habir fi takhrih ahadith al-rafi'i al-kabir*. Mu'asasah Qurtubah.
- [8] Al-Bukhari. (n.d.). *Al-adab al-mufrad*. Jamamizah: Maktabah Al-Adab wa Matba'atuha.
- [9] Alma'amun, S. (2010). Islamic estate planning: Malaysian experience. *Kyoto Bulletin of Islamic Area Studies*, 2(March), 165–185.
- [10] Azhar, A. (2017). *Praktis hibah di Malaysia*. Sintok: Penerbit UUM.
- [11] Azhar, A., Hussain, M. A., Badarulzaman, M. H., & Mohd Noor, F. (2014). Pengurusan harta dalam Islam: Perspektif hibah di Malaysia. *Journal of Human Development and Communication*, 3, 115–128.
- [12] Aziz, I. H. (2016, March 29). RM60b harta umat Islam tidak dituntut. *Berita Harian*. Retrieved from <http://www.bharian.com.my/node/138450>
- [13] Buang, A. H. (2009). Pengurusan harta keluarga mengikut Islam dan realiti semasa di Malaysia. *Jurnal Muamalat*, 2, 1–15.
- [14] Disa, M. N. (2009). Penyelarasan undang-undang pewarisan: Isu dan penyelesaiannya. *Jurnal Pengurusan JAWHAR*, 3(1), 189–215.
- [15] Ghul, Z. H., Yahya, M. H., & Abdullah, A. (2015). Wasiyyah (Islamic will) adoption and the barriers in Islamic inheritance distribution among Malaysian Muslims. *International Journal of Humanities Social Sciences and Education*, 2(1), 1–11.
- [16] Halim, A. H., & Arshad, A. (2014). Penentuan harta pusaka di Malaysia: Kajian dari perspektif undang-undang Civil dan Syariah. *Kanun*, 26(2), 153–172.
- [17] Hamidi, A. Z. (2008). Membangun ekonomi ummah menerusi instrumen faraid dan hibah. *Jurnal Muamalat*, 1, 1–8.
- [18] Hussain, F., & Sulaiman, S. (2013). "When I die I bequeath you,,,: Formalities as the legal protection against forgery and fraud in wills in Malaysia. In *The 5th International Conference on Financial Criminology* (pp. 281–286).
- [19] Ibrahim, B. (2017). Hibah (gift inter vivos) by parent in favour of some children to the exclusion of the others under Islamic law. *Arab Law Quarterly*, 31(1), 54–73.
- [20] Ibrahim, N., & Abd Ghadas, Z. A. (2014). Rights of future interest as Matrimonial Property: Sepcial referencce to earning capacity. *IJUM Law Journal*, 22, 249–265.
- [21] Isa, A., Othman, R., Azizan, N., & Mohd Daud, N. (2017). Factors inhibiting wasiyyah practice among Malay community. *International Journal of Management Research & Review*, 7(9), 926–932.
- [22] Ismail, A. (2013). *Islamic inheritance planning*. Kuala Lumpur: IBFIM.
- [23] Kamaruddin, K., & Ahmad, M. Y. (2012). Analisis kefahaman penulisan wasiat orang Islam di Negeri Melaka. *Islamiyyat*, 34(4), 71–82.
- [24] Kamarudin, M. K., & Abdullah, A. (2016). Amalan pembahagian faraid di malaysia. *Journal of Global Business and Social Entrepreneurship*, 2(3), 11–19.
- [25] Kasim, M., & Ab Rashid, R. (2015). Hibah as a tool of risk management in Islamic estate planning. In *Prosiding Seminar Hibah dalam Pengurusan Harta Islam 2015*. Sintok: Universiti Utara Malaysia.
- [26] Mahad Musa, Z. (2017). Kebajikan waris dhawi al-arham sebagai penerima harta pusaka dan cabaran perlaksanaannya di Malaysia. *Labuan E-Journal of Muamalat and Society*, 11, 39–50.
- [27] Mahad Musa, Z., & Hasbullah, M. (2015). *Faraid: Pembahagian pusaka dalam Islam*. Nilai: Penerbit USIM.
- [28] Md Azmi, F. A., & Mohammad, M. T. S. (2015). A proposal for a single tribunal of estates distribution in Malaysia. *Jurnal Teknologi*, 75(10), 103–109.
- [29] Md Razak, M. I., Norizan, N. S., Ruslan, A. F., Mohd Nor, K., Sakarji, S. R., & Ramlan, A. F. (2015). The awareness of hibah as a tool to reduce estate planning risk in Malaysia. *International Journal of Economcis, Commerce and Management*, 3(6), 1558–1565.
- [30] Md Yunos, A. R. (2015). Hibah dari perspektif aplikasi undang-undang Syariah di Malaysia. In *Prosiding Seminar Hibah dalam Pengurusan Harta Islam 2015*. Sintok: Universiti Utara Malaysia.
- [31] Md Yusof, N. (2009). Mekanisme dokumen wasiat Amanah Raya Berhad (ARB) dan aplikasi hibah ruqba: Satu analisis. *Kanun*, 21(3), 1–19.
