AN EXAMINATION OF THE LEGAL FRAMEWORK GOVERNING MUSLIM ESTATE PLANNING IN MALAYSIA

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ABSTRACT

Muslim estate planning in Malaysia is governed by a dual legal framework in which Islamic law operates alongside civil laws relating to property, probate, trusts, and land administration. While this framework offers various mechanisms for wealth distribution, it has also created legal and administrative fragmentation arising from overlapping jurisdictions, institutional complexities, and inconsistencies between federal and state regulatory frameworks. Such fragmentation has contributed to delays in estate administration, uncertainty in legal procedures, and the increasing accumulation of undistributed Muslim estates. This study aims to examine the nature of legal and administrative fragmentation in Muslim estate planning in Malaysia and to evaluate the role of

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estate planning instruments in promoting greater harmonisation between civil and Shariah legal frameworks. The study adopts a qualitative doctrinal legal research methodology through the analysis of statutes and state enactments. The collected data were analysed using descriptive and thematic content analysis. The findings indicate that fragmentation primarily stems from the division of jurisdiction between federal authorities and state Islamic institutions, The study finds that legal and administrative fragmentation in the regulation of hibah, wasiyyah, waqf, and Islamic trust continues to pose challenges to effective Muslim estate planning in Malaysia, highlighting the need for greater legal harmonisation and institutional coordination in line with SDG 16 (Peace, Justice and Strong Institutions).

Keywords: *Muslim estate planning; hibah, wasiyyah, Islamic trust (amanah), waqf, Legal, Malaysia*

INTRODUCTION

Estate planning for Muslims in Malaysia is governed by a complex interaction between Islamic law and civil statutory frameworks. Unlike jurisdictions where Islamic property law exists as a fully codified body of legislation, Malaysia utilises a fragmented structure in which succession, Islamic wills, trusts, *hibah*, and waqf must comply simultaneously with state-level Islamic enactments and federal civil laws. This duality reflects Malaysia's constitutional allocation of powers, where Islamic law falls under State jurisdiction, while land, taxation, financial instruments, and probate administration fall under Federal authority. The overlap has stimulated continuous academic and professional debate due to the absence of a comprehensive statute dedicated exclusively to Islamic property law, resulting in non-uniform application across states, procedural overlap between Syariah and civil courts, and inconsistent outcomes in the administration and distribution of Muslim estates (Siti Mashitoh Mahamood et.al, 2006; Ahmad Hidayat Buang et. al, 2007; Md Yazid Ahmad et. al., 2006; Mohd Ridzuan Awang, 2006).

The findings reveal that estate administration in Malaysia involves multiple authorities with distinct jurisdictions and legal frameworks. Accordingly, Muslims should be aware of the respective jurisdiction of each authority to ensure that estate matters are administered through the appropriate legal channels. In the case of Muslim estates, effective coordination between civil

institutions and the Syariah Court remains essential due to the dual legal system practiced in Malaysia (Muhammad Amrullah et.al, 2023).

Although Malaysia recognises various Islamic estate planning instruments such as *hibah* (inter vivos gift), *wasiyyah* (Islamic will), Islamic trust (*amanah*), and waqf their enforceability remains constrained by multiple legislative regimes and competing jurisdictions. The situation is further complicated by contemporary asset types, including corporate shares, trust investments, insurance benefits, and federally regulated retirement schemes, which fall outside exclusive State religious control. Existing scholarship has heavily focused on doctrinal discussions of *faraid* distribution but has not adequately explored how Malaysia's fragmented legal environment influences the practical implementation of pre-death planning instruments, particularly in modern financial and property markets. As a result, a significant research gap remains in integrating Shariah-based estate planning mechanisms with enforceable civil statutory frameworks.

To address these concerns, this chapter examines the legal position of Muslim estate planning in Malaysia by analysing the regulatory framework governing *hibah*, Islamic wills, waqf, and Islamic trusts. The discussion integrates historical development, Shariah principles, and relevant civil laws such as the National Land Code (Revised 2020) (Act 828), Probate and Administration Act 1959 (Act 97), Small Estates (Distribution) Act 1955 (Act 98) and Trustee Act 1949 (Act 208), which intersect with State Islamic Enactments. By mapping these intersections, the chapter seeks to clarify the legal status of these instruments, highlight areas of jurisdictional conflict, and propose harmonisation pathways that strengthen governance while safeguarding Muslim wealth (*ḥifẓ al-māl*) and heirs' rights in line with the objectives of Islamic law (*maqāṣid al-Sharīʿah*).

OVERVIEW OF THE HISTORICAL DEVELOPMENT OF ISLAMIC ESTATE PLANNING IN MALAYSIA

In Malaysia, customary law is one of the recognised sources of law which was in force and applied before the arrival of the British in the Malay Peninsula (Salleh Buang, 1995). Malay customary law, whether influenced by the teachings of Islam or otherwise, is said to form the basis of law for the Malay states (Zaini Nasohah, 2004). In the case of *Shaik Abdul Latif & Ors v Shaik Elias Bux (1915) 1 FMSLR 204*, Justice Braddell C.J.C in his judgment stated: "before the first treaties, the inhabitants of these states consisted almost entirely of Muslim Malays together with Chinese miners and planters. The only law

applicable to the Malays was Islamic law as modified by local customs". A similar statement was made in the judgment of *Ramah v Laton (1927) 6 FMSLR 128*. where the Court of Appeal of the Federated Malay States held that local law and Islamic law were not foreign laws but were the local and national law. This customary law continued until the arrival of Islam in the Malay Peninsula, which was based on the Shafi'i school of law (Pawancheek Marican, 2004). The influence of the Shafi'i school can be traced based on the contents of Malay manuscripts (Mahmood Zuhdi Abdul Majid et. al., 1987; Jasni Sulong, 2005; Abdul Monir Yaacob, 1999) such as the writings of Nur al-Din al-Raniri in *Sirat al-Mustaqim* and Dawud al-Fatani in *Ghayat al-Taqrib fi Irth wa Ta'sib* (Abdul Rahman Hj Abdullah, 1990; Pawancheek Marican, 2004).

The law relating to the distribution of property for Malay Muslims followed custom (Pawencheek Marican, 2004; Ahmad Ibrahim, 1999). There were two main customs that influenced the practices of Malay society, particularly in relation to property, namely *adat perpatih* (matrilineal) and *adat temenggung* (patrilineal) (M. B Hooker, 1976); Pawencheek Marican, 2004; Othman Ishak, 1997; Ahmad Ibrahim, 1999). Before the arrival of the British in the Malay Peninsula, the law of the Malays regarding property in Negeri Sembilan was based on *adat perpatih* which originated from Minangkabau, whereas in the other states it was based on *adat temenggung* brought from Palembang (Ahmad Ibrahim, 1999; Pawencheek Marican, 2004). Questions concerning property that arose at the beginning were more focused on inheritance through *pusaka* (M. B Hooker, 1976).

Matters concerning property and inheritance were previously rarely disputed between a woman and her children and among the heirs to the estate. This was because, as a rule, they were settled by mutual agreement and based on the arrangements made. The coming of Islam meant that the application of Islamic law was widely followed by the Land Revenue Collectors and the courts in matters of inheritance, except in relation to the specific rights of husband and wife (Ahmad Ibrahim, 1999). In short, in all the states in Peninsular Malaysia except parts of Negeri Sembilan and Melaka where adat perpatih is applied, the rules of Islamic inheritance law have been followed subject to certain modifications in the Malay states (Ahmad Ibrahim, 1999).

Generally, when discussing the implementation of Islamic law in Malaysia, the application of the Melaka Laws cannot be separated from the discussion. Looking at the four main provisions in the Melaka Laws, there is found to be no specific provision on the aspect of the property of Muslims. What exists concerns Islamic family law, Islamic commercial law, the law of evidence in Islam and Islamic criminal law, which as a whole comprise 44 sections (Ahmad Ibrahim, 1990). The position and development of the law in Melaka

was in no way different from the position and development of the law in the other Malay states. Similar provisions can be observed in the Pahang Laws, the Kedah Laws, the Ninety-Nine Laws of Perak, and the laws in Terengganu and Kelantan (Zaini Nasohah, 2004).

However, in Johor, there existed laws relating to the property of Muslims compared to the other states at that time, as the *Majallah Ahkam Johor* was introduced during the reign of Sultan Ibrahim. The drafting of the *Majallah Ahkam Johor* was not based on the laws of Melaka but instead referred to the *Majallah al-Ahkam al-'Adliyyah*. The *Majallah al-Ahkam al-'Adliyyah* was a compilation of Islamic civil laws enacted in Turkey and later translated into Malay and recognised as the law to be followed in the Johor courts in 1914 (Ridzuan Awang, 1994; Ahmad Hidayat Buang, 1993, Abdul Jalil Borhan, 1993). Among its contents which touch on the property of Muslims in the *Majallah Ahkam Johor* are provisions relating to trusts and *hibah* (inter vivos gifts) (Md. Akhir Haji Yaacob, 2002).

The arrival of colonial powers, particularly the British, in the Malay Peninsula had a significant influence and impact on the position and development of the legal system in the Malay Peninsula up to the present day (Hamid Jusoh, 1995). One of the effects of the arrival of the British, especially in the Straits Settlements, was that the implementation of Islamic law was limited to matters of marriage, divorce, inheritance and certain acts of worship only, and this was compounded by the formal introduction of civil law enactments in 1937 (Hamid Jusoh, 1995).. The scope for the implementation of Islamic law became narrow and was interfered with by the British, as can be seen in the case of *In The Goods of Abdullah (1885) 2 Ky. Ecc. Rs. 8* where English law was applied to validate a will disposing of the testator's entire estate. In matters of inheritance, however, Islamic law was applied as in the cases of *Shaik Abdul Latif v Shaik Elias Bux I FMSLR 204*., *Re Ismail bin Rentah 9 MLJ 98* and *Siti v Mohamad Noor 6 FMSLR 135*. Conversely, in waqf cases, the application of English law principles was also adopted, such as the rules against perpetuities, as can be seen in the case of *Re Hj Ismail bin Kassim 12 SSLR 74*.

In the period before the restructuring of Islamic laws in the states of Malaysia, which began in the late 1970s, the need to introduce specific property laws was not so apparent as at that time all such matters were contained in a single enactment, namely the Administration/Islamic Law Enactment of each state. However, as a result of the restructuring, the enactments were separated and dedicated enactments were introduced for family matters, criminal law, court administration, rules of evidence and the administration of Islamic law. In practice, matters relating to property as mentioned above are now placed

under the state Islamic law administration enactments. In 1911, Johor enforced a waqf law known as the Waqf Enactment 1911 with the aim of protecting waqf land from any form of dealings. When the states in Malaysia began enforcing Islamic law administration statutes, all matters, especially those relating to property, were consolidated as part of those laws. After the Federation of Malaya gained independence, Islamic law was administered in the Shariah Courts based on the Islamic law administration enactments. Selangor was the first state to enact a law on the administration of Islamic law, in 1952, followed by other states (Mahamad Arifin, 2007). Provisions relating to property were initially found in the Islamic religion administration enactments of each state.[1]

It may be concluded that the basis of property law for Muslims is custom. Before the British colonial period in the Malay Peninsula, the law governing property for Malays was through the application of Adat Perpatih, while in the other states of the Malay Peninsula Adat Temenggung was practiced. Islamic law on inheritance was widely applied by the Land Revenue Collectors and the Shariah Courts, to the extent that it may be said that the law relating to inheritance applied to Muslims was Islamic law (Mahamad Naser Disa, 2009). Accordingly, in all the states in Peninsular Malaysia except Negeri Sembilan and parts of Melaka, where Adat Perpatih is still used in the context of the distribution of property in relation to customary land, the principles of Islamic inheritance law were followed, although subject to modifications in the other Malay states. One example of the principle of Islamic law that non-Muslims are not entitled to a share of inheritance was applied in the case of *Re Timah binti Abdullah [1941] MLJ 51*, where it was held that the non-Muslim heirs of a Japanese woman who had embraced Islam could not inherit the deceased's property (Ahmad Ibrahim, 1999). Therefore, the development of the law relating to land ownership, the power to administer wills and inheritance in Malaysia and Singapore is closely related to the history of early law when

[1] Administration of Muslim Law Enactment (Selangor) 1952; Administration of the Religion of Islam Enactment (Malacca) 1959; Administration of Islamic Religion Law (Penang) 1959; Administration of Islamic Law Enactment (Perlis) 1964; Administration of the Religion of Islam Law (Perak) 1965; Council of the Religion of Islam and Malay Customs Law (Kelantan) 1966; Administration of Muslim Law Act (Federal Territories) 1974; Council of Islam (Incorporation) Ordinance (Sarawak) 1977; Administration of Islamic Law Enactment (Kedah) 1978; Administration of the Religion of Islam Enactment (Johor) 1978; Administration of the Religion of Islam and Malay Customs Enactment (Pahang) 1982; Administration of Islamic Religious Affairs Enactment (Terengganu) 1986; Administration of Muslim Law Enactment (Negeri Sembilan) 1991; and Administration of Islamic Law Enactment (Sabah) 1992.

English law began to spread widely in the Federated Malay States and the Unfederated Malay States (Mahinder Singh Sidhu, 2005).

The historical development of Islamic property law reflects a long-standing legal tradition governing ownership, inheritance, *hibah*, Islamic Wills, waqf, and wealth management based on the Qur'an, Sunnah, and juristic interpretations. In Malaysia, these principles were introduced through the spread of Islam and became embedded within the legal and administrative structures of the Malay Sultanates. Despite the influence of British colonial rule and the introduction of civil laws relating to land, trusts, and estate administration, Islamic inheritance law remained applicable to Muslims and continues to be recognised under the Federal Constitution through state jurisdiction over Islamic law. This historical evolution has shaped Malaysia's contemporary dual legal framework, where civil and Shariah laws coexist in the administration of Muslim estates, providing the foundation for modern estate planning instruments such *as hibah*, Islamic wills, and waqf while also giving rise to ongoing challenges in legal and administrative harmonisation.

