

## **The Journey on Wasiyyah in Malaysia: A Calling for an Expansion**

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### **Abstract**

Wasiyyah or will is one of many acceptable modes of wealth acquisition and disposal in Islam. Wasiyyah is declaration of a person made during his life time with respect to his property or benefit thereof, to be carried out for the purposes permissible by Islamic law after his death.. The Hukum of making wasiyyah depends on the conditions of the owner of the property and it can be sunnah or recommend and sometime can be wajib or compulsory. Wasiyyah is recommended for settling debts or to secure the welfare of minors. This concept and practice of wasiyyah is hardly known in Malaysia. However, it is widely practised in the Middle East, especially in Egypt whose Islamic inheritance procedures are quite well established. Therefore, in line with this, the aim of this paper present the journey

so far on wasiyyah from Malaysian perspective with a calling for more research to be conducted in this area so that to add on the existing literature on wasiyyah which is one of the Islamic estate planning. It's a conceptual paper.

**Keywords:** wasiyyah, Islamic estate planning, wealth acquisition

## 1. Introduction/Background

Estate planning is a vital but often forgotten element in a Muslim's financial plan. According to Abdul Aziz Peru Mohamed (Weekley edge,2016), estate planning is how we protect the assets we have spent a lifetime accumulating. He also mentioned that:

“Estate planning is the final part of financial planning. Of course, most of our energy is directed to accumulating assets, whether liquid or fixed. After that, we seek to protect our assets, so we take on takaful and insurance to protect our homes, our families and ourselves. But we always forget the last part. Based on our research, 85% of the local Muslim population have not done any estate planning”.

Estate planning is the writing of wills and nominations as a means of wealth distribution after one's passing on. The principles guiding Islamic Estate Planning helps to ensure that the wealth or estate transferred is in accordance with the giver or deceased's wishes and, more importantly, in accordance with the Shariah. There are some means of wealth and estate transfer as mentioned in Quran and Hadith; wasiyyah, waqf, hibah, faraid and etc.

Currently, the administration of Islamic property in Malaysia was governed by rule of faraid. However, it has to certain degree give negative impacts to the well being of the community (Rashih et al.,2013;Buang,2008). This can be seen through the statistics revealed that there are about 42 billion of Muslims estates failed to be distributed to the legal heirs (Rashid et al.,2013, Mujani et al., 2012). In fact, the figure of frozen assets of the Muslims in Malaysia keep on incerasing over the year(Kamaruddin and Al-Ma'amun,2013). This alarming statistics trigger the importance of delivering the Muslim society with the right tools to solve the problems immediately as this phenomenon raises many issues and problems. The process of distributing the property by way of succession or fara'id in many cases is time consuming, complicated and costly. Not to mention the process sometimes has disrupted relationships between family members because of disputes (Shafie et al.,2015).

Due to the problems that may occurred, some writes and scholars in view that the implementation of estate planning distribution which is made during the property owner's lifetime is very crucial. One must clear that estate planning is not meant to avoid faraid (Mujani et al., 2011). The objective of making an estate planning is to ease the family while dealing the estate administration and settlement since the

whole process is lengthy and costly (Kamaruddin and Al-Ma'amun,2015). The estate planning should be prepared for two elements of time, covering planning during the lifetime and planning upon death .Islamic law recognizes transactions which transfer property from one individual to another, without any payment or consideration( Rashid et al.,2013). In this regards, the management of estate planning by way of gift inter wasiyyah is really recommended eventhough there are a variety of other legal techniques that a person may deploy as a form of estate planning (Rashid et al.,2013;Al-Ma'amun,2010). Apart from that, estate planning during the lifetime also helps to solve the problem of frozen estates.

Ab. Aziz (2012) has highlighted several importance functions of wasiyyah which is to guide the executor through the process of distributing the estate upon the testator's death, the consolidation process and the purification process. The wasiyyah also contains wishes or advice of the deceased to the surviving family to submit to God and to obey his command. The estate to be willed also must have some economic value in physical terms or in benefits. It is important that a wasiyyah created must be clear and objective becuase unclear wasiyyah may create more problems in future. Leaving a Wasiyyah also will assists in the smooth processing and settlement of the estate administration (Ghul et al.,2015). Thus, this research will analyze the journey of wasiyyah in Malaysia by classifying the existing article based on their method and focus of study and findings.

