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Islamic Estate Planning in Malaysia: The Dilemma

Perancangan Harta Islam di Malaysia: Satu Dilema

Azi Haslin Abdul Rahman*, and Rusni Hassan**

Abstract

Islamic estate planning is very important in the life of any Muslims. Indeed, those Muslims who pass away and do not have proper planning on their estate indirectly breaching the bequest guidance as stated in the Qur'an which are the main source of reference for a Muslim life. Regrettably, the noble spirit of Islam is not well accepted, and many are not concerned with arranging their estate thus triggering enormous family debates and increase the unclaimed property after the deceased's death. The present-day affairs of Islamic estate planning in Malaysia is still not encouraging despite the efforts by relevant institutions and industry players to expand the industry. The initiative was undertaken by the government to form a national institution known as Amanah Raya Berhad and followed by participation of private Islamic estate planning companies to provide estates planning related services. However, thus far only 700,000 individuals have declared *wasiyyah* as compared to the majority of Muslims among the 30 million Malaysians. The outstanding differences among subscribers of the services and who do not subscribe, open up to a real dilemma within the area of Islamic estate planning. This is the subject that motivates the researcher to study the issues in Islamic estate planning in Malaysia. The purpose of this study is to examine the dilemma faced by the industry practitioners. This research is qualitative in nature relying on the existing literatures from internet website, document analysis and library literature. The scope of this study is relevant and pertinent to the overall Islamic estate planning industry development thus, intended to put forward recommendations for enhancement of Islamic estate planning in Malaysia including the possibility of establishing *Shari'ah* advisory framework for the Islamic estate planning institutions.

Keywords: Islamic estate planning, Dilemma, Issues, Inheritance, Malaysia.

Abstrak

Perancangan harta Islam adalah sangat penting dalam kehidupan orang Islam. Bagi orang Islam yang meninggal dunia dan tidak merancang sebaiknya harta

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peninggalan mereka, dalam erti kata lain individu terbabit telah melanggar garis panduan yang telah ditetapkan di dalam Qur'an yang merupakan panduan utama bagi kehidupan seseorang yang beragama Islam. Prinsip utama panduan kehidupan sehingga peringkat kematian yang bersifat menyeluruh yang ditekankan oleh agama Islam nyata gagal diterima sepenuhnya oleh umat Islam yang akhirnya menyebabkan sebahagian dari mereka tidak merancang pengagihan harta setelah kematian. Situasi ini menyebabkan wujudnya perdebatan antara ahli keluarga atau waris yang berhak dan ini menjadi faktor kepada harta tidak dituntut setelah kematian seseorang individu. Perkembangan semasa pengurusan harta pusaka di Malaysia masih tidak menggalakkan walaupun pelbagai usaha telah dilaksanakan oleh pihak berwajib dan pemain industri. Inisiatif awal telah dibuat oleh pihak Kerajaan Malaysia dengan menubuhkan institusi dikenali sebagai Amanah Raya Berhad serta seterusnya kemunculan pelbagai pemain industri swasta dalam menyediakan khidmat pengurusan harta pusaka serta yang berkaitan. Namun demikian, sehingga kini, sejumlah 700,000 individu sahaja telah melaksanakan deklarasi wasiat berbanding bilangan umat Islam di Malaysia yang mencecah 30 juta orang. Perbezaan yang amat ketara ini berhubung individu beragama Islam yang mempunyai wasiat dan yang tidak berwasiat membuka kepada persoalan apakah dilema yang dihadapi dalam pengurusan harta Islam di Malaysia. Objektif kajian adalah untuk mengenalpasti dilema yang dilalui para pengamal industri. Kajian ini bersifat kualitatif dan bersumberkan literatur sedia ada yang dirujuk menerusi laman internet, analisis dokumen dan carian di perpustakaan. Skop kajian ini adalah sangat relevan dan bertepatan dengan keperluan dan perkembangan industri pengurusan harta pusaka. Kajian ini juga bertujuan untuk menyediakan cadangan bersesuaian bagi kemajuan pengurusan harta pusaka berdasarkan kaedah Islam dengan kemungkinan mewujudkan kerangka khidmat nasihat berlandaskan Shari'ah bagi institusi pengurusan harta pusaka Islam.

Kata kunci: Perancangan harta pusaka, dilema, isu, harta warisan, Malaysia.

Introduction

The life span of Islamic estate planning institution in Malaysia could be traced from the establishment of Department of Public Trustee and Official Administrator in 1921, later known as Amanah Raya Berhad (ARB) after corporatization in 1995. Counting the number of years in existence, the only public trustee in Malaysia being in the market nearly more than 90 years. In addition, the emergence of private trustee way back more than 15 years ago and some newest companies indicates the present of Islamic estate planning (IEP) service provider in Malaysia. Unfortunately, IEP which is equally important aspect of Islamic finance is neglected, judging by the number of years of their existence and their development progress. The current scenario implicates little attention given to the IEP industry. For the purpose of assessment, the nature of earning and commercial opportunity from estate planning business is not like that of mainstream Islamic finance. It is likely not comparable to the