FEDERAL AND STATE POWERS IN THE MUSLIM ESTATE PLANNING

Malaysia is a country that practises a system of parliamentary democracy (Malek Shah Hj Mohd Yusoff et al., 2006). Any law that is passed and is inconsistent with the Federal Constitution shall be void.[2] The Federal Constitution confers extensive powers on the Federal Government in relation to the administration of the country; however, in certain aspects, the State Governments also have powers to make provisions in areas within state jurisdiction. This shows that the State Governments also play an important role in administering their respective states. The division of powers between the Federal Government and the State Governments is based on Articles 74 and 80 together with the Ninth Schedule of the Federal Constitution. Article 74(1) provides that Parliament may make laws with respect to any of the matters enumerated in the Federal List (List I) and the Concurrent List (List III) in the Ninth Schedule. Meanwhile, under Article 74(2), the State Legislature, known as the State Legislative Assembly, may make laws with respect to any of the matters enumerated in the State List (List II) or the Concurrent List (List III) as contained in the Ninth Schedule. In brief, the Federal List contains 28 matters covering external affairs, defence, internal security, civil and criminal law and procedure and the administration of justice, finance, trade, industry and education. The State List comprises 13

[2] Article 4(1) of the Federal Constitution.

matters such as affairs relating to Islamic law and personal and family law of persons professing the religion of Islam, land and local government. A review of the Federal List shows that the powers of the State Governments are limited as compared to those of the Federal Government.

The exclusive right of the State Governments to enact Islamic laws is provided in Item 1 of the State List (List II) of the Ninth Schedule, which must be read together with Article 74(2). As a result of these provisions, the State Governments may only enact Islamic laws that have effect within their respective states. The matters referred to as Islamic law in the context of the Federal Constitution are:

> *"Except with respect to the Federal Territories of Kuala Lumpur, Putrajaya and Labuan, Islamic law and personal and family law of persons professing the religion of Islam, including Islamic law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, partitions and non-charitable trusts, waqf and the definition and regulation of charitable and religious trusts, the appointment of trustees and the incorporation of persons in respect of Islamic religious and charitable endowments…"*

The State Legislature has the power to enact matters concerning Islamic law as provided in List II, State List, of the Federal Constitution. By virtue of this power, laws have been enacted concerning the property of Muslims either directly under specific statutes or under the Islamic religion administration enactments of each state. For example, as a result of this power, several specific laws relating to the property of Muslims have been enacted in Malaysia, such as the Waqf Enactment of Selangor[3], the Waqf Enactment of Negeri Sembilan[4], the Waqf Enactment of Melaka[5], the Islamic Wills Enactment of Selangor[6], the Islamic Wills Enactment of Melaka[7], and the Islamic Wills Enactment of Negeri Sembilan[8].

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3 Waqf Enactment (State of Selangor) 1999 [Enactment No. 7 of 1999].

4 Waqf Enactment (Negeri Sembilan) 2005 [Enactment No. 5 of 2005].

5 Waqf Enactment (State of Malacca) 2005 [Enactment No. 5/2005].

6 Muslim Wills Enactment (Selangor) 1999 [Enactment No. 4/1999]

7 Muslim Wills Enactment (State of Malacca) 2005 [Enactment No. 4/2005].

8 Muslim Wills Enactment (Negeri Sembilan) 2004 [Enactment No. 5/2004].

LAWS GOVERNING INSTRUMENTS FOR THE DISTRIBUTION OF MUSLIM ESTATE PLANNING

A proper understanding of the Islamic inheritance system is essential in the context of Muslim estate planning. The distribution of a deceased Muslim's estate is principally governed by faraid, a divinely prescribed mechanism derived from the Qur'an that determines the shares of eligible heirs. The rules of inheritance are discussed within the discipline of *ʿilm al-faraid*, which constitutes a fundamental branch of Islamic jurisprudence concerned with the allocation of inheritance rights. Nevertheless, effective estate planning in Islam extends beyond the application of faraid. While faraid regulates the distribution of assets upon death, Muslims are also encouraged to undertake proactive measures during their lifetime to ensure the orderly management, preservation, and transfer of wealth in accordance with Shariah principles. In addition, the administration and distribution of estates often involve various legal and administrative procedures requiring engagement with multiple institutions, which may contribute to delays in the settlement process (Azi Haslin Abdul Rahman et.al, 2020).

Consequently, Islamic estate planning encompasses not only inheritance distribution but also a range of complementary instruments designed to facilitate wealth management and succession planning. These include *hibah* (inter vivos gift), *wasiyyah* (Islamic will), Islamic trust (*amanah*), and waqf, each of which serves distinct legal and socio-economic functions in achieving the objectives of Shariah and ensuring the effective transfer of wealth across generations. Given the significance of these instruments, Muslims should also be aware of the legal framework governing their creation, administration, and enforcement. In Malaysia, the application of hibah, wasiyyah, Islamic trust, and waqf is regulated through a combination of Islamic law, state enactments, civil legislation, judicial decisions, and regulatory policies. An understanding of these legal provisions is essential to ensure that estate planning arrangements are valid, enforceable, and consistent with both Shariah principles and the prevailing legal system. Therefore, the following discussion examines the legal framework governing these estate planning instruments and their role in facilitating effective Muslim estate planning in Malaysia.

Hibah

The legal status of *hibah* in Malaysia remains relatively underdeveloped compared to other Islamic estate planning instruments. Although *hibah* has

gained increasing recognition and acceptance among Malaysian Muslims as an effective mechanism for *hibah* wealth distribution, its legal regulation is still largely dependent on Islamic legal principles, judicial interpretation, fatwas, and administrative practices rather than comprehensive statutory provisions. In the context of modern practice in Malaysia, the application of *hibah* has been extended as a type of supporting financial instrument within the main Islamic financial services offered by some Islamic financial institutions (Rusni Hassan et.al, 2020). In addition, the application of *hibah* within Islamic financial transactions has received regulatory endorsement from the Shariah Advisory Council of Bank Negara Malaysia through the Hibah Policy Document effective from 31 July 2018. The policy permits Islamic financial institutions to offer *hibah* on a discretionary basis, subject to compliance with prescribed Shariah requirements and regulatory standards (Rusni Hassan et.al, 2020).

The legal framework governing *hibah* in Malaysia remains fragmented across the states. While certain states have introduced specific legal instruments relating to *hibah,* such as the Enakmen Hibah Negeri Kelantan 2022 and the Selangor State Fatwa on Hibah issued in 2021, most states have yet to enact dedicated *hibah* legislation. Consequently, the administration and regulation of *hibah* in many jurisdictions continue to rely on the general provisions of the respective State Islamic Religious Administration Enactments and other related Islamic laws. This situation reflects the absence of a comprehensive and uniform legal framework governing both the substantive and procedural aspects of *hibah* across Malaysia.

This position contrasts with other Islamic estate planning instruments, particularly waqf and Islamic wills, which have been codified in several states such as Selangor, Pahang, Negeri Sembilan, and Melaka. Consequently, the absence of a comprehensive legal framework for *hibah* continues to create legal uncertainty and administrative challenges in its implementation and enforcement within the Malaysian legal system.The provision on *hibah* in the Federal Constitution only clarifies the jurisdiction of the Shariah Courts over it, through the Ninth Schedule, List II, State List of the Federal Constitution. On the basis of that provision, State enactments on the administration of Islamic law or the Shariah Courts provide that the Shariah Court, under its civil *(mal)* jurisdiction, is empowered to hear and determine all actions and proceedings related to *hibah.*[9]

[9] Section 50(3)(b)(v) and (vi), Administration of the Religion of Islam Enactment (Perak) (Amendment) 2005 [Enactment No. 6 of 2006]; Section 61(3)(b)(v) and (vi), Administration of the Religion of Islam Enactment (State of Selangor) 2003 [Enactment No. 1 of 2003]; Section 46(2)(b)(vi), Administration of Islamic Law Act (Federal Territories) [Act 505];

In the application of *hibah* in Malaysia, there are several conditions that must be complied with in order for a *hibah* to be recognised in law. Since substantive law on *hibah* is not contained in any statute, judges who decide cases involving *hibah* property will refer directly to the rules of Islamic law. Looking back at the history of Islamic property in Malaysia, the Shariah Court of the State of Johor once implemented Islamic *hibah* law in 1914 through the Majallah al-Ahkam al-'Adliyyah, which was translated as Majallah Ahkam Johor. An examination of the Majallah al-Ahkam al-'Adliyyah shows that there are 48 provisions dealing specifically with *hibah,* from article 833 to article 880, based on the Hanafi school of law. The legal position of *hibah* is somewhat different from other Islamic property instruments such as Islamic wills, waqf, inheritance, matrimonial property, *nazr* and so on, because these other instruments are at least mentioned, even if briefly, in the State enactments or Acts on the administration of Islamic law and in the Islamic family law enactments.

This is one of the *lacunae* that continues to exist in the implementation of *hibah* in Malaysia, even though *hibah* products are actively offered commercially by Islamic estate planning and management industry players such as Zar Perunding Pusaka Sdn Bhd, As-Salihin Trustee Berhad, Wasiyyah Shoppe Sdn Bhd, CIMB Trustee Berhad and others. This is different from a number of other Muslim countries such as Jordan, Egypt and Indonesia which already have specific *hibah* legislation. Literally, the Ninth Schedule, List II, State List of the Federal Constitution provides that matters of Islamic law relating to "gifts" fall specifically under the jurisdiction of the States.[10]

Section 61(3)(b)(v) and (vi), Administration of the Religion of Islam Enactment (State of Johor) 2003 [Enactment No. 16 of 2003]; Section 11(3)(b)(v) and (vi), Syariah Courts Enactment (Terengganu) 2001 [Enactment No. 3 of 2001]; Section 9(2)(b)(vi), Syariah Courts Administration Enactment (Kelantan) (Amendment) 1998 [Enactment No. 10 of 1998]; Section 47(2)(b)(v) and (vi), Administration of Islamic Law Enactment (Pahang) (Amendment) 2001 [Enactment No. 5 of 2001]; Section 9(2)(b)(v) and (vi), Syariah Courts Enactment (Kedah) [Enactment No. 4 of 1994]; Section 61(3)(b)(v) and (vi), Administration of the Religion of Islam Enactment (Penang) 2004 [Enactment No. 4 of 2004]; Section 61(3)(b)(v) and (vi), Administration of the Religion of Islam Enactment (Negeri Sembilan) (Amendment) 2005 [Enactment No. 8 of 2005]; Section 49(3)(b)(v) and (vi), Administration of the Religion of Islam Enactment (State of Malacca) 2002 [Enactment No. 7 of 2002]; Section 11(3)(b)(v) and (vi), Syariah Courts Enactment (State of Sabah) 2004 [Enactment No. 6 of 2004]; Section 10(3)(b)(v) and (vi), Syariah Courts Ordinance 2001 [Ordinance No. 24 of 2001]; and Section 61(3)(b)(v) and (vi), Administration of the Religion of Islam Enactment (Perlis) 2006 [Enactment No. 4 of 2006].

10 Paragraph 4(e)(ii), Ninth Schedule, List II (State List), Federal Constitution.

However, no definition of "gift" is actually given, including in the State enactments on the administration of Islamic religion.

In the English version of the Federal Constitution, the term "*pemberian*" is translated as "gift". According to English legal dictionaries, a gift is a voluntary transfer of property or of a property interest from one individual to another, made gratuitously to the recipient: "A voluntary transfer of property or of a property interest from one individual to another, made gratuitously to the recipient."[11] Such a transfer and delivery of property may be made by deed, by physical delivery, or by an intention to transfer upon impending death *(donatio mortis causa)*. This definition is generally similar to Islamic law for *hibah* and gift, but Islamic law does not recognise a gift made merely by an intention to transfer property at the point of death because that conflicts with the rules on Islamic wills. It can therefore be seen that the meaning of "gift" in the Federal Constitution of Malaysia covers both *hibah* and gift, whereas in Islamic law gift and *hibah* have different meanings and legal implications, as clarified in *Harun bin Muda & Ors v Mandak binti Mamat [1999] XIII:I JH 63* and *Itam & Anor v Zain [1961] MLJ 54*. The general provision in the Federal Constitution on *hibah* mentioned above is elaborated at State and Federal Territory level through State Enactments or Federal Acts as referring to inter vivos gifts or settlements made without adequate consideration in money or money's worth by a Muslim.[12] The English version of this provision reads: "gifts inter vivos or settlements made without adequate consideration in money or money's worth by a Muslim."

The existing legal provision clarifies that "gift" in the Constitution means gifts or dispositions during life. This means that the State law does not adopt the exact term used in the Constitution. Nevertheless, this does not pose a problem because the English text uses the term gifts inter vivos. The phrase inter vivos explains the meaning of "gift" in the Constitution and excludes *donatio mortis causa*. Several other terms in the above provision also require further comment. The first is the word "*alang*". According to Kamus Dewan[13], *alang* means gift or pemberian (a present or gift). The dictionary notes that the term is rarely used, or its usage is limited to certain regions, or that it is archaic or obsolete; its correctness may even be doubtful due to possible mis-reading or mis-spelling. *Alang* is an old Malay word used in historical Malay laws such as the *Hukum Kanun Melaka* and is retained in the statute just mentioned. The

11 http://legal-dictionary.thefreedictionary.com/gift, access on 23 November 2025.

12 Section 46(1)(b)(iv), Administration of Islamic Law Act (Federal Territories) 1993 [Act 505].

13 http://prpm.dbp.gov.my/Search.aspx?k=alang, access on 25 November 2025

Administration of Islamic Law (Federal Territories) Act 1993 [Act 505] does not define *alang hayat*; the meaning of the term must therefore be derived from other State laws. For example, section 3 of the Shariah Courts (Kelantan) Enactment 1982 [No. 3/1982] defines *alang hayat* as a gratuitous gift or transfer of property by a person during his life to any person he wishes. The same subsection also mentions settlements made without adequate consideration.

In legal dictionaries, settlement is defined as: "A disposition of land or other property made by deed, will or very rarely by statute… under which trusts are created by the settlor designating the beneficiaries and the terms on which they are to take the property." This definition gives settlement the meaning of a disposition made on trust. In the absence of any judicial interpretation, one may expect that this technical definition of settlement would not apply to the provision in question, because the statute deals with settlements among Muslims to which Islamic law applies. The provision expressly mentions "settlements made without adequate consideration". In Islamic *hibah,* gifts may be made with consideration, and such consideration need not be equal in value to the property endowed. Thus, the provision can be interpreted as referring to gifts or *hibah* subject to consideration. The Hibah Enactment (Kelantan) 2022 (Enactment No. 17 of 2022) defines hibah as the voluntary transfer of property by a donor during his or her lifetime, without any consideration, to a beneficiary of the donor's choice through a valid sighah (declaration and acceptance), subject to registration in accordance with the provisions of the Enactment.