## **2. Literature Review**

### **2.1 Definition of wasiyyah**

The Muslims in Malaysia call this document a 'Wasiat'. It basically means the testamentary bequest limited to one-third (1/3) of the Testator's estate and can only be given to non-heirs as defined in the Holy Quran. This means that the general bequest can be made to adopted children and adopted parents and is usually meant for charitable purposes including to the mosques, religious organizations and orphanages. It has to be reminded that under Islamic Law, heirs and family members do not exactly mean the same people. (ZAR Perunding Pusaka,2008). According to Imam Muḥammad Idris al-Shafii, waṣiyyah means "authorizing possession of one's wealth or possessions to someone else after one's death by way of charity (tabarru')(Salisu,2016).

Wasiyyah (will or bequest) also defined as the gift from a person to another; like material wealth, property or benefit to be owned after the death of the giver( Zakiah et al.,2016). Literally, wasiyyah can be defined as a declaration of a person made during his life time with respect to his property or benefit thereof, to be carried out for the purpose of charity or for any other purposes permissible by Islamic law, after his death (Ab. Aziz, 2012). Zurina et al.(2013) claimed that Wasiyyah in Islam is not only seen as a part of Ibadah, but it is also been considered as a part of social

responsibility because indirectly it contributes to socio-economic through sadaqah jariyyah.

Hassan (2013) defined wasiyyah as declaration in the prescribed form of the intention of the person making it of the matter which he wishes to take effect on or after his death, until which time it is revocable is another technical meaning of wasiyyah. Shafii scholars on the other hand conclude that “wassa” as connecting or delivering where it connects or delivers someone good deeds during his lifetime to be rewarded later after his demise (Zamro,2008).

### **3. Journey so Far on Wasiyyah in Malaysia**

The study conducted on wasiyyah in Malaysia is very limited. Among the pioneer paper is the one conducted by Ismail and Peyman (2008) which examine the knowledge of Muslim society about wasiyyah and the factors that influence Muslim society in preparing wasiyyah. The findings confirm that the objective of wasiyyah writing, the benefit of wasiyyah and the knowledge about wasiyyah are found to be the factors that influence many Muslims in making a wasiyyah as an effort to have fair management and distriburion of wealth. While Muda (2008) highlighted on the concept of wasiyyah in his writings. The paper discussed on the rulings of wasiyyah from the sources of Islamic shariah, types of wasiyyah, the law governed wasiyyah in Malaysia and some cases on the application of wasiyyah in Malaysia.

Later, in 2010, Al-Ma’amun has discovered the current parcatice of leaving wasiyyah among Malaysian by analyzing the factors of leaving wasiyyah and the factors of not leaving wasiyyah. Among the factors of leaving wasiyyah is mainly because of their intention either to protect the adopted children or for the reason of the good deeds in the hereafter. The paper also discussed on the overall Islamic estate services in Malaysia in term of their process and procedures. Among the institutions are Amanah Raya Berhad, As-Salihin Trustee Berhad, ZAR Perunding Pusaka and many more. The findings shows that Malaysian Muslims are still far behind in this particular matter in the aspects of knowledge and implementation. They seem rather to take for granted and their ignorance finally leads to emergence of the estate administration and settlement problems.

In 2012, Dahan study on the extent of possession of Will among Muslim community based on demographic characteristics that examines the relationship between Attitude, Religiosity, Financial obligation and Knowledge with the Intention to adopt Will. Based on the findings, it reveals that possession of Will among respondents were very low. Al-Ma’amun also in the research title of “Analysing the Practice of Wasiyyah (Islamic Will) Within the Contextual Form of Islamic Estate Planning in Malaysia: Variations Across Control Variables” review the practice of wasiyyah within the contextual form of Islamic estate planning by menas of investigating its variations across selected control variables. The findings

imply that age, employment status, monthly income, amount of inheritance received, health status, having children, adopted children and grandchildren, knowledge, institution, and inheritance law are the significant factors triggering the wasiyyah practice among respondents. This study reflects that the attempt to increase wasiyyah practice and the integration of wasiyyah into Islamic wealth management and financial planning process should be aggressively made.