other mainstream segment of Islamic finance; however, the desires and the importance of appropriate estate planning may ensure the smoothness of estate distribution after one's passing away. Very little discussion on IEP and again, IEP is always associated with wealth management that goes back to Islamic banking and takaful, leaving behind estate planning which is appeared under the wealth distribution phase. Clear understanding may be derived from the proper definition of the process; thus, the IEP is where the individual charting their assets and possessions to their loved ones, designated heirs in accordance to Islamic inheritance law or bestow it for charitable purposes. Corresponding to the Islamic Wealth Management Report 2016¹, Islamic wealth management relatively under-developed as compared with other sub-sectors in Islamic finance, however Islamic wealth management has countless ability for advancement. The similar report affirming few concerns such as the limited supply of Islamic wealth management products driven, expansion of markets and investor base, strengthening of the supporting infrastructure, and generating greater level of confidence.

The Islamic wealth management comprises of few components including wealth creation, wealth accumulation, followed by wealth protection, then wealth cleansing/purification and lastly wealth distribution. Thus, the scenario testified in the previous report extended to the wealth distribution stage or estate planning industry that believed to be left behind. Due to insignificant concentration on IEP, substantial issues raised concerning the practices particularly as regard to Shari'ah compliance aspects of IEP. The essence of the concern connected to the practices of the Islamic law itself and not to the existing law precisely. Therefore, there are needs for a check and balance in the practices applies in IEP institutions. In another standpoint, as scripted in the Economic Transformation Programme (ETP), "*Shari'ah* wealth management is a largely underserved market today that represents a unique opportunity for Malaysia, requiring specialized knowledge such as *Shari'ah* compliant wills and estate planning."² ETP also realizes that building *Shari'ah* financial planning capability is a prerequisite for the well-developed personal wealth management industry. Visibly, the

¹ Edbiz Consulting, "*Islamic Wealth Management Report 2016*" (Kuala Lumpur, 2016). Islamic Wealth Management Report (2016) published by Edbiz Consulting, an international Islamic financial advisory firm. This report publication is sponsored by Labuan International Business and Financial Centre, Malaysia.

² PEMANDU Jabatan Perdana Menteri, "*Economic Transformation Programme Report*," Economic Planning Unit Malaysia, 2010. P. 229.

stated assertion in ETP reaffirm substance of *Shari'ah* compliant wills and estate planning. In relation, establishing the intended products and services that are fully compliant apparently needs the participation of *Shari'ah* expertise. In some situation, the process of dispersal of estates grow more complicated in the event of multiple layers of heirs and in the occurrence of swindle and disagreements among beneficiaries. This is what referred as a family drama. On top of that, this kind of family drama turn out to become headline in mass media and worsening the reputation of IEP.

Further understanding on the inheritance system applied in Islam which is *faraid* that define as one of the instruments stated in Qur'an for estate distribution. In Islam, the jurisprudence that deals with inheritance is called *al-faraid* or the science of the ordained shares whose principles are drawn from the Qur'an.³ In another circumstances, the Muslims should understand that besides the *faraid* system which being mandatory for them, they have a duty to also be attentive of various other considerations that their rightful beneficiaries should go through prior to the estates be able to be disseminated among themselves after their passing away. According to the worth of the estates, these involve processes and bureaucracies that be existent with several government agencies, such as the Department of Director General of Lands & Mines, both the Civil and Syariah courts, banking and financial institutions, ARB, Employee Provident Fund (EPF), and Tabung Haji (TH) as well as Retirement Fund Incorporated (KWAP). Taking into consideration, certain complexity of processes required an extended time of period. Thus, the beneficiaries had to endure a tiresome procedure.

The major concern in this study is the barrier in the advancement of IEP industry in Malaysia. The reality of the industry practices currently quiet upsetting due to improper regulation, and it starts from non-appearance of the standard practices. This condition caused by the absence of requirement by the respective authority. Hence, the study is important and significant to the general IEP industry development. The research objective is to shed light and address legal and *Shari'ah* regulatory issues within IEP in Malaysia. Ultimately, this study envisions some proposition for enhancement of IEP in Malaysia including the probability of forming *Shari'ah* advisory framework for the IEP institutions. The modus operandi of the study utilizing qualitative

³ Azman Ismail, *Islamic Inheritance Planning 101*, 1st ed. (Kuala Lumpur: IBFIM, 2013).

approach. The main resources that contribute to the research journey retrieved from secondary data where the researcher getting the information from the published data. The sources derived from the hardcopy or softcopy books, several journals and other publications. Besides that, published printed resources, published electronic resources, government documentations and private sector documentations that available and searchable also become part of the resources. Structure of the paper will be reviewing the concept of IEP, the current situation and practices of IEP in Malaysia followed by the predicament highlighted in IEP and finally some constructive suggestions.

The Conception of Islamic Estate Planning

The origin of the concept of IEP descended from the Qur'an, which is the holy book of Muslims, and its further interpretations presented in the hadith. The Qur'an is a 1400-year-old religious text that has been comprehended over time to be applied to the modern age. Prior to the arrival of Islam, the estate commonly could not be inherited by a woman, even from their spouses, and occasionally these women were considered as a portion of a man's estate. At those eras, the person who are blood relatives and adopted