Within the Islamic administration laws, a variety of terms are used to refer to *hibah,* and these terms are not standardised across the States in the respective Islamic religious administration enactments. Among them are *alang semasa hidup* in the Federal Territories[14], Terengganu[15], Selangor[16], Perak[17],

[14] Section 46(2)(b)(vi), Administration of Islamic Law Act (Federal Territories) 1993 [Act 505].

[15] Section 11(3)(b)(vi), Syariah Courts Enactment (Terengganu) 2001 [Enactment No. 3 of 2001].

[16] Section 61(3)(b)(vi), Administration of the Religion of Islam Enactment (Selangor) 2003 [Enactment No. 1 of 2003].

[17] Section 50(3)(b)(vi), Administration of the Religion of Islam Enactment (Perak) 2004 [Enactment No. 4 of 2004].

Penang[18], Melaka[19], Kedah[20], Perlis[21] and Johor[22], and *alang semasa hidup (hibah)* in Sarawak[23] and Sabah[24]. In Pahang[25], the term inter vivos gift is used, while in Negeri Sembilan[26] *hibah semasa hidup*. This diversity of terminology, all referring to *hibah,* should be standardised and harmonised to reduce misunderstanding of the provisions, and a clear and uniform interpretation should be formulated. All these *hibah* provisions are placed under the jurisdiction of the Shariah High Court. The statutes that confer jurisdiction on the Shariah High Court to hear *hibah* cases do not actually define the terms they use to denote *hibah.* Only Kelantan defines *alang hayat* as "a gratuitous gift or transfer of property by a person during his lifetime to any person whom he wishes".[27]

The absence of a specific *hibah* statute does not prevent *hibah* cases from being heard and decided by the courts. A number of cases in both the Civil and Shariah courts have elaborated on the principles of *hibah,* including its pillars *(rukun)*, conditions and so on. Among them are *Tengku Haji Jaafar ibn Almarhum Tengku Muda Ali & Anor v Government of Pahang [1987] 2 MLJ 74*, *Harun bin Muda & Ors v Mandak binti Mamat & Ors [1999] XIII:I JH 63, Muhammad bin Awang & Ors v Awang bin Deraman & Ors [2001] XIV:II JH 165, Ibrahim bin Haji Abu Bakar v Mohd Sah bin Mohd Ali & Ors [2001] XIV:II JH 279, Salmiah binti Che Hat v Zakaria bin Hashim [2001] XIV:I JH 79, Itam & Anor v Zain [1961] MLJ 54 and Eshah binti Abdul v Azuhar bin*

18 Section 61(3)(b)(vi), Administration of the Religion of Islam Enactment (State of Penang) 2004 [Enactment No. 2 of 2004].

19 Section 49(3)(b)(vi), Administration of the Religion of Islam Enactment (State of Malacca) 2002 [Enactment No. 7 of 2002].

20 Section 13(3)(b)(vi), Syariah Courts Enactment (Kedah Darul Aman) 2008 [Enactment No. 12 of 2008].

21 Section 61(3)(b)(vi), Administration of the Religion of Islam Enactment (Perlis) 2006 (Amendment 2008) [Enactment No. 4 of 2006].

22 Section 61(3)(b)(vi), Administration of the Religion of Islam Enactment (State of Johor) 2003 [Enactment No. 16 of 2003].

23 Section 10(3)(b)(vi), Syariah Courts Ordinance (Sarawak) 2001 [Ordinance No. 42 of 2001].

24 Section 11(3)(b)(vi), Syariah Courts Enactment (Sabah) 2004 [Enactment No. 6 of 2004].

25 Section 47(2)(b)(vi), Administration of Islamic Law Enactment (Pahang) 1991 [Enactment No. 3 of 1991].

26 Section 61(3)(b)(vi), Administration of the Religion of Islam Enactment (Negeri Sembilan) 2003 [Enactment No. 10 of 2003].

27 Section 2, Syariah Courts Administration Enactment (Kelantan) 1982 [Enactment No. 3 of 1982].

Ismail [1997] XI:II JH 219. These decisions serve as reference and guidance whenever issues concerning *hibah* arise. One of the earliest cases to deal with the pillars and conditions of *hibah,* particularly *al-qabd* (taking possession), was the Supreme Court case Tengku Haji Jaafar ibn Almarhum Tengku Muda Ali & Anor v Government of Pahang [1987] 2 MLJ 74.

The appellant sought a declaration that a *hibah* existed. The Court held that for a valid and effective *hibah* contract to be formed, three elements must be satisfied: *ijab* (offer), *qabul* (acceptance) and *qabd* (taking possession). A similar approach was taken in Harun bin Muda & Ors v Mandak binti Mamat & Ors [1999] XIII:I JH 63. There, the defendant disputed the existence of a *hibah* in favour of the plaintiffs. The Court held that the conditions of *hibah* had been fulfilled and the *hibah* was valid. The facts showed that there was no express *qabul* on the part of the plaintiffs. However, the Court held that this did not prevent the *hibah* from being valid, because according to YA Dato' Ismail Yahya, Shariah High Court Judge: *"Islamic law also recognises acceptance (qabul) of a hibah offer (ijab) by way of conduct, such as where, after the offer is made, the property is developed, worked on or utilised."*

Accordingly, the Court was of the view that *qabul* had been perfected while Muda was still alive. A different approach was taken in *Muhammad bin Awang & Ors v Awang bin Deraman & Ors [2001] XIV:II JH 165*. The plaintiffs applied to set aside a gift of two plots of land made by the defendants, arguing that the *hibah* was invalid because it did not meet the pillars and conditions of *hibah,* particularly the absence of any expressed *sighah* (offer and acceptance). The Court rejected this argument, on the ground that at trial the application made by the appellants was to cancel a *hibah,* whereas no party had actually pleaded that a *hibah* existed. The Court held that what had actually taken place was a gift (gift), which did not require *ijab* and *qabul*. The Court further held that gift falls within the jurisdiction of the Court under section 9(2)(vi) of the Shariah Courts (Kelantan) Enactment (No. 2) 1982.

In *Salmiah Che Mat v Zakaria Hashim [2001] XIV JH 79*, however, the Court held that a *hibah* was invalid even though acceptance (*qabul*) had taken place by conduct. The judgment raised a number of questions, including whether the pillars of *hibah* had been properly and fully fulfilled. The Court found that the pillars of the donor, donee and subject matter had all satisfied the conditions required by Islamic law. However, the Court held that the pillar of *sighah* had not been properly and fully fulfilled because there had only been *ijab* from Che Mat and no *qabul* from the defendant, either orally or in writing. The Court thus found that the *hibah* from Che Mat to the defendant was invalid, since the pillar of *sighah* had not been fully completed.

From this case, it appears that the Court did not treat the use and development of the land by the defendant, namely the construction of a house, as a form of *qabul*. Another reason for rejecting the validity of the *hibah* was that the use and development of the land had taken place before the donor had given permission. In addition, the defendant failed to prove *qabul*, whether orally or through documentary evidence. No transfer of title had been registered using Form 14A under section 215 of the National Land Code. According to the Shafi'i and Hanbali schools, the condition for taking possession of the subject matter of a *hibah* requires that the donee obtains the donor's permission. In *Mohd Mokhtar b. Hj. Abdullah v Fadhilah bt Hj. Abdullah & 4 Ors [2005] 1 JH 138*, the appellant appealed against the Shariah High Court's decision dismissing his claim to validate the revocation of a *hibah* made by his mother to the respondents. He contended that the *hibah* was invalid in Shariah and could be revoked because the four respondents had never occupied or possessed *(qabd)* the property from the time of the alleged *hibah* until his mother's death. The Court held that there was no evidence at trial that any of the pillars and conditions of *hibah* had been contravened or that any defect existed. On the contrary, the records showed that the ownership had been transferred to the four respondents, and this transfer of title was sufficient to constitute *qabd* over the property.

Dalam Perkara Nang Lijah bt Megat Stan Kanun (September 2006), 169, the claimant sought the deceased's land, who was both her uncle and adoptive father. During his lifetime, the deceased had gifted two lots of land to her, but the title could not be transferred because at that time he was in a very infirm condition. The Court held that the claimant's *hibah* claim over the two lots was accepted because the gift had been made during the deceased's lifetime and all the relevant conditions had been fulfilled. The requirement of *qabd* was satisfied by the claimant's management of the property while the deceased was still alive, even though no formal transfer of title had been effected. In *Poolomahee Rajeswary @ Fatimah bt Baba v Meah bt Hussain [2005] 1 JH 164*, the plaintiff was the adoptive child of the defendant. She claimed that the deceased, who was also her adoptive father, had expressed his intention during his lifetime to transfer the land and house to her by changing the registered owner's name on the title. However, he was unable to implement the transfer process because he did not have the money to complete the procedure. The Court allowed the defendant's application; *qabd* over the house was not an issue because the plaintiff had been living in the house with the deceased since childhood.

In the *hibah* confirmation case *Siti Noor Aseera bt Awang [2007] 1 JH 119*, the applicant, the only child of her father, applied to the Court to confirm

a *hibah* made by her late father consisting of two immovable properties and one movable property, namely ASB savings. The Court found that *qabd* had taken place, based on facts such as the applicant and her husband continuously residing in the house from the time her father was alive until after his death. In addition, the applicant's actions in managing the plantation, holding the land titles and keeping the ASB passbook were strong circumstantial evidence *(qarinah)* of *qabd*. Moreover, the fact that the deceased had obtained Form 14A from the Kuantan Land Office and inserted the applicant's name as transferee, although he died before submitting the form to the land office, was sufficient proof of permission. Another issue concerns the distinction between *hibah* and other Islamic property instruments such as gift, Islamic wills and charity. *In Poolomahee Rajeswary @ Fatimah bt Baba v Meah bt Hussain [2005] 1 JH 164*, the Shariah High Court Judge of the Federal Territory stated that every charity and gift is a *hibah,* but not every *hibah* is charity or gift. What distinguishes these terms is the donor's intention and purpose. If a person's purpose is to assist someone in need and seek God's pleasure, the gift is classified as charity; if the purpose is to honour or show respect to the recipient, it is gift.

In Harun bin Muda & Ors v Mandak bt Mamat [1999] 1 JH 63, the Terengganu Shariah High Court Judge explained the differences among *hibah,* gift and charity. The distinctions were summarised as follows:

a) A gift to one in need accompanied by *ijab* and *qabul* is charity;
b) A gift to one in need accompanied by *ijab* and *qabul* is both charity and *hibah*;
c) A gift to someone in order to honour that person, without *ijab* and *qabul*, is gift;
d) A gift to someone in order to honour that person, with *ijab* and *qabul*, is both gift and *hibah*; and
e) A gift that is neither to obtain reward nor to honour the recipient, but is accompanied by *ijab* and *qabul*, is purely *hibah.*

It is also important to distinguish *hibah* from contracts generally. For example, in *Zaleha bt Ariffin v Zalmah bt Md Zain [2001] 6 MLJ 234*, *hibah* was not recognised as a contract. The Court held that the issue of undue influence raised by the defendant in relation to the deceased was irrelevant. Because the transfer of land lots to the defendant was effected through *hibah,* it was a gift inter vivos and not contractual in nature. Section 16 of the Contracts Act 1950 applies only to contractual relationships and thus does not govern such a gift. Since the lots were registered in the defendant's name, the indefeasibility principle in section 340(1) of the National Land Code 1965 protected her title

to the land. Revocation of *hibah* is another issue in Islamic law. In *Eshah binti Abd Rahman v Azyhar bin Ismail [1997] 2 JH 219*. The Court dismissed the plaintiff's claim to revoke a *hibah* made to the defendant. Among the reasons given by the Judge was that the defendant had developed the land by building several houses on it. The Court held that the *hibah* could not be revoked because a *hibah* made by an adoptive mother cannot be cancelled. According to the Judge, an adoptive mother is not included in the concept of *ab* (father) referred to in the hadith that allows a father to retract *hibah* given to his child.

Issues also arise concerning the fairness of distributing *hibah.* In *Muhammad b. Awang & Ors v Awang b. Deraman & Ors [2001] 2 JH 165*, the appellants appealed against the Qadi Besar of Kelantan's refusal to cancel *hibah* in favour of the defendants. The appellants argued that the *hibah* was unfair, as they, being the deceased's biological children, did not receive any gifts, and that this contravened Qur'anic verses.[28] The appellate court held that this was a matter of juristic disagreement *(khilafiyyah)*. The Court adopted the majority view that fairness and equal division in *hibah* are *sunnah* (recommended) but not obligatory. Hence, the claim to cancel the *hibah* on that ground was rejected. In *Mohd Mokhtar b. Hj. Abdullah v Fadhilah bt Hj. Abdullah & 4 Ors [2005] 1 JH 138*, the appellant argued, among other things, that the *hibah* was invalid and revocable for failing to treat all children equally and that it would sow enmity and sever family ties. Referring to the hadith of Nu'man ibn Bashir and classical fiqh works, the Court held that a *hibah* which meets all its pillars and conditions is valid, even if it is not in accordance with the sunnah.

Another issue concerns *hibah* made during *marad al-mawt* (death-illness). In the Supreme Court case *Mustak Ahmed bin Dato' Haji Abdul Rahim Gulam Rasool Shaik v Abdul Wahid bin Dato' Haji Abdul Rahim Gulam Rasool Shaik & Ors and Shafiah Bibi binti Ibrahim Mysoory & Ors v Abdul Wahid bin Dato' Haji Abdul Rahim Gulam Rasool Shaik & Ors [1987] 2 MLJ 449*, the Court allowed the appeal and set aside the High Court's decision, holding that the *hibah* of company shares to the appellant was valid and not subject to the doctrine of *marad al-mawt*. The Court was satisfied that the three elements of *hibah* had been fulfilled. The key principles set by the Court for a *hibah* to fall under *marad al-mawt* are: (1) when making the *hibah,* the deceased feared that death was imminent; and (2) the illness prevented him from performing his usual work. In that case, although he knew of his illness, the deceased continued his daily activities.

[28] Verse 8 of Surah al-Ma'idah and the hadith of Nu'man ibn Bashir concerning the obligation to act justly in gifts bestowed upon one's children.