Then, in 2013 Halim came out with the conceptual paper which mainly discussed on the rulings of wasiyyah and the procedure of the administration of the estate property. The findings emphasized on the importance of estate planning which is to ensure the efficiency in managing the property. Ramli in the same year also produced the conceptual paper which discuss on the importance of wasiyyah in estate planning and managing family wealth. The findings suggested that the ammendmend of law should be make in order to ensure the process of writing the will and administration of the property run smoothly.

The recent paper in 2014 explore the bequest perceptions among Malaysia's urban older adults with appropriate bequest models in describing theirs bequest motives (Chuan et al.,2014). The aims of this study are to determine the most applicable bequest motives and bequest clusters to describe bequest perceptions among Malaysia's urban older adults. The research revealed that urban older Malaysians are more conformed to altruism model, selfish life-cycle model, and social norms and tradition. Through the cluster analysis, this study has discovered that there are three bequest clusters from urban older adults'' bequest motives and are named as indifferent norms bequest, authoritarian self-centred bequest and domineering philanthropic bequest. Generally, domineering philanthropic bequest older adults are young, healthy, educated and financially well-off as well as highly committed to household expenditure. On the other hand, authoritarian self-centred bequest older Malaysians are old, unhealthy, less educated, have poor financial status and have low commitment on household expenditure. Indifferent norms bequest older persons fall in between domineering philanthropic and authoritarian self-centred bequest older groups.

Later, in 2015, there are about five papers have been written on wasiyyah. Ghul et al.,(2015) has examine the relationship between knowledge and awareness with regards to Wasiyyah adoption among Muslims in Malaysia and i dentify the barriers in Islamic inheritance distribution. The findings from this study show that 1) knowledge on the concepts of Islamic estate planning and 2) awareness of the importance wealth management have a significant effect towards Wasiyyah practices. In terms of barriers in Islamic inheritance distribution, the biggest obstacles among all the factors are lengthy estate management and distribution process. Abd. Aziz and Izzati (2015) in their research discovered that Malaysian Muslims have positive perception towards planning of waqf, wasiyyah and faraid. Majority of them have a perception planning of wealth distribution is not only for rich, established people, married person and old people. Besides that, most of them

also have a perception that it is important to plan wealth distribution for benefits of heirs as well as ummah. In another different paper with the title of “ coordinating waqf, wasiyyah and faraid” ,both authors found that most of respondents agreed that by coordinating of waqf, wasiyyah and faraid could ease burden of the owner and heirs as well as could reduce issues of frozen assets to the lowest level.

In 2015 also, Muhammad examined the rate of success of the alternative tools for the transfer of properties from one generation to the next, among which Muslim wills (wasiyah). The theoretical concept of wills in Islamic law was used to assess the applied instruments of wills. The study finds that there is a steady increase in the number of new will document being drafted and executed. However, the number is still small compare to the majority of Muslims among the 30 million Malaysians. This was attributed to the mindset of Muslims and the lack of education about the benefits of wills. On the other hand, Talib et al.( 2015) explore the concept of maqasid syariah which is related to the application of wasiyyah. The findings proved that the concept of maqasid shari’ah is really needed in enhancing the application of wasiyyah and ensuring the property well managed.

Zakiah et al. (2016) analyzed the documentation of wasiyyah with special reference at As Salihin Trustee and subsequently discuss the implication for non-practicing documentation of wasiyyah in Malaysia. This article then presents recommendations on how the aforementioned issues may be addressed by suggesting a proper wasiyyah documentation process that complies with both Shariah and Malaysian law. The outcome of this paper signifies the documentation of wasiyyah is among the vital part that need to be taken into consideration within Muslim’s life as this practice could uphold and maintain the established principle in Islam in ensuring the family’s welfare are protected. On the other hand, Mohamed and Sulong (2016) revealed the history of the methods of bequest according to the customs and traditonal laws of the Malays and takes a detailed look at the changes and developments in the methods of bequest after the arrival of Islam. Ngadnan et al.(2016) discovered the procedure of the implementation which focused only in Majlis Agama Islam Selangor (MAIS). The finding highlighted on the role of MAIS as one of the body in Malaysia which involved in Islamic estate planning.