- [32] Mohamed, A., Jusoh, M. K. A., Mohd Burhan, N., & Awang, M. D. (2017). Wasiat bersyarat: Analisis menurut hukum Syarak dan Enakmen Wasiat Orang Islam di Malaysia. In N. Lateh, M. R. Osman, & G. Din (Eds.), *Isu-isu Kontemporari dalam Zakat, Wakaf dan Filantropi Islam* (pp. 441–450). Shah Alam: Akademi Pengajian Islam Kontemporari (ACIS), Universiti Teknologi Mara.
- [33] Mohd Yusof, Y., & Ahmad, A. (2013). Hibah as an alternative mechanism in Muslims asset management: A study in Melaka Tengah. *South East Asia Journal of Contemporary Business, Economics and Law*, 3(3), 1–5.
- [34] Muda, M. Z. (2009). Instrumen hibah dan wasiat: Analisis hukum dan aplikasi di Malaysia. *Jurnal Pengurusan JAWHAR*, 3(1), 105–157.
- [35] Muda, M. Z., & Jusoh, M. S. (2005). Peruntukan undang-undang wasiat wajibah di Mesir dan Selangor: Kajian perbandingan. *Islamiyyat*, 27(2), 3–23.
- [36] Muhammad bin Abdillah Al-Hakim. (1998). *Al-mustadrak ala al-shahihayn*. Beirut: Dar Al-Ma'rifah.

- [37] Muhammad bin Ismail bin Muhammad Al-Shawkani. (1995). *Nayl al-awtar*. Al-Mansurah: Maktabat Al-Iman.
- [38] Mujani, W. K., Rashid, R. A., Wan Hussain, W. M. H., & Yaakub, N. I. (2012). Gift inter vivos for charged property. *The Social Sciences*, 7(2), 196–199.
- [39] Mujani, W. K., Wan Hussain, W. M. H., Yaakub, N. I., & Abdul Rashid, R. (2011a). Constructions of failure ad delay under Islamic estate management. *International Business Management*, 5(6), 326–330.
- [40] Mujani, W. K., Wan Hussain, W. M. H., Yaakub, N. I., & Abdul Rashid, R. (2011b). The concept of law of gift inter vivos under Islamic law and the contracts act, 1950. *International Business Management*.
- [41] Muslim bin Al-Hajjaj. (1994). *Al-musnad al-sahih*. Beirut: Dar Al-Khayr.
- [42] Nik Hussain, N. F., & Abdul Razak, S. H. (2014). The importance of rules of inheritance (fara'id) in a Muslim's society estate planning. *Journal of Islamic Banking and Finance*, Jan-March, 11–34.
- [43] Noordin, N., Shuib, A., Zainol, M. S., & Mohamed Adil, M. A. (2011). Problem to petition rights to the Islamic inheritance - Practical solution found elsewhere than the legal system of Malaysia. *PERINTIS E-Journal*, 1(December), 44–60.
- [44] Nor Muhamad, N. H. (2009). Elemen qabd (pindah milikan) dalam hibah: Analisis terhadap keperluan dan pelaksanaannya mengikut perspektif undang-undang Islam. *Jurnal Syariah*, 17(2), 243–266.
- [45] Nor Muhamad, N. H. (2010). Pemakaian prinsip hibah dalam sistem kewangan Islam di Malaysia: Tumpuan kepada industri perbankan Islam dan Takaful. *Jurnal Teknologi*, 52, 69–81.
- [46] Nor Muhamad, N. H. (2011a). Hibah dalam undang-undang Islam: Prinsip & amalan. Skudai: Penerbit UTM.
- [47] Nor Muhamad, N. H. (2011b). Penyelesaian pindah milik harta bercagar di institusi kewangan: Dari perspektif undang-undang Islam. *Kanun*, 2, 180–208.
- [48] Nor Muhamad, N. H. (2012). Wasiat & Wisayah dalam perancangan harta: Prinsip dan amalan. Johor Bharu: Universiti Teknologi Malaysia.
- [49] Nor Muhamad, N. H. (2017). Wasiat sebagai instrumen perancangan harta Islam: Prosedur dan pelaksanaan. *Jurnal Hadhari*, 9(1), 17–32.
- [50] Nordin, N. H., Ismail, M. I., Abd Rahman, M. A. H., Haron, S. N., & Abdullah, A. (2016). Re-evaluating the practice of hibah trust in Malaysia. *Humanomics*, 32(4), 418–436.
- [51] Ramli, Y. (2013). Wisayah: Kepentingannya dalam pengurusan harta dan keluarga orang Islam. In *Seminar Serantau Kajian Manuskrip Melayu dan Kearifan Tempatan* (pp. 217–222).
- [52] Roshaimizam, S., & Sulong, J. (2014). Konsep A'Addah dalam pengurusan pindahmilik harta pusaka. *ESTEEM Academic Journal*, 10(2), 44–55.