Confirmation of *hibah* is also required to determine whether a *hibah* made by a person is valid. If there is a dispute about the existence of a *hibah,* the court will hear witness testimony. Documentary evidence is the strongest basis for proving a *hibah.* In the absence of such documents, the Court must rely on witness testimony. For example, in *Aishah v Che Kar [1984] IV:II JH 246*, the Chief Kadi of Kelantan rejected the plaintiff's claim to establish a *hibah* because the witnesses' evidence was weak: the first witness was a woman and the second gave hearsay evidence. In *Ahmad v Mahabat Khan & Anor [1980-1981] I:I JH 82*, the plaintiff's claim was dismissed because his witness was unable to provide clear and sufficient testimony. In *Ibrahim bin Haji Abu Bakar v Mohd Sah bin Mohd Ali & Ors [2001] XIV:II JH 279*, the Kuantan Shariah High Court dismissed the plaintiff's claim to confirm a *hibah* made in his favour by the defendant's predecessor, on the grounds that the plaintiff had taken no steps to register the transfer of the land and the witnesses failed to state the date and time when they heard the deceased make the alleged disposition. The Court requires witnesses to state precisely what they heard and saw.

It is therefore urgent and important that *hibah* legislation be enacted, whether as an Act or an Enactment, to clearly set out substantive rules on *hibah,* such as the pillars, conditions, revocation, *qabd* through an agent, conditional *hibah* and so on (Ahmad Hidayat Buang, 2007). If *hibah* is not clearly legislated, disputes and ambiguity will continue to arise in the courts and may hinder its use as an instrument of estate planning. A comprehensive codification of Islamic *hibah* law, covering both substantive and administrative aspects, would serve as a useful reference for judges, *syarie* lawyers and the public. Although judges now refer directly to fiqh texts, the existence of specific legislation would still benefit the judiciary. Such legislation would also clarify the Shariah Court's jurisdiction over *hibah* cases, particularly where *hibah* overlaps with trust instruments. Although Shariah Court jurisdiction over *hibah* was recognised by the Federal Court in *Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor [2007] MLJ 101*, it was again questioned in a more recent decision of the Kuala Lumpur High Court in *Dato' Kahar Shah bin Tun Sulaiman v Datin Fauziah binti Harun [2008] 7 MLJ 779*.

Accordingly, a specific *hibah* statute is highly significant to resolve issues arising both from the perspective of substantive *hibah* rules and the determination of Shariah Court jurisdiction over *hibah* cases involving Muslims. In principle, the determination of whether a valid hibah exists falls within the exclusive jurisdiction of the Syariah Courts pursuant to Article 121(1A) of the Federal Constitution, the landmark case of *Faridah v Mohd Habibullah [1990] 1 MLJ 174*, and the relevant State Syariah Court Administration Enactments. However, the decision in *Per Rosmawati* appears to depart from

this established position. Consequently, the issue of judicial jurisdiction in hibah disputes remains unresolved. What is evident is that hibah-related matters may still come before the Civil Courts when they are connected to other legal issues, particularly probate and letters of administration proceedings, rather than solely involving the validity of the hibah itself (Ahmad Termizi Abdullah et.al., 2024). In addition, a dedicated *hibah* statute would serve as guidance for industry players who vigorously market *hibah* products today so that those products comply with Islamic law.

A recent dispute involving a RM1 million takaful *hibah* has highlighted the continuing legal uncertainty surrounding the status and enforceability of *hibah* arrangements within Malaysia's dual legal system. In the case, the deceased had nominated his wife as the beneficiary of a takaful *hibah*, and the Syariah Court initially upheld the validity of the *hibah* and recognised the widow's entitlement to the takaful proceeds. However, subsequent civil court proceedings resulted in a different outcome, whereby the takaful benefits were ordered to be redistributed according to the *faraid* principles of inheritance. The differing outcomes between the Syariah and civil courts generated significant public debate and raised concerns regarding the legal certainty of *hibah* takaful as an estate planning instrument. The case illustrates the practical challenges arising from the absence of a comprehensive statutory framework governing *hibah* and the continuing jurisdictional overlap between civil and Syariah institutions. It further demonstrates that, despite the recognition of conditional *hibah* under the Islamic Financial Services Act 2013 (IFSA 2013), uncertainties remain regarding its interaction with inheritance claims and estate administration processes. Consequently, the case strengthens the argument for the enactment of clearer and more uniform legal provisions on *hibah*, including its substantive principles, procedural requirements, and jurisdictional boundaries, in order to minimise conflicting judicial interpretations, enhance legal certainty, and reinforce public confidence in *hibah* as a legitimate Islamic estate planning mechanism.

Wasiyyah (Islamic Wills)

Islamic wills has long been practised in human civilisation. In ancient Roman society, the head of the family had authority over property through the means of will, by devising property to any person he wished and excluding his children from inheritance (Abdul Monir Yaacob & Mohd Fauzi Mustaffa, 1999). Early English law likewise recognised the right of a person with testamentary capacity to dispose of his property by will to anyone he chose, in respect of his personal property. In pre-Islamic *(Jahiliyyah)* Arab society,

Islamic wills was sometimes used as a means of self-aggrandisement, while leaving one's relatives in poverty and need. The coming of Islam corrected this by laying down the foundations of truth and justice in making a will. Initially, Islamic wills was made obligatory in respect of parents and close relatives. It was later further developed through the *mawarith* verses on inheritance and various hadith. Based on Qur'anic verses and hadith, Muslim jurists elaborated extensively on the rules and practice of Islamic wills in accordance with Islamic principles (Abdul Monir Yaacob & Mohd Fauzi Mustaffa, 1999).

In Malaysia, the practice of Islamic wills has long existed. Although there is no comprehensive study on the existence of specific Islamic will legislation for Muslims, it is believed that Islamic Islamic wills and inheritance have long been practised among the Malays, and any disputes arising would be referred to Islamic law (Tajul Aris Ahmad Bustami, 2004) . Historically, the British attempted to enforce English rules of wills and inheritance through the legal system in Malaya, replacing the Islamic system of inheritance including Islamic wills (Tajul Aris Ahmad Bustami, 2009). The approach adopted by the British was formally introduced through the Mohamedan Law Ordinance No. 5 of 1880. This law applied to all Muslims, unless the deceased had given prior consent before death for his property to be distributed according to faraid. Many of the provisions of the Mohamedan Law Ordinance were clearly contrary to Islamic rules of inheritance, which prescribe fixed shares for particular heirs (Tajul Aris Ahmad Bustami, 2009).

The Ordinance was repealed in 1923 through Law No. 26/1923 (Mohamedan Amendment Ordinance) in the Straits Settlements. Recognition of Islamic wills and Islamic inheritance was then reflected in the case of Shaik Abdul Latif v Shaikh Elias Bux [1915] 1 FMSLR 204, where the Court of Appeal held that the validity of a will and the distribution of property of an Indian Muslim domiciled in the Federated Malay States was governed by Islamic law. Similarly, in *Re Ismail bin Rentah, decd (1940) 9 MLJ 98*, the Court held that the estate must be distributed according to Islamic law and that the will in question conflicted with Islamic law. The law applicable to Muslims on Islamic wills in Malaysia is therefore Islamic law, derived from the constitutional provisions (Ahmad Hidayat Buang, 2007). The Wills Act 1959 Act 346 does not apply to Muslims; it applies only to non-Muslims (Tajul Aris Ahmad Bustami, 2009). The Wills Act 1959 is inapplicable to Muslims because it is based on English law (Ahmad Hidayat Buang, 2007).

Under the Ninth Schedule, List II, State List of the Federal Constitution, Islamic wills and their administration fall under State jurisdiction. Shariah Courts in each State are therefore empowered to determine the validity

of a Islamic wills made by a Muslim. As a result, the court responsible for administering the estates of Muslims, whether testate or intestate, is the Shariah Court. The Civil High Court, on the other hand, has jurisdiction over probate and letters of administration. The relevant law is the Probate and Administration Act 1959 and Orders 71 and 72 of the Rules of the High Court 1980. Among the matters that fall within the High Court's jurisdiction are estate administration cases involving a combination of testate and intestate property of Muslims (Tajul Aris Ahmad Bustami, 2009). The Wills Act 1959, which predates the more recent developments, does not apply to wills made by Muslims because they are allowed to make Islamic wills according to Islamic law, and such wills are valid only if they do not conflict with Islamic law. Thus, the validity of a Islamic wills by a Muslim is determined by a Shariah Judge in the State Shariah Courts (Mohd Zamro Muda et al., 2008). Although Islamic will cases fall within the jurisdiction of Shariah Courts, several cases have also been heard and decided by Civil Courts since the colonial period through to post-independence. However, most of the Civil Court decisions involving Muslims in the Malay States (except Penang and Sarawak) are in line with Islamic principles on Islamic wills and Islamic law.

This can be seen, for example, in cases such as *Sheikh Abdul Latif & Ors v Sheikh Elias Bux [1915] FMSLR 204, Saedah bt Abu Bakar v Haji Abdul Rahman bin Mohammad Yusof [1918] 1 FMSLR 352, Siti bt Yatim v Mohamed Nor bin Bujai [1928] 6 FMSLR 135 and Amanullah bin Haji Ali Hassan v Hajjah Jamilah [1975] 1 MLJ 30*. The issues that can be distilled from these cases concern, among others, wills exceeding one-third of the estate, postponement of the vesting of bequests through conditions contrary to Islamic law, wills made in favour of heirs, dispositions during *marad al-mawt* and nominations. These cases were heard in the Civil Courts but decided in accordance with Islamic law. Up to 1999, legal provisions relating to Islamic wills for Muslims were not set out in a systematic and comprehensive manner in any Shariah or civil statute (Mohd Farid Mohd Zainal, 2008). They were only briefly provided under the respective State Islamic religious administration laws, such as section 47(2)(b)(v) of the Pahang Administration of Islamic Law Enactment 1991, which was too brief to provide guidance to Muslims on the rules of Islamic wills in Islam. It only dealt with the jurisdiction of the Shariah High Court over the existence of a will and related matters. The same situation existed in other States.

Recognising the importance and need for specific legislation on Islamic wills, Selangor enacted the Islamic Wills Enactment (State of Selangor) 1999 [No. 4/1999], followed by the Islamic Wills Enactment (State of Negeri Sembilan) 2004 [No. 5/2004] and the Islamic Wills Enactment (State

of Melaka) 2005 [No. 4/2005]. Selangor also introduced the Islamic Wills Management Rules (State of Selangor) 2008. These enactments combine substantive Islamic will law with administrative provisions. The Selangor Enactment contains provisions on interpretation, implementation, revocation, withdrawal, acceptance and rejection of wills, provisions on beneficiaries, disposal of bequests, obligatory bequest *(wasiat wajibah)* and rule-making powers. The Negeri Sembilan and Melaka Enactments contain similar provisions on scope and interpretation, implementation, invalidity, revocation, acceptance and rejection, beneficiaries, testamentary gifts and obligatory bequest *(wasiat wajiabah)*. In other States, the provisions on Islamic wills are still found in the general clauses of their Islamic religious administration enactments. There is a pressing need for specific Islamic will legislation in all States, given the frequency with which issues relating to the principles of Islamic wills arise. Among them is the issue of wills exceeding one-third of the estate. In *Siti binti Yatim v Mohamed Nor bin Bujal (1983) 3 JH 217*, the Court held that a testator's desire to favour a particular heir by bequeathing to him a share greater than the one-third permitted by Islamic law is invalid without the consent of the other heirs. Similarly, in Shaik Abdul Latif v Shaikh Elias Bux (1915) FMSLR 204, the Judge held that the will was invalid because it attempted to give more than one-third of the deceased's estate. In *Katchi Fatimah v Mohamed Ibrahim(1962) 28 MLJ 374*, it was also held that a Muslim cannot bequeath more than one-third of the balance of his estate after funeral expenses and debts; any excess is invalid unless the other heirs consent after the testator's death.

Sometimes a testator bequeaths property that is also the subject of a nomination. The question then arises whether the nominee is a beneficiary or merely an executor/trustee *(wasi)* to distribute the property to other heirs. A nomination is a process whereby a person who has taken out an insurance policy or made savings in a body such as EPF, a cooperative, a unit trust or an insurance company, names a person to benefit from the policy or savings upon his death (Pawancheek Marican, 1997). The nominee may be an heir or a non-heir. There is disagreement as to whether the nominee's entitlement falls under islamic wills , inheritance or *hibah.* A fatwa issued by the National Fatwa Committee for Islamic Affairs on 2 October and 5 July 1973 stated that nominees of EPF contributions, savings in postal or bank accounts, insurance policies and cooperative savings are executors or trustees entrusted with carrying out the deceased's wishes. They may receive the monies but must distribute them to the rightful heirs according to Islamic inheritance. This National Fatwa is supported by State Fatwa Committees in the Federal

Territories, Selangor, Pahang, Negeri Sembilan, Kedah, Kelantan and Perak (Tajul Aris Ahmad Bustami, 2007).

The nominee's responsibility is to distribute the money received to the heirs and not to keep it solely for himself. This is because the nominated funds form part of the deceased's estate and are subject to his debts. The nominee is thus not merely a beneficiary but acts as *wasi* or administrator of the funds and must fulfil his responsibilities in accordance with Islamic law.[29] Cases illustrating issues of Islamic wills and nomination include *Re Ismail bin Rentah, decd (1940) MLJ 98, Re Man bin Mihat, decd (1965) 2 MLJ 1 and Re Bahadun bin Haji Hassan (1974) 1 MLJ 14, decd*. Abdul Kadir Hj Muhammad argues that the nomination system should be retained as it facilitates administration, but the nominee should not be treated as absolute owner; rather, he acts as agent to distribute the property to the other heirs (Abdul Kadir Hj. Muhammad, 1997)

Another issue is Islamic wills to heirs. The codification of Islamic will laws in many Middle Eastern countries generally allows Islamic wills in favour of heirs. A Islamic wills in favour of an heir for less than one-third of the estate is treated as recommended *(sunnah)* and may be implemented without the consent of other heirs. A Islamic wills exceeding one-third is valid if the other heirs consent.[30] Provisions that allow Islamic wills to heirs reflect a reform in classical fiqh opinion. Section 11(2) of the Selangor Islamic Wills Enactment 1999 [No. 4/1999] provides that a person may determine the shares of his heirs in the estate, and if the determined amount exceeds their fixed shares, the excess is treated as Islamic wills. This provision parallels Egyptian law on Islamic wills *sunnah*. It gives heirs a right to receive a will. Section 11(2) is subject to section 26(2), which stipulates that such Islamic wills must not exceed one-third of the estate unless the heirs consent. There is no specific provision on Islamic wills to heirs for less than one-third. But read together, sections 11(2) and 26(2) imply that a Islamic wills to an heir for less than one-third does not require the consent of other heirs and is valid (Jasni Sulong, 2008).