The latest article was wtitten by Muhammad (2017) which has discussed on the concept of a bequest in Islamic law and its roles as an effective wealth planning instrument. Bequest (or will) is suitable as an instrument for property management. However, to accommodate this instrument, amendments proposed in this article are needed to the existing law. The table below show the summary of the existing research.

<b>Study</b>	<b>Method</b>	<b>Study focus and findings</b>
Ahmad Ismail and Jaafar Peyman (2008)	Questionnaire survey	This paper examines the knowledge of Muslim society about wasiyyah and its contribution to the society. While the majority of Muslims in Malaysia are alert and familiar with the term of Islamic will or wasiyyah, they have no clear idea or understanding about wasiyyah. Most of Muslim society has little knowledge about wasiyyah because of poor knowledge dissemination or promotion. The contribution of wasiyyah is to accelerate the process of management and distribution of property.
Mohd Zamro Muda (2008)	Literature review	The paper is a conceptual paper which discusses wasiyyah and hibah as tools of estate planning. The paper also highlights the rulings of wasiyyah from the sources of Islamic shariah, types of wasiyyah, the law governing wasiyyah in Malaysia and some cases on the application of wasiyyah in Malaysia.
Suhaili Alma'amun (2010)	Interview	The paper reviews the process of the administration and distribution of Muslims' estates in Malaysia. The study also analyzed the current practice of the subject matter, particularly on leaving Wasiyyah, its significance within the confinement of Malaysian Muslims' scenario and the reasons behind such patterns of practice. The findings imply that Malaysian Muslims are still far behind in this particular matter in the aspects of knowledge and implementation.

Hayati Mohd Dahan (2012)	Questionnaire survey	This paper study on the extent of possession of Will among Muslim community based on demographic characteristics that examines the relationship between Attitude, Religiosity, Financial obligation and Knowledge with the Intention to adopt Will. Based on the findings, it reveals that possession of Will among respondents were very low.
Suhaili Alma 'amun (2012)	Questionnaire survey	The paper review the practice of wasiyyah within the contextual form of Islamic estate planning by menas of investigating its variations across selected control variables. The findings imply that age, employment status, monthly income, amount of inheritance received, health status, having children, adopted children and grandchildren, knowledge, institution, and inheritance law are the significant factors triggering the wasiyyah practice among respondents. This study reflects that the attempt to increase wasiyyah practice and the integration of wasiyyah into Islamic wealth management and financial planning process should be aggressively made.
Akmal Hidayah Halim (2013)	Literature review	The paper discussed on the rulings of wasiyyah and the procedure of the administration of the estate property. The findings emphasized on the importance of estate planning which is to ensure the efficiency in managing the property.
Yusof Ramli (2013)	Literature review	The study is the conceptual paper which discuss on the importance of wasiyyah in estate planning and managing family wealth. The findings suggested that the ammendmend of law should be make in order to ensure the process of writing the will and administration of the property run smoothly.

<p>Chong Shyue Chuan, Lim Chee Seong &amp; Sia Bik Kai (2014)</p>	<p>Questionnaire survey</p>	<p>The purpose of this study is to explore the bequest perceptions among Malaysia's urban older adults with appropriate bequest models in describing their bequest motives. The target samples were those aged 50 years and above and residing within the state of Selangor, Malaysia. In summary, this research found that urban older Malaysians are more conformed to altruism model, selfish life-cycle model, and social norms and tradition. Through the cluster analysis, this study has discovered that there are three bequest clusters from urban older adults' bequest motives and are named as indifferent norms bequest, authoritarian self-centered bequest and domineering philanthropic bequest.</p>
<p>Zahirah Hamid Ghul , Mohamed Hisham Yahya &amp; Amalina Abdullah (2015)</p>	<p>Questionnaire survey and interview</p>	<p>This study examine the relationship between knowledge and awareness with regards to Wasiyyah adoption among Muslims in Malaysia and identify the barriers in Islamic inheritance distribution. The findings from this study show that 1) knowledge on the concepts of Islamic estate planning and 2) awareness of the importance wealth management have a significant effect towards Wasiyyah practices. In terms of barriers in Islamic inheritance distribution, the biggest obstacles among all the factors are lengthy estate management and distribution process.</p>
<p>Muhammad Ridhwan Ab. Aziz &amp; Nurul Izzati Nordin (2015)</p>	<p>Questionnaire survey</p>	<p>This study investigate the relationship between perception of Malaysian Muslims towards planning of waqf, wasiyyah and faraid in wealth distribution. Based on the results obtained, it can be concluded that Malaysian Muslims have positive perception towards planning of waqf, wasiyyah and faraid. Majority of them have a perception planning of wealth distribution is not only for rich, established people, married person and old people.</p>