- [53] Sabirin, A. (2009). Instrumen perancangan harta bagi saudara baru. In *Bengkel Wasiat dan Harta Pusaka* (pp. 1–8). Kuala Lumpur: Pertubuhan Kebajikan Islam Malaysia (PERKIM).
- [54] Sabirin, A. (2014, January 20). Umat Islam rugi berbilion ringgit kerana harta pusaka. *Utusan Malaysia*. Retrieved from [http://ww1.utusan.com.my/utusan/Ekonomi/20140120/ek\\_04/Umat-Islam-rugi-berbilion-ringgit-kerana-harta-pusaka](http://ww1.utusan.com.my/utusan/Ekonomi/20140120/ek_04/Umat-Islam-rugi-berbilion-ringgit-kerana-harta-pusaka)
- [55] Sahari, N. H., Mohd Zin, N., Ibrahim, N., & Saidon, R. (2015). The effectiveness of sulh on matrimonial asset division after death of spouse. *Pertanika Journal of Social Sciences and Humanities*, 23(S), 141–152.
- [56] Samori, Z., Khalid, M. M., Yaakob, M. A. Z., Harun, H. M. F., & Abdul Hamid, N. (2016). Towards managing the beneficiaries rights via writing a will. *Global Journal of Management and Business Research: G Interdisciplinary*, 3(1), 23–29.
- [57] Sitoris, M., & Halim, A. H. (2010). Tuntutan harta sepencarian dalam kes kematian. *Kanun*, 22(1), 26–46.
- [58] Wan Harun, W. A. H. (2009). Isu-isu Pembahagian Harta Pusaka Orang Islam Dalam Konteks Perundangan Malaysia. *Jurnal Pengurusan JAWHAR*, 3(1), 159–187.
- [59] Wan Harun, W. A. H. (2013). *Pengurusan dan pembahagian harta pusaka*. Kuala Lumpur: Dewan Bahasa dan Pustaka.
- [60] Zaitun, A. B., Al Harbi, N., Al Hudayr, H., & Duweik, G. (2013). e-Wasiyah : A Solution for wealth management after death. *International Journal Of Information System and Engineering(IJSE)*, 1(1), 81–87.
- [61] Zulkafli, B. N. A., & Ahmad, M. Y. (2016). Kekangan dan penyelesaian kelewatan pengurusan aset pusaka tak alih orang Islam di Malaysia. *Islamiyyat*, 38(1), 53–63.

## 9. HEAD NOTES

- [1] Muslim's Holy Book
- [2] Prophet Muhammad's words, actions and confession.
- [3] If the deceased own wealth that has been in sufficient time (*haul*) (one year of *hijrah* (Muslim calendar based on lunar system)) and exceed the minimum amount of taxable wealth (*nisab*). *Zakah* must be paid by the heirs using the deceased's estate.
- [4] If the deceased vowed, but could not fulfil it, legal heirs would have to pay the votage using the deceased's estate.
- [5] If the deceased does not make up the fasting which is in Ramadhan (fasting month for Muslims) due to illness or death, legal heirs must pay the *fidyah* using the deceased's estate.
- [6] If the deceased is unable to perform *hajj* during his/her lifetime, legal heirs must pay an individual to perform *hajj* on the behalf of the deceased using the deceased's estate.



- [7] Matrimonial wealth or 'harta sepencarian' is a property that is acquired together directly or indirectly by husband and wife during their legal marriage period (N. Ibrahim & Abd Ghadas, 2014; Sahari, Mohd Zin, Ibrahim, & Saidon, 2015; Sitis & Halim, 2010).
- [8] Full brothers or consanguine brothers.
- [9] Hibah giving during the critical illness of donors will be considered as wasiyyah (Azhar et al., 2014; Mujani, Wan Hussain, Yaakub, & Abdul Rashid, 2011b; Nor Muhamad, 2011a, 2011b)
- [10] Dhawi al-arham heirs are deceased's family members who do not inherit any estate based on Al-Quran and Hadith. In other words, heirs other than Ashab Al-Furud heirs and Asabah heirs. Examples of dhawi al-arham heirs are grandchildren from daughters and grandfather from mother and children from full sisters. Normally, there is a female heir between the deceased and these type of heirs. In Malaysian context, these heirs cannot inherit any deceased's estate according to Syafie's school of thought (Ahmad & Zainol Abidin, 2017; Mahad Musa, 2017).(Ahmad & Zainol Abidin, 2017; Mahad Musa, 2017)(Mahad Musa 2017; Ahmad and Zainol Abidin 2017)
- [11] Compulsory Wasiyyah allows grandchildren whose father or mother pass away prior to their grandparents to inherit their grandparent's estate. Basically they do not inherit any wealth from their grandparents as shielded by their living uncle(s) or aunt(s) (Muda & Jusoh, 2005)(Muda & Jusoh, 2005)(Muda and Jusoh 2005)(Muda & Jusoh, 2005)(Muda & Jusoh, 2005).
- [12] Adopted children do not inherit from their adopted parents (Nor Muhamad, 2017)