The permissibility of Islamic wills to heirs also includes those who are not yet in existence when the Islamic wills is made[31], and allows a Islamic wills to an unborn child provided the child is born within a lawful period under Islamic law.[32] Thus, a Islamic wills in favour of a future child, whose conception may or may not be known at the time of the Islamic wills, is valid if the child is born

29 Section 167(1) and (2), Insurance Act 1996 [Act 553].

30 Article 37 and Articles 77–78 of Egyptian Law No. 71 of 1946.

31 Section 22(1), Muslim Wills Enactment (Selangor) 1999 [Enactment No. 4 of 1999].

32 Section 24, Muslim Wills Enactment (Selangor) 1999 [Enactment No. 4 of 1999].

within the period recognised as legitimate in Islamic law. As for Islamic wills requiring the consent of other heirs because it exceeds one-third of the estate, the Selangor Enactment does not specify whether the consent must be obtained before or after the testator's death. Section 21(1) provides that a beneficiary acquires rights to the subject matter of the Islamic wills from the time of the testator's death or at a later specified time. Based on this, section 20 (1) can be understood as providing that a Islamic wills is not revoked merely because it is rejected by the beneficiary before the testator's death. Section 20(2) states that if a beneficiary rejects a Islamic wills before accepting it, the rejected portion is revoked. Acceptance or rejection of a Islamic wills is connected to the time at which ownership is transferred in Shariah. These provisions suggest that the validity of heirs' consent must be considered after the testator's death, because only then do they acquire rights to the estate.

In States without specific Islamic will enactments, Islamic wills is still governed by generic provisions under the Islamic administration enactments. For instance, the Administration of Islamic Law (Federal Territories) Act 1993 [Act 505], Part IV on Shariah Courts, provides:

> *"(2) The Shariah High Court shall—*
> *(b) in its civil jurisdiction, hear and determine all actions and proceedings in which all the parties are Muslims and which relate to:*
> *... (v) any will or alang semasa marad al-mawt of a deceased Muslim;*
> *... (viii) the division and distribution of testate and intestate estates of Muslims."*

Similar provisions exist in the Islamic administration enactments of Sarawak[33], Perlis[34], Perak[35], Penang[36], Pahang[37] and Johor[38]. In Terengganu[39],

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33 Section 10(3)(b)(v), Syariah Courts Ordinance (Sarawak) 2001 [Ordinance No. 42 of 2001].

34 Section 61(3)(b)(v), Administration of the Religion of Islam Enactment (Perlis) 2006 [Enactment No. 4 of 2006].

35 Section 50(3)(b)(v), Administration of the Religion of Islam Enactment (Perak) 2004 [Enactment No. 4 of 2004].

36 Section 61(3)(b)(v), Administration of the Religion of Islam Enactment (State of Penang) 2004 [Enactment No. 2 of 2004].

37 Section 47(2)(b)(v), Administration of the Religion of Islam Enactment (Pahang) 1991 [Enactment No. 3 of 1991].

38 Section 61(3)(b)(v), Administration of the Religion of Islam Enactment (State of Johor) 2003 [Enactment No. 16 of 2003].

39 Section 11(3)(b)(v), Syariah Courts Enactment (Terengganu) 2001 [Enactment No. 3 of 2001].

Kedah[40], Sabah[41] and Kelantan[42], these matters fall under the Shariah Courts Enactments. In States without specific Islamic will statutes, reference is therefore made to the general provisions in these enactments. The enactment of specific Islamic will legislation would give testators greater opportunity to plan and manage their estate distribution more efficiently in line with Islamic law and the law. At the same time, clear legislation would ensure that estate planning is no longer limited to *hibah,* waqf and inheritance; Islamic wills may also be used in parallel with the growth of the Muslim economy.

Waqf

Waqf is one of the charitable instruments of Islamic estate distribution expressly mentioned in the Ninth Schedule, List II, State List of the Federal Constitution. Johor was among the earliest States to have specific waqf legislation, through the Waqf Enactment 1973 (No. 11). However, that Enactment was later repealed and all matters relating to waqf were incorporated into the Johor Islamic Religious Administration Enactment 1978 and now the Administration of Islamic Religion (State of Johor) Enactment 2003. In 1999, Selangor's State Legislature enacted a specific waqf law that remains in force, the Waqf (State of Selangor) Enactment 1999. It was passed by the State Legislative Assembly on 23 December 1999 and came into force on 1 July 2004 (Siti Mashitoh Mahamood, 2005).

The implementation of the Selangor Waqf Enactment inspired other States to introduce their own waqf enactments. Melaka's State Legislature enacted the Waqf (State of Melaka) Enactment 2005 [5/2005], which came into force on 1 August 2005, followed by Negeri Sembilan's Waqf (State of Negeri Sembilan) Enactment 2005 [5/2005]. These developments are positive in terms of strengthening the legal and administrative framework for waqf in Malaysia, where previously waqf provisions were only found in Islamic administration enactments and mixed together with other property-related provisions. In other States, waqf provisions are still located in the Islamic administration enactments.[43] Some States previously introduced rules and

[40] Section 13(3)(b)(v), Syariah Courts Enactment (Kedah Darul Aman) 2008 [Enactment No. 12 of 2008].

[41] Section 11(3)(b)(v), Syariah Courts Enactment (Sabah) 2004 [Enactment No. 6 of 2004].

[42] Section 9(2)(vii), Syariah Courts Administration Enactment (Kelantan) 1982 [Enactment No. 3 of 1982].

[43] Administration of the Religion of Islam Enactment (Perak) 2004 [Enactment No. 4 of 2004]; Administration of the Religion of Islam Enactment (State of Johor) 2003 [Enactment

regulations to supplement the waqf provisions, such as the Waqf Rules (Johor) 1983 and the Waqf Rules Enactment 1951 [8/1951]. In other States, reference is made directly to the State Enactment. For example, in the Federal Territories waqf is regulated under the Administration of Islamic Law (Federal Territories) Act 1993; in Terengganu, under the Administration of Islamic Affairs (Terengganu) Enactment 2001; and in Kedah, under the Kedah Islamic Religious Administration Enactment 1962.

At present, only seven Malaysian states have enacted specific legislation governing waqf administration. These include the Waqf (State of Selangor) Enactment 2015, the Waqf (Terengganu) Enactment 2016, the Waqf (Pahang) Enactment 2022, the Waqf (State of Sabah) Enactment 2018, the Waqf (Perak) Enactment 2015, the Waqf (Negeri Sembilan) Enactment 2005, and the Waqf (Melaka) Enactment 2005 (Fares Djafri et.al, 2022). The enactment of these specific waqf laws reflects the efforts of individual states to strengthen the legal and administrative framework for waqf governance, management, and development. Nevertheless, the absence of a uniform waqf enactment across all Malaysian states continues to contribute to variations in regulatory approaches and administrative practices, reflecting the decentralised nature of Islamic law administration under Malaysia's federal constitutional structure. For the rest of the states, generally the provisions of waqf in those legislations are not unified and are less elaborated, confined to the administrative and procedural aspects rather than the substantive aspects for the creation of a waqf. Having specific enactments of the matters relating to waqf shows a very positive development in the legal aspects of waqf in Malaysia. Furthermore, these specific laws also become a guidance to practitioners in the administration and management of waqf in view of existing provisions that cover substantive and administrative (Daud, M. Z., et.al., 2022).

In addition to the Administration of Islamic Law Acts, Ordinances, and Enactments, several Malaysian states have introduced subsidiary legislation

No. 16 of 2003]; Administration of the Religion of Islam Enactment (State of Selangor) 2003 [Enactment No. 1 of 2003]; Administration of the Religion of Islam Enactment (State of Malacca) 2002 [Enactment No. 7 of 2002]; Administration of Islamic Religious Affairs Enactment (Terengganu) 2001 [Enactment No. 2 of 2001]; Council of the Religion of Islam and Malay Customs Enactment (Kelantan) 1994 [Enactment No. 4 of 1994]; Administration of the Religion of Islam Enactment (State of Penang) 2004 [Enactment No. 4 of 2004]; Administration of Islamic Law Enactment (Pahang) 1991 [Enactment No. 3 of 1991]; Majlis Islam Sarawak Ordinance 2001; Administration of the Religion of Islam Enactment (Perlis) 2006 [Enactment No. 4 of 2006]; Administration of the Religion of Islam Enactment (Kedah) 1962 [Enactment No. 9 of 1962]; Administration of Islamic Law Enactment (Sabah) 1992 [Enactment No. 13 of 1992].

to further regulate and facilitate the administration and management of waqf within their respective jurisdictions. Examples include the Johor Waqf Rules 1983, the Waqf Administration (Waqf Forms) Rules 2001 (Selangor), the Majlis Islam Sarawak Administration of Waqf Rules 2008, the Pahang Waqf Fund Rules 2015, and the Administration of Islamic Law (Federal Territories) (Waqf) Rules 2025. These subsidiary regulations provide detailed procedural and administrative guidance on matters such as waqf registration, documentation, governance, fund management, reporting requirements, and the implementation of waqf-related activities. The existence of such state-specific subsidiary legislation demonstrates the continuing efforts of State Islamic Religious Councils to strengthen waqf administration and enhance regulatory effectiveness, although variations among states continue to reflect the decentralised nature of waqf governance within Malaysia's federal constitutional framework.

Accordingly, substantive and administrative matters relating to waqf in states that have enacted specific waqf legislation are governed by their respective waqf enactments. In contrast, states without dedicated waqf legislation continue to rely on the provisions contained in their Islamic Religious Administration Enactments, which generally provide only limited regulation of waqf matters. This legislative disparity reflects the varying approaches adopted by Malaysian states in regulating waqf administration. A notable example is the Pahang Waqf Enactment 2022, which establishes a comprehensive legal framework for waqf governance and administration. The enactment regulates a wide range of matters, including the powers of the Majlis, the appointment of the Chief Registrar and Registrar of Waqf, incorporation, the establishment and management of the Waqf Fund, the creation of waqf, waqf land administration, *mawquf* and *mawquf ʿalayh*, waqf by will, offences and penalties, as well as enforcement, investigation, and general administrative provisions.

The enactment therefore represents a more structured and comprehensive approach to waqf regulation compared to states that continue to depend primarily on general Islamic administration legislation. In States without specific waqf enactments, waqf is usually grouped together with *nazr*. The waqf provisions in these Islamic administration enactments tend to focus on administrative aspects. Common provisions include: the State Islamic Religious Council as sole trustee of all waqf assets; placement of waqf assets; restrictions on creating charitable trusts (waqf); income from waqf; waqf capital; referral to the Mufti where there is ambiguity regarding waqf instruments; and accounting and audit matters. Substantive provisions only define waqf, general waqf and specific waqf. In total, only about eight waqf-related matters are covered in these enactments.

Under many Islamic administration enactments, any waqf created by a *wakif* is restricted to one-third of his property. The Majlis will check whether the property to be endowed exceeds one-third of the *wakif's* estate, even if it is not made by Islamic wills and the *wakif* is not in *marad al-mawt*. For example, section 63(1) of the Administration of Islamic Law (Federal Territories) Act 1993 [Act 505] provides:

> *"Whether or not made by way of will or alang semasa marad al-mawt, no waqf or nazr made after the commencement of this Act and involving more than one third of the property of the person making it shall be valid with respect to the part in excess of one third."*

This clearly contradicts Islamic waqf law, which permits a person to endow as much of his property as he wishes. The one-third limit applies only in two situations: when the waqf is made during marad al-mawt, and when the waqf is made by way of Islamic wills. Almost all States impose a one-third limitation on waqf, including Johor[44], Penang[45], Pahang[46], Kedah[47], Sarawak[48], Perak[49], the Federal Territories[50], Terengganu[51], Sabah[52], Kelantan[53] and Perlis[54]. Previously, Perlis, under its 1964 Enactment, imposed the one-third limit only on waqf made by Islamic wills, as seen in the provision: "No will made by a

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44 Section 91(1), Administration of the Religion of Islam Enactment (State of Johor) 2003 [Enactment No. 16 of 2003].

45 Section 94(1), Administration of Islamic Religious Affairs Enactment (State of Penang) 2004 [Enactment No. 4 of 2004].

46 Section 73(1), Administration of Islamic Law Enactment (Pahang) 1991 [Enactment No. 3 of 1991].

47 Section 92(1), Administration of the Religion of Islam Enactment (Kedah) 1962 [Enactment No. 9 of 1962].

48 Section 51, Majlis Islam Sarawak Ordinance 2001.

49 Section 80(1), Administration of the Religion of Islam Enactment (Perak) 2004 [Enactment No. 4 of 2004].

50 Section 63(1), Administration of Islamic Law Act (Federal Territories) 1993 [Act 505].

51 Section 65(1), Administration of Islamic Religious Affairs Enactment (Terengganu) 2001 [Enactment No. 2 of 2001].

52 Section 47(1), Administration of Islamic Law Enactment (Sabah) 1992 [Enactment No. 13 of 1992].

53 Section 63(1), Council of the Religion of Islam and Malay Customs Enactment (Kelantan) 1994 [Enactment No. 4 of 1994].

54 Section 91(1), Administration of the Religion of Islam Enactment (Perlis) 2006 [Enactment No. 4 of 2006].

person professing the Muslim Religion shall bequeathe to any beneficiary or waqf property in excess of one third of the whole of the property of the said person." This provision ought to be amended to align with Islamic waqf law, which allows a person in good health to endow any amount of property, with the one-third limit applying only to waqf made by Islamic wills or during marad al-mawt.

Relevant authorities should take steps similar to those reflected in the Selangor Waqf Enactment[55] and the Melaka Waqf Enactment[56]. In Negeri Sembilan, provisions state that any aspect of waqf not expressly covered in the Enactment, including waqf made during marad al-mawt, is governed by Islamic law. In view of the above, it is necessary for all States other than Melaka, Negeri Sembilan and Selangor to introduce specific waqf enactments. At the very least, such enactments would serve as clear references and guidelines for all parties in implementing waqf in a more organised manner. In most States, specific provisions exist on the validity of a waqf khas. A special waqf made by a *wakif* becomes valid after the Sultan's consent, granted on the advice of the Majlis. The *wakif* must express the waqf in writing, witnessed by two adult Muslims who reside in the same mosque area *(kariah)* as the *wakif*. Such requirements are found in Pahang[57], Perak[58], Terengganu[59], the Federal Territories[60], Sabah[61], Penang[62] and Perlis[63].