Muhammad Ridhwan Ab. Aziz & Nurul Izzati Nordin (2015)	Questionnaire survey	The paper attempted to investigate on coordinating of waqf, wasiyyah and faraid in Islamic wealth distribution among Malaysian Muslims. The result of the study shows that respondents agreed that by coordinating of waqf, wasiyyah and faraid could ease burden of the owner and heirs as well as could reduce issues of frozen assets to the lowest level.
Mohammad Tahir Sabit Haji Mohammad (2015)	Literature review	This study was aimed to find the rate of success of the alternative tools for the transfer of properties from one generation to the next, among which Muslim wills (wasiyah) were examined. The theoretical concept of wills in Islamic law was used to assess the applied instruments of wills. The study finds that there is a steady increase in the number of new will document being drafted and executed. However, the number is still small compare to the majority of Muslims among the 30 million Malaysians. This was attributed to the mindset of Muslims and the lack of education about the benefits of wills.
Hasliza Talib, Norziah Othman, Siti Zaleha Ibrahim, Norsaadah binti Din @ Mohamad Nasirudin, Dr. Nor'Adha Abd Hamid & Abdulhakim Fakhrudeen Muhamad Ridzuan (2015)	Literature review	The paper explore the concept of maqasid shariah which is related to the application of wasiyyah. The findings proved that the concept of maqasid shari'ah is really needed in enhancing the application of wasiyyah and ensuring the property will be well managed. The maqasid shariah is important in protecting the welfare of the society especially for the Muslim.
Zakiah, Samori, Mohammad Mahyuddin Khalid, Mohd Ashrof Zaki Yaakob, Hanifah Musa Fathulah Harun & Nadirah Abdul Hamid (2016)	Interview	This study examine the concept and the conditions of wasiyyah and provide the procedure involved in the documentation of wasiyyah with special reference to As-Salihin Trustee, one of renowned wills Management Company in Malaysia. At the end of the paper, it presents recommendations on how the aforementioned issues may be addressed by suggesting a proper wasiyyah documentation process that complies with both Shariah and Malaysian law.

Asjad Mohamed & Jasni Sulong (2016)	Literature review	The study reveals the history of the methods of bequest according to the customs and traditional laws of the Malays and takes a detailed look at the changes and developments in the methods of bequest after the arrival of Islam. The findings of the study show that the arrival of Islam solved issues concerning the administration of wills, as well as bringing an end to disputes and enmity among heirs. Islam brought with it complete inheritance laws that resulted in greater awareness in Malay society, and that hitherto influenced methods of bequest among the Malaysia.
Muhammad Nabeel Alia Ngadnan, Mohd Musa Sarip & Fakhri Sungit (2016)	Library research and document analysis	This study attempted to explain the concept of wasiyyah from Islamic perspective and the procedure of the implementation which focused only in Majlis Agama Islam Selangor (MAIS). The finding highlighted on the role of MAIS as one of the body in Malaysia which involved in estate planning. The facilities provided by MAIS really can help the Muslim who wish to manage their wealth based on shariah compliance.
Nasrul Hisyam Nor Muhamad (2017)	Interview, document analysis and observation	This paper discuss the concept of a bequest in Islamic law and its roles as an effective wealth planning instrument. Bequest (or will) is suitable as an instrument for property management. However, to accommodate this instrument, amendments proposed in this article are needed to the existing law.

Table 1: Summary of Research on Wasiyyah in Malaysia

#### 4. Conclusion

This paper presents different research that has been conducted on wasiyyah specifically in Malaysia. The paper is a conceptual literature review paper not an empirical paper. Nevertheless, the paper contribute to the body of knowledge by extending the existing literature on the wasiyyah through the presentation of the previous studies on wasiyyah with a calling for expansion on the existing literature on wassiyah. Therefore, more research should be conducted on wasiyyah to ensure the Muslim have a comprehensive knowledge and understanding on the benefits of planning and managing wealth distribution.

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