In Kedah[64], the waqf must be witnessed by two adult Muslims, one of whom must be a *penghulu*, mosque official or village head in the same mosque area. In

55 Section 7 & 8(2).

56 Section 7 & 8(2).

57 Section 73(2)(a) and (b), Administration of Islamic Law Enactment (Pahang) 1991 [Enactment No. 3 of 1991].

58 Section 80(2)(a) and (b), Administration of the Religion of Islam Enactment (Perak) 2004 [Enactment No. 4 of 2004].

59 Section 65(2)(a) and (b), Administration of Islamic Religious Affairs Enactment (Terengganu) 2001 [Enactment No. 2 of 2001].

60 Section 63(2)(a) and (b), Administration of Islamic Law Act (Federal Territories) 1993 [Act 505].

61 Section 47(2)(a) and (b), Administration of Islamic Law Enactment (Sabah) 1992 [Enactment No. 13 of 1992].

62 Section 91(2)(a) and (b), Administration of the Religion of Islam Enactment (State of Penang) 2004 [Enactment No. 4 of 2004].

63 Section 91(2)(a) and (b), Administration of the Religion of Islam Enactment (Perlis) 2006 [Enactment No. 4 of 2006].

64 Section 92(2)(a) and (b), Administration of the Religion of Islam Enactment (Kedah) 1962 [Enactment No. 9 of 1962].

Kelantan[65], it must be witnessed by two qualified Muslims, one of whom is the mosque officer for the area of residence. In Johor[66], the requirement is simply that it be witnessed by two qualified witnesses under Islamic law. The Sarawak Islamic Council Ordinance 2001 contains no such provision. The Majlis is also required to draw up schemes for the utilisation of waqf property in permissible ways. Where the method of utilisation cannot be determined, the Majlis may direct that the property be credited to or form part of the baitulmal or a general charitable fund, with the written approval of the Sultan.[67] Most States require the Majlis to prepare, publish and gazette an annual list of all trust property, investments and assets of waqf or *nazr* that do not form part of the baitulmal fund, for each year after 31 December.[68]

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65 Section 63(2)(a) and (b), Council of the Religion of Islam and Malay Customs Enactment (Kelantan) 1994 [Enactment No. 4 of 1994].

66 Section 91(2)(a) and (b), Administration of the Religion of Islam Enactment (State of Johor) 2003 [Enactment No. 16 of 2003].

67 Section 72(2) and (3), Administration of Islamic Law Enactment (Pahang) 1991 [Enactment No. 3 of 1991]; Section 65(2) and (3), Council of the Religion of Islam and Malay Customs Enactment (Kelantan) 1994 [Enactment No. 4 of 1994]; Section 94(2) and (3), Administration of the Religion of Islam Enactment (Kedah) 1962 [Enactment No. 9 of 1962]; Section 93(2) and (3), Administration of the Religion of Islam Enactment (Perlis) 2006 [Enactment No. 4 of 2006]; Section 49(2) and (3), Administration of Islamic Law Enactment (Sabah) 1992 [Enactment No. 13 of 1992]; Section 65(2) and (3), Administration of Islamic Law Act (Federal Territories) 1993 [Act 505]; Section 67(2) and (3), Administration of Islamic Religious Affairs Enactment (Terengganu) 2001 [Enactment No. 2 of 2001]; Section 82(2) and (3), Administration of the Religion of Islam Enactment (Perak) 2004 [Enactment No. 4 of 2004]; and Section 93(2) and (3), Administration of the Religion of Islam Enactment (State of Penang) 2004 [Enactment No. 4 of 2004].

68 Section 78, Administration of Islamic Law Enactment (Pahang) 1991 [Enactment No. 3 of 1991]; Section 95, Administration of the Religion of Islam Enactment (State of Penang) 2004 [Enactment No. 4 of 2004]; Section 84, Administration of the Religion of Islam Enactment (Perak) 2004 [Enactment No. 4 of 2004]; Section 69, Administration of Islamic Religious Affairs Enactment (Terengganu) 2001 [Enactment No. 2 of 2001]; Section 68, Administration of Islamic Law Act (Federal Territories) 1993 [Act 505]; Section 52, Administration of Islamic Law Enactment (Sabah) 1992 [Enactment No. 13 of 1992]; Section 98, Administration of the Religion of Islam Enactment (Kedah) 1962 [Enactment No. 9 of 1962]; Section 95, Administration of the Religion of Islam Enactment (State of Johor) 2003 [Enactment No. 16 of 2003]; and Section 95, Administration of the Religion of Islam Enactment (Perlis) 2006 [Enactment No. 4 of 2006].

The Majlis must also prepare and submit to the State authority estimates of all its projected income and expenditure by 31 October each year[69], except in Sabah, where this is due in November[70]. Unlawful encroachment and occupation of waqf land is an offence. However, not all States expressly provide for such offences. Some provisions are found in Islamic administration enactments, while others are contained in State Shariah Criminal Offences Enactments. Melaka[71], Selangor[72] and Negeri Sembilan[73] place these provisions in their respective waqf enactments. In Kelantan[74], encroachment on Majlis land is dealt with under the Majlis Agama Islam dan Adat Istiadat Melayu Kelantan Enactment 1994, which makes it an offence for anyone to encroach, occupy, use or enjoy any waqf property or other trust property under the Majlis' control without written permission from the President (Yang Dipertua). In Sabah, similar provisions appear in sections 93 and 94 of the Shariah Criminal Offences (Sabah) Enactment 1995. For other States that do not provide for this in any enactment, there remains a need to legislate specific offences on encroachment of waqf land and to standardise them under a dedicated statute.

Thus, there remain several lacunae in waqf legislation that must be addressed to ensure the sustainability of waqf. States that do not yet have specific waqf laws should enact them, as Selangor, Melaka and Negeri Sembilan have done. Existing provisions should also be improved, such as those limiting waqf to one-third of a person's property. The definition of waqf property should be broadened to cover current forms of waqf such as waqf shares and other modern instruments. Similarly, provisions on encroachment of waqf land should be harmonised to protect waqf property and prevent unlawful occupation, given that many States still lack such provisions. The federal and state relationship as designated in the Federal Constitution put waqf into the state power but left with no clear provisions or laws except for the Administration of Islamic Laws in which, each state has its own. As such, the administration and procedures vary.

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69 Section 79(1), Administration of Islamic Law Enactment (Pahang) 1991 [Enactment No. 3 of 1991]; Section 69(1), Administration of Islamic Law Act (Federal Territories) 1993 [Act 505]; and Section 99(1), Administration of the Religion of Islam Enactment (Kedah) 1962 [Enactment No. 9 of 1962].

70 Section 53(3), Administration of Islamic Law Enactment (Sabah) 1992 [Enactment No. 13 of 1992].

71 Section 45, Waqf Enactment (State of Malacca) 2005 [Enactment No. 5 of 2005].

72 Section 45, Waqf Enactment (State of Selangor) 1999 [Enactment No. 7 of 1999].

73 Sections 35, 36, 37 and 38, Waqf Enactment (Negeri Sembilan) 2005 [Enactment No. 5 of 2005].

74 Section 111, Council of the Religion of Islam and Malay Customs Enactment (Kelantan) 1994 [Enactment No. 4 of 1994].

In practice, the different laws and procedures are not helping the practitioners and the legal experts (Nor Asiah Mohamad, 2024).

Islamic Trust (*Amanah*)

Trust *(Amanah)* refers to property held by a trustee for the benefit of certain persons.[75] A person may create a trust over property he owns for the benefit of others, with the property being held by another person. Within the framework of Islamic estate planning, a trust functions as an effective mechanism for facilitating the transfer of ownership of movable and immovable assets from the property owner to intended beneficiaries (Yusnita Mohd Yusof et.al, 2024). Most trusts in Islamic law are created by contract (akad). These include *hibah,* wills, waqf, *wisayah* (guardianship), *wakalah* (agency), *wadi'ah* (deposit), loan contracts and others (Badruddin Hj Ibrahim, 2009; Ahmad Hidayat Buang, 2009). Trusts can also be created by court order to administer the property of those who lack legal capacity to manage their affairs, such as orphans, persons of unsound mind, and also to administer estates and wills.

The practice of trusts in Malaysia is largely based on English law, particularly the principles of equity. This means that it is bound by equitable principles such as those seen in cases like In *re The Will of Yap Kwan Seng, decd (1924) 4 FMSLR 313* (rule against perpetuities), *Mohamed Ghaouse v Hajee Mahomed Saiboo & Anor (1885) 4 Ky 101* (rule against inalienability) and *Commissioner for Religious Affairs, Terengganu v Tengku Mariam (1970) 1 MLJ 222* (application of estoppel). Trusts in Malaysia are subject to various Federal statutes, such as the Trustees (Incorporation) Act 1952, the Trustee Act 1949, the Public Trust Corporation Act 1995, the Employees Provident Fund Act 1951, the Insurance Act 1963 and the National Land Code 1965 (Salleh Buang, 2009). Section 25 of the Civil Law Act 1956 provides that the Act does not affect any disposition of property made in accordance with Islamic law. This can be seen in *Haji Embong v Tengku Nik Maimunah (1980) 1 MLJ 286*, where Mohd Salleh Abbas of the Federal Court held that the English rule against perpetuities did not apply because the disposition of property was based on Islamic law.

Trusts fall under the Federal List in the Federal Constitution, meaning that all matters relating to them fall within the jurisdiction of the Civil Courts. This is evident from cases such as *Re Application by Tengku Ahmad Tajuddin (1984)2 MLJ 231*, where the Court held that a deed of trust executed by a

[75] *Yong Nyee Fan & Sons Sdn. Bhd. V. Kim Guan & Co. Sdn. Bhd. (1990) 3 MLJ 493.*

Muslim must be interpreted according to English law, and *Nor Jahan v Md Yusoff (1994) 1MLJ 156*, where the plaintiff's trust-related claim was held to fall within Civil Court jurisdiction, and the application to exclude the Court's jurisdiction under Article 121(1A) of the Federal Constitution was rejected.

An exception is made for trusts created through waqf. Waqf falls under the jurisdiction of the Shariah Courts by virtue of the State List in the Federal Constitution, supported by the State Islamic administration enactments that designate the State Islamic Religious Council as sole trustee of waqf property. Nevertheless, this does not preclude Civil Court jurisdiction entirely. Cases such as *Majlis Agama Islam Pulau Pinang v Isa Abdul Rahman (1992) 2 MLJ 244, Barkath Ali v Anwar Kabir (1997) 4 MLJ 389* and *G. Rethinasamy v Majlis Hal Ehwal Ugama Islam Pulau Pinang (1993) 2 MLJ 166* show that trust issues can still fall under Civil Court jurisdiction. Although waqf matters fall under the Shariah Courts, some related issues must be decided by Civil Courts because Shariah Courts lack jurisdiction to grant certain relief, such as injunctions over land or to adjudicate disputes involving non-Muslims. To date, there is still no written Islamic law specifically on amanah (trusts). Existing trust statutes do not contain special provisions on trusts according to Islamic law (Siti Zalikhah Md Nor, 2003).

CIVIL LAW PROVISIONS IN MUSLIM ESTATE PLANNING

Probate and Administration Act 1959 [Act 97]

The Probate and Administration Act 1959 is applied to ordinary (large) estates or to small estates. An ordinary estate refers to all types of property left by a deceased person, with or without a will, or partly intestate, consisting of movable and immovable property with a total value of RM2 million and above; immovable property (land) valued at more than RM2 million; and movable property only, such as money, shares and vehicles, even if their total value is less than RM2 million. A small estate, on the other hand, is an estate the total value of which does not exceed RM2 million, consisting, inter alia, of movable property only such as cash, shares, cars, Employees Provident Fund savings, Amanah Saham Nasional, Amanah Saham Bumiputera, unit trusts and so on.[76]

Applications for the administration of large estates must be made to the Civil High Court, whereas claims relating to small estates may be made through

[76] Small Estates (Distribution) Act 1955 [Act 98].

the estate administrator, the Small Estates Unit or Amanah Raya Berhad. The Probate and Administration Act 1959 came into force throughout Malaysia on 1 February 1960. It sets out the procedures for obtaining grants of probate and letters of administration. Applications for a grant of probate and for letters of administration may be made to the Civil High Court. Under this Act there are three types of grant, namely: (i) a grant of probate where the deceased, being a non-Muslim, left a will covering all his property; (ii) letters of administration in respect of an intestate estate; and (iii) letters of administration with will annexed where the deceased left a will disposing of part of his estate while the remainder is undisposed of (partly testate and partly intestate). In the context of large or small estates of Muslims, a faraid certificate is required to determine the shares of the estate to be distributed to the entitled heirs in accordance with Islamic law.

Small Estates (Distribution) Act 1955 [Act 98]

The Small Estates (Distribution) Act 1955 is an administrative statute. Its purpose is to coordinate and standardise the procedures for the distribution and administration of a deceased person's estate, whether the deceased was a Muslim or a non-Muslim. In addition, the Act was passed in order to save costs and to expedite the process of handling and managing claims relating to small estates. It applies to all claims in respect of the estate of a deceased person, whether the estate consists solely of land or partly of land together with other movable property such as cash, shares, Employees Provident Fund savings, unit trusts and so forth, provided that the total value of the estate does not exceed RM2 million at the date of the application.[77]

The Small Estates (Distribution) Act 1955 was brought into force in the States in stages, namely in Kelantan on 1 December 1955; in Johor, Negeri Sembilan, Pahang, Perak, Perlis, Selangor and Terengganu on 1 July 1957; in Kedah on 1 August 1962; in Penang on 23 December 1965; and in Melaka on 30 December 1965 (Mohd Zamro Muda et al., 2008). Applications for the distribution of small estates, whether of Muslims or non-Muslims, may be made before a Land Administrator (*Pegawai Penyelesai Pusaka*) at the District Land Office. In the context of administering the estate of a deceased Muslim, section 12(7) of the Act allows Islamic inheritance law to be applied in determining the devolution of the estate, the heirs entitled, and their respective shares and interests.

[77] Section 3(2), Small Estates (Distribution) Act 1955 [Act 98].

National Land Code (Act 828) (Revised 2020)

The National Land Code (Act 828) serves as the principal legislation governing all matters relating to land administration in Peninsular Malaysia. Its scope encompasses land ownership, registration, acquisition, leasing, disposal, and management of land falling under the jurisdiction of the State Authorities. The NLC establishes that all land is ultimately vested in the State Authority and may only be held through alienation by the relevant State Government. In the context of waqf land, although the concept and administration of waqf are derived from Islamic law and regulated through state waqf enactments, such land is generally registered as alienated land under the name of the State Islamic Religious Council (SIRC) as the registered proprietor. The implementation of the NLC is carried out through the Land Offices at the state and district levels, with executive authority vested in the State Authority pursuant to Part Three of the Code.

Accordingly, the NLC functions as the primary legal framework that ensures a systematic and uniform land administration system throughout Peninsular Malaysia. Nevertheless, in addition to state waqf enactments, ordinances, and legislation, the provisions of the NLC remain applicable to the administration of waqf land, particularly in securing statutory recognition and protection under the Torrens system of land registration. Notably, section 4(2)(e) of the NLC provides that existing laws relating to waqf and Baitulmal shall continue to apply notwithstanding the operation of the Code. Consequently, where any inconsistency arises between the provisions of the NLC and the applicable state waqf legislation (or federal legislation in the case of the Federal Territories), the waqf legislation shall prevail. This provision reinforces the primacy of Islamic law in matters concerning waqf property and religious administration, consistent with the constitutional division of legislative powers under the Federal Constitution. Therefore, any management, development, or utilisation of waqf land must be undertaken in accordance with the relevant waqf statutes in force while remaining compatible with the land registration framework established under the National Land Code.

Trustee Act 1949 [Act 208]

The application of civil law to Islamic trusts is also unavoidable. These civil laws must be applied in full even where the dispute concerns the property of Muslims. *Hibah* remains subject to the Trustee Act 1949, the Trust Companies Act 1949 and the Public Trust Corporation Act 1995, which has given rise to

conflicts of jurisdiction between the courts (Rusnadewi Abdul Rashid, 2009). In *Re Application by Tengku Ahmad Tajuddin [2004] CLJ 465*, it was held that a deed of trust executed by a Muslim must be interpreted according to English legal principles and must be heard and decided in the Civil Court. The same position arose in *Nor Jahan v Md Yusoff [1994] 1 MLJ 156*, where the plaintiff's application related to a trust that fell within the jurisdiction of the Civil Court, and reliance on Article 121(1A) was rejected. A different situation arises, however, where an exception is made to the Civil Court's jurisdiction to hear cases involving the management of trust property of Muslims, namely in waqf cases. For matters other than waqf, jurisdiction over disputes involving Muslim property remains with the Civil Courts, as illustrated by *Wan Naiman v Wan Mohamad Nawawi [1974]1 MLJ 41*, which involved a *hibah.*

Land (Group Settlement Areas) Act 1960 [Act 530]

All land under FELDA schemes throughout the country is subject to the Land (Group Settlement Areas) Act 1960. This Act also applies to other group settlement lands such as FELCRA, FELDA and RISDA schemes. The restrictions imposed by this Act can be seen, for example, in section 14, which provides that only two persons may be registered as co-holders regarded as joint owners on the title. Section 15 states that rural holdings may not at any time be subdivided or leased, while section 17 limits the types of crops that may be planted on any part of the land. Section 17(3) confines the use of urban holdings to residential, public, commercial, industrial or such other uses as may be approved by the State authority. At the same time, the Act operates as an exception to the National Land Code (Zulkifli Mohamad, 2010).

The Land (Group Settlement Areas) Act 1960 (Act 530) represents one of the civil laws that indirectly affects the administration of Muslim estates in Malaysia, particularly in relation to FELDA and other group settlement lands. Although inheritance rights of Muslim heirs are determined according to the principles of *farāʾiḍ*, the transfer and registration of settlement land remain subject to the requirements imposed by the Act. The legislation was introduced primarily to preserve the economic viability of agricultural holdings and to prevent excessive fragmentation of land ownership among multiple beneficiaries.

In practice, this has created a unique situation in which the determination of inheritance shares under Islamic law does not necessarily translate into the physical subdivision or registration of land in accordance with those shares. While all eligible heirs retain their rights under farāʾiḍ, the statutory framework

may require the land to be registered in the name of a single successor or managed through alternative arrangements agreed upon by the beneficiaries. As a result, the administration of settlement land often involves balancing the requirements of Islamic inheritance law with the policy objectives underlying land legislation. This illustrates one of the practical challenges within Malaysia's dual legal system. On the one hand, Islamic law seeks to ensure the equitable distribution of a deceased person's estate among entitled heirs. On the other hand, land legislation seeks to maintain the economic sustainability of settlement schemes through restrictions on ownership and transfer. The interaction between these two legal frameworks highlights the broader issue of legal and administrative fragmentation in Muslim estate planning and underscores the importance of developing mechanisms that can accommodate both the objectives of Islamic inheritance law and the practical realities of land administration.

Evidence Act 1950 [Act 56]

Section 100 of the Evidence Act 1950 provides: "Nothing in sections 91–99 shall affect the interpretation of wills, but in the States of Malacca, Penang, Sabah and Sarawak or any of them, those sections shall, so far as regards wills, be subject to any written law and to any interpretation relating thereto if those wills are construed in the Courts of Justice in England." On the basis of section 100, wills in Melaka, Penang, Sabah and Sarawak must therefore be construed according to English law, and this applies to everyone, including Muslims. This should not be the case for Muslims (Md Yazid Ahmad dan Ibnor Azli Ibrahim, 2006). Although the Evidence Act 1950 is not specifically enacted to regulate Muslim inheritance or estate planning, its provisions continue to have practical implications in the administration and adjudication of estate-related matters. One notable provision is section 100 of the Act, which provides that the interpretation of wills in the States of Melaka, Penang, Sabah, and Sarawak remains subject to English law principles and the relevant written laws applicable in those jurisdictions. This provision reflects the historical influence of English common law on Malaysia's legal system and continues to affect the interpretation of testamentary documents.

From the perspective of Muslim estate planning, this position raises important legal concerns. Islamic wills (waṣiyyah) are governed by specific Shariah principles relating to testamentary capacity, beneficiaries, and the limitation of bequests to one-third of the estate. Therefore, the application of English principles in the interpretation of wills involving Muslims may give

rise to tensions between civil legal rules and Islamic inheritance principles. Such a situation demonstrates the complexity of Malaysia's dual legal system, where certain aspects of estate administration remain influenced by civil law despite the constitutional recognition of Islamic law in matters relating to Muslim succession. In addition, the Evidence Act 1950 continues to play an important role in disputes involving hibah, waṣiyyah, trusts, and other estate planning instruments. Matters relating to documentary proof, witness testimony, authenticity of legal documents, and evidential requirements are often determined with reference to civil evidentiary principles. As such, while the substantive rights of Muslim beneficiaries may be governed by Islamic law, the procedural and evidential aspects of estate disputes frequently remain subject to civil legislation. This illustrates the continuing interaction between civil and Shariah law in Muslim estate planning and highlights the need for greater harmonisation to ensure legal certainty and consistency in the administration of Muslim estates in Malaysia.

Specific Relief Act 1950 [Act 137]

Part III of the Specific Relief Act provides that orders for perpetual injunctions may only be granted by the High Court. This means that any claim for a perpetual injunction can only be heard by the High Court because the Shariah Courts have no jurisdiction to entertain such claims, even where the injunction sought concerns matters that fall within the jurisdiction of the Shariah Courts, such as a claim for a perpetual injunction to restrain the demolition of a mosque that has been endowed as waqf. For example, in *Majlis Agama Islam Pulau Pinang v Isa Abdul Rahman & Anor, Eusoff Chin (1992) 2 MLJ 249* (then a Supreme Court Judge) stated:

> *"We are of the opinion that where a Civil Court hears a claim for an order which is not within the jurisdiction of the Shariah Court to grant, the Civil Court must hear that claim; and if a question of Islamic law arises in the course of the proceedings, the parties may call Islamic religious experts to give evidence at the trial, or the Court may refer the questions to the relevant Fatwa Council for clarification."*

However, this position has changed somewhat and become less restrictive following the decision of Haidar JCA (as he then was), sitting in the Federal Court on appeal in *Majlis Ugama Islam Pulau Pinang & Seberang Perai v Shaik Zolkaffily bin Shaik Natar & Ors (2003) 3 MLJ 305*, where it was held that the approach adopted by the High Court and the Court of Appeal namely

that the Shariah Court had no jurisdiction to grant the injunction sought by the respondents and no jurisdiction to determine the validity of the will and deed of settlement was wrong because it was based on the "remedy prayed for" rather than the "subject matter" approach. The judgment emphasised that the proper approach is to look at the underlying subject matter and not the remedy prayed for; thus, if the subject matter is waqf, it is the Shariah Court, and not the Civil Court, that has jurisdiction, even if civil remedies are sought. In truth, the purpose of the amendment to Article 121(1A) was to remove from the Civil Courts any jurisdiction over matters within the jurisdiction of the Shariah Courts. This was stressed by Harun Hashim J (of the Supreme Court), who clearly stated in his judgment[78] that the object of the amendment to Article 121 was to withdraw the High Court's jurisdiction in respect of any matter that falls within the jurisdiction of the Shariah Courts, and that where the jurisdiction of the Shariah Courts is challenged, the correct approach is to ascertain whether the Shariah Court has jurisdiction, and not whether the State Legislature has power to enact laws conferring jurisdiction on the Shariah Courts.

He explained the purpose of the amendment as follows:

> *"It is very clear that the Muslim community in this country has lived under personal and family Islamic laws since the fifteenth century. Such laws have long been administered not only in the Shariah Courts but also in the Civil Courts. What Article 121(1A) has done is to confer exclusive jurisdiction on the Shariah Courts to administer those Islamic family laws. In other words, Article 121(1A) of the Federal Constitution is a provision intended to prevent any conflict of jurisdiction between the Civil Courts and the Shariah Courts."*[79]

Accordingly, based on the explanation given in these Supreme Court decisions, cases that fall within the jurisdiction of the Shariah Courts should no longer be brought before the High Court. Any other written laws that may give rise to confusion between the jurisdictions of the Shariah and Civil Courts must be amended so as to conform with the amendment to Article 121(1A) of the Federal Constitution.

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78 *Mohd. Habibullah bin Mahmood lwn. Faridah bte Dato Talib (1992) 2 MLJ 793; Nor Kursiah bte Baharuddin lwn. Baharuddin lwn Shahril bin Lamin & Anor (1997) 2 AMR 1243.*

79 *Mohd. Habibullah bin Mahmood lwn. Faridah bte Dato Talib (1992) 2 MLJ 803-804.*

Malay Reservation Enactments of the States

The Malay Reservation Enactments of the various States prohibit any dealings in, and transfer of, Malay Reservation land to non-Malays. These Enactments restrict the devolution of a deceased's Malay Reservation land to heirs who are not Malay, even though they are Muslims. From the perspective of Islamic law, such heirs are entitled to the inheritance. The Enactments allow devolution or transfer of title only to Malays. As a result, orders for distribution and transfer of title cannot be implemented where an heir (such as the deceased's non-Malay spouse) does not fall within the statutory definition of Malay, even though he or she is entitled under Islamic law.

In substance, making a nomination over savings is similar to making a will over those savings. However, because the nominee is usually one of the heirs entitled to inherit, such nominations clearly conflict with the rules of inheritance and wills in Islam (Md Yazid Ahmad dan Ibnor Azli Ibrahim, 2006). Here, "nomination" means naming or designating a person in financial institutions such as the Employees Provident Fund (EPF), Bank Simpanan Nasional and others, including life insurance. For example, under the EPF Act 1991 [Act 452], the savings of a deceased contributor are dealt with through the nominee. This is inconsistent with the requirements of Islamic law, because EPF contributions form part of the deceased's estate and must be distributed in accordance with the Islamic inheritance system (Siti Zalikha Md Nor, 1996). Similarly, under the Pensions Act 1980, pension payments are not treated as estate property and cannot be claimed in the distribution of the estate unless the nominee agrees to distribute them in accordance with the inheritance rules. As for foreigners, they may own land classified as industrial without obtaining approval from the State Authority, and may own commercial land provided that prior written approval is obtained from the State Authority; however, foreigners may never own land classified as agricultural or land intended for agricultural purposes (Ridzuan Awang, 1994).[80]

Income Tax Act 1967

The Income Tax Act 1967 is not specifically concerned with the regulation of Muslim estate planning. Nevertheless, its provisions remain relevant in the broader context of wealth management and estate administration. While instruments such as hibah are primarily governed by Islamic law, the financial

[80] Section 433B, National Land Code 1965 [Act 56 of 1965].

consequences arising from the ownership, transfer, and management of assets continue to be subject to the general taxation framework established under civil law. In principle, the transfer of property through hibah or inheritance does not constitute taxable income for the recipient, as these transactions involve the gratuitous transfer of wealth rather than the generation of income. However, practical issues may arise when the transferred assets subsequently produce income, such as rental proceeds, dividends, or business profits, which remain subject to the ordinary provisions of the Income Tax Act 1967. Similarly, estate administrators are often required to ensure that any outstanding tax liabilities of the deceased are settled before the estate can be fully distributed to the beneficiaries. The relevance of the Act therefore lies not in determining the validity of Islamic estate planning instruments, but in regulating the financial and administrative consequences that may arise from their implementation. This reflects the broader reality of Malaysia's dual legal system, where the substantive aspects of succession are governed by Islamic law, while matters relating to taxation and financial administration continue to fall within the scope of civil legislation. As such, effective Muslim estate planning requires not only compliance with Shariah principles but also an appreciation of the tax obligations that may affect the administration and preservation of estate assets.

Stamp Act 1949 [Act 378]

Section 16(1) of the Stamp Act 1949 provides that any conveyance operating as a voluntary inter vivos disposition is chargeable with the same stamp duty as if it were a transfer or conveyance on sale. Under the Stamp Duty (Remission) Order No. 7 2002 – P.U. (A) 434, the Government grants a 50 per cent remission of stamp duty chargeable on instruments of transfer. However, this reduction is still insufficient because a person who wishes to make a *hibah* must still pay stamp duty on the instrument of transfer executed by way of *hibah.* This can pose a problem where the value of the property to be transferred is high. At the same time, the Order does not clearly state whether the remission also applies to the revocation of *hibah.*

This is significant because revocation has implications in terms of procedure and cost, and imposes a burden on the applicant, particularly as to whether the revocation process is treated in the same way as the making of a *hibah.* The Schedule to the Order also fails to include other categories of children such as li'an children and foster children. Ideally, dispositions of property by way of *hibah* should be exempted from stamp duty, especially when compared with non-Muslim wills, which are not subject to stamp duty (Rusnadewi Abdul

Rashid, 2009). In *Poolimahee Rajeswary @ Fatimah binti Baba v Meah binti Hussain (2005) Jurnal Hukum 164, XIX*, an application to transfer a plot of land and a house to the deceased's stepchild during his lifetime failed because he did not have the funds to complete the change of name, which in turn led to a dispute over the plaintiff's rights. In addition, the Government later acquired the land for a highway project and paid compensation in the name of the deceased.

CONCLUSION

The study concludes that although Malaysia has developed various legal mechanisms for Muslim estate planning, significant gaps and fragmentation remain in the regulation of hibah, wasiyyah, waqf, and Islamic trust. Addressing these challenges through legal harmonisation and stronger institutional coordination is essential to improve estate administration, reduce inheritance disputes, and prevent unadministered estates. Such reforms are aligned with SDG 16 (Peace, Justice and Strong Institutions), which emphasises the importance of effective legal frameworks, access to justice, and accountable institutions in promoting social stability and sustainable development. A comprehensive examination of Malaysia's legal framework for Islamic estate planning reveals persistent structural and jurisdictional gaps that require urgent policy and legislative attention.

As the Islamic estate planning sector continues to expand through financial innovation, corporate involvement, and broader asset ownership among Muslims, the absence of a cohesive and harmonised regulatory structure risks undermining both legal certainty and the integrity of Shariah implementation. Fragmented procedures, overlapping court jurisdiction, and the lack of dedicated legislation governing *hibah*, Islamic wills (*wasiyyah*), Islamic trusts (*amanah*), and waqf highlight a pressing need for coordinated reform at both federal and state levels. In this respect, the enactment of specific statutory instruments, whether through Acts at the federal level or enactments at the state level, would provide clarity and enforceability that cannot be achieved solely through common law application of Islamic principles.

The same reform imperative applies to states that have not yet introduced comprehensive waqf legislation, especially given the increasing commercialisation and corporatisation of waqf products in contemporary Malaysia. Codified legislation would not only harmonise legal interpretation and streamline administrative procedures, but also enhance public confidence, protect beneficiaries' rights, and support regulatory governance. As industry

players continue to develop estate planning products and services, they depend on transparent and authoritative legal guidelines. Therefore, proactive legal reforms will serve as the cornerstone for a robust, ethically governed, and economically viable Islamic estate planning ecosystem for Malaysia's Muslim community.

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REFERENCES

Abdul Jalil Borhan. *Sejarah Penulisan dan Perlaksanaan Hukum Islam di Nusantara*. Dewan Bahasa dan Pustaka, 1993.

Abdul Kadir Hj. Muhammad. "Harta Penama Bukan Harta Wasiat." *Jurnal Syariah* 5, no. 2 (1997): 165.

Abdul Monir Yaacob. "Islamic Law in the Malay Legal Texts." *Jurnal Undang-Undang IKIM* 1 (Jan–Jun 1999): 86.

Abdul Monir Yaacob. "Wasiat: Konsep dan Perundangan." Dalam *Pentadbiran Harta Menurut Islam*, disunting oleh Abdul Monir Yaacob dan Mohd Fauzi Mustaffa, 75. Institut Kefahaman Islam Malaysia, 1999.

Abdul Rahman Hj Abdullah. *Pemikiran Umat Islam di Nusantara: Sejarah dan Perkembangannya Hingga Abad ke-9*. Dewan Bahasa dan Pustaka, 1990.

Ahmad Hidayat Buang, ed. *Undang-Undang Islam di Malaysia: Prinsip dan Amalan*. Penerbit Universiti Malaya, 2007.

Ahmad Hidayat Buang. "Prinsip dan Pelaksanaan Wasiat." Dalam *Undang-Undang Islam di Malaysia: Prinsip dan Amalan*, disunting oleh Ahmad Hidayat Buang, 291. Penerbit Universiti Malaya, 2007.

Ahmad Hidayat Buang. *Prinsip dan Perlaksanaan Hibah*. Penerbit Universiti Malaya, 2007.
Ahmad Hidayat Buang. "The Influence of Customary Practices in and Around Arabia in the Early Centuries of Islam to the Understanding of the Historical of Islamic Law." *Monograf Syariah* (Jun 1993): 51–68.

Ahmad Ibrahim. *Pentadbiran Harta Menurut Islam: Undang-Undang Pentadbiran Harta Pusaka bagi Orang-Orang Islam di Malaysia*. Institut Kefahaman Islam Malaysia, 1999.

Ahmad Ibrahim. *Undang-Undang Keluarga Islam di Malaysia*. Malayan Law Journal Sdn. Bhd., 1999.

Ahmad Termizi Abdullah & Shofiyyah Moidin. Peranan dan Praktik Profesional Perundangan dalam Pelaksanaan Hibah, Hibah Amanah Tunai dan Hibah Hartanah dalam Gadaian. *Journal of Contemporary Islamic Studies*, 10(3) (2024): 1-19.

Ahmad Ibrahim. "Undang-undang Pentadbiran Harta Pusaka bagi Orang Islam di Malaysia." Dalam *Pentadbiran Harta Menurut Islam*, disunting oleh Abdul Monir Yaacob dan Mohd Fauzi Mustaffa, 27–29. Institut Kefahaman Islam Malaysia, 1999.

Al-Ahkam al-'Adliyyah: Undang-Undang Sivil Islam. Diterjemahkan oleh Md Akhir Haji Yaacob. Dewan Bahasa dan Pustaka, 2002.

Azi Haslin Abdul Rahman & Rusni Hassan. Islamic Estate Planning in Malaysia: The Dilemma. *Journal of Islam in Asia*. 7(2)(2020): 237–268.

Badruddin Hj Ibrahim. "Konsep Amanah di dalam Perundangan Islam." Dalam *Undang-Undang Harta dan Amanah*, disunting oleh Akmal Hidayah Halim et al., 130. Universiti Islam Antarabangsa Malaysia, 2009.

Fares Djafri, Mohamad Akram Laldin & Sharifah Zubaidah Syed Abdul Kader. Waqf in Malaysia: The Development of Legal and Institutional Framework. *Sultan Qaboos University Legal Studies Journal.* no. 1 (1) (2022): 1-30

Hamid Jusoh. "Pemakaian Undang-Undang Islam Kini dan Masa Depannya di Malaysia." Dalam *Al-Ahkam: Undang-Undang Malaysia Kini*, disunting oleh Ahmad Ibrahim, 67–68. Dewan Bahasa dan Pustaka, 1995.

Hooker, M. B. *The Personal Laws of Malaysia: An Introduction*. Oxford University Press, 1976.

Jasni Sulong. "Hadis Wasiat kepada Waris: Konsep dan Takhrij dalam Penggubalan Undang-Undang Semasa." Dalam *Warisan al-Hadis: Antara Teras dan Dinamika Pemikiran*, disunting oleh Mohd Radzi Othman et al., 84. Penerbit Universiti Sains Malaysia, 2008.

Jasni Sulong. "Undang-undang Pusaka Islam: Kajian Terhadap Pembaharuan Undang-Undang dan Aplikasi di Malaysia." Tesis kedoktoran, Universiti Malaya, 2005.

Mahamad Arifin. "Perkembangan Undang-Undang Pentadbiran Islam di Malaysia." Dalam *Pentadbiran Undang-Undang Islam di Malaysia*, disunting oleh Mahamad Arifin et al., 2. Dewan Bahasa dan Pustaka, 2007.

Mahamad Naser Disa. "Penyelarasan Undang-Undang Perwarisan: Isu dan Penyelesaiannya." *Jurnal Pengurusan JAWHAR* 3, no. 1 (2009): 190.

Mahinder Singh Sidhu. *The Law of Wills, Probate, Administration and Succession in Malaysia and Singapore*. International Law Book Services, 2005.

Mahmood Zuhdi Abdul Majid dan Raihanah Azahari. *Undang-Undang Keluarga Islam: Konsep dan Perlaksanaannya di Malaysia*. Karya Abazie, 1987.

Md Yazid Ahmad dan Ibnor Azli Ibrahim. "Kekangan Statut ke atas Bidang Kuasa Mahkamah Syariah dalam Pentadbiran Harta Orang-Orang Islam di Malaysia." Kertas kerja dibentangkan dalam *Seminar Kebangsaan Pengurusan Harta dalam Islam*, Universiti Kebangsaan Malaysia dan Kolej Islam Pahang Sultan Ahmad Shah (KIPSAS), 8–9 Ogos 2006.

Mohd Farid Mohd Zainal. "Pengurusan Wasiat Majlis Agama Islam Selangor: Kronologi, Isu dan Cabaran." *Jurnal Pengurusan JAWHAR* 2, no. 1 (2008): 87.

Mohd Ridzuan Awang. "Pengurusan Harta Orang Islam di Malaysia: Isu Undang-Undang dan Penyelesaian." Kertas kerja dibentangkan dalam *Seminar Kebangsaan Pengurusan Harta dalam Islam*, Universiti Kebangsaan Malaysia dan Kolej Islam Pahang Sultan Ahmad Shah (KIPSAS), 8–9 Ogos 2006.

Mohd Zaidi Daud, Hanira Hanafi, and Mohd Fauzi Abu@Hussin. Literature on Current Development of Waqf Practices in Malaysia. *Journal of Shariah Law Research* 7, no. 2 (2022): 223–240.

Mohd Zamro Muda et al. *Pengantar Undang-Undang dan Pentadbiran Pusaka, Wasiat dan Wakaf Orang Islam di Malaysia*. Jabatan Syariah, Fakulti Pengajian Islam, Universiti Kebangsaan Malaysia, 2008.

Muhammad Amrullah, Nasrul, D., Buang, A. H., Noh, N., & Mohd Alam Shah, N. A. Resolution of family disputes in administration of estate by Amanah Raya Berhad. *Journal of Shariah Law Research*, 8(1) (2023): 71-86

Nor Asiah Mohamad. Developments in Harmonisation of Sharīʿah and Law on Waqf. *IIUM Law Journal* 32, no. 2 (2024): 59–86.

Othman Ishak. *Hubungan Antara Undang-Undang Islam dengan Undang-Undang Adat*. Dewan Bahasa dan Pustaka, 1997.

Pawancheek Marican. *Islamic Inheritance Laws in Malaysia*. Malayan Law Journal Sdn. Bhd., 2004.

Pawancheek Marican. "The Legal Effect of Nomination by Muslims." *Malayan Law Journal* 2 (1997): cxxxviii.

Ridzuan Awang. *Undang-Undang Tanah Islam: Pendekatan dan Perbandingan*. Dewan Bahasa dan Pustaka, 1994.

Rusnadewi Abdul Rashid. "Hibah sebagai Cara Pengagihan Harta: Kajian Terhadap Halangan Pelaksanaannya." Tesis kedoktoran, Universiti Kebangsaan Malaysia, 2009.

Rusni Hassan & Nor Azdilah Mohamad Zaizi. The Concept and Application of Hibah as a Financial Instrument from the Malaysian Legal Perspective: An Analysis. *IUM Law Journal* 28, no. 1 (2020): 227–252.

Salleh Buang. "Undang-Undang Tanah Adat Melayu." Dalam *Al-Ahkam: Undang-Undang Malaysia Kini*, disunting oleh Ahmad Ibrahim, 26. Dewan Bahasa dan Pustaka, 1995.

Siti Mashitoh Mahamood, ed. *Harta Amanah Orang Islam di Malaysia: Perspektif Undang-Undang dan Pentadbiran*. Penerbit Universiti Malaya, 2006.

Siti Mashitoh Mahamood. "Undang-undang Pentadbiran Harta Wakaf di Malaysia." Dalam *Mahkamah Syariah di Malaysia: Pencapaian dan Cabaran*, disunting oleh Ahmad Hidayat Buang, 112. Penerbit Universiti Malaya, 2005.

Siti Zalikhah Md Nor. "Beberapa Isu dalam Pentadbiran Harta Keluarga Islam di Malaysia." Dalam *Prosiding Seminar Kebangsaan Fiqh Semasa*, disunting oleh Shofian Ahmad et al., 4–7. Jabatan Syariah, Fakulti Pengajian Islam, Universiti Kebangsaan Malaysia, 2003.

Siti Zalikha Md Nor. *Pemilikan Harta dalam Perkahwinan*. Dewan Bahasa dan Pustaka, 1996.

Tajul Aris Ahmad Bustami. "Penghakiman Kes Wasiat Orang Islam: Satu Analisis." Dalam *Pentadbiran Undang-Undang Islam di Malaysia*, disunting oleh Mahamad Arifin et al., 196–197. Dewan Bahasa dan Pustaka, 2007.

Tajul Aris Ahmad Bustami. "Pentadbiran Wasiat Orang Islam di Malaysia: Perkembangan dan Permasalahan." *Kanun* 16, no. 1/8 (2004).

Tajul Aris Ahmad Bustami. "Undang-Undang Wasiat Orang Islam di Malaysia: Sejarah dan Perkembangannya." Dalam *Undang-Undang Harta dan Amanah*, disunting oleh Akmal Hidayah Halim, 111–120. Universiti Islam Antarabangsa Malaysia, 2009.

Yusnita Mohd Yusof and Akmal Hidayah Halim. The Creation of Islamic Trust under the Civil Requirements in Malaysia. *Al-Qanatir: International Journal of Islamic Studies* 33, no. 1 (2024): 76–85.

Zaini Nasohah. *Pentadbiran Undang-Undang Islam di Malaysia Sebelum dan Menjelang Merdeka*. Utusan Publications & Distributors Sdn. Bhd., 2004.

Zulkifli Mohamad. "Penyelesaian Isu Harta Pusaka Tanah Rancangan FELDA: Kajian Kes FELDA Lurah Bilut Bentong Pahang Darul Makmur." Tesis kedoktoran, Universiti Malaya, 2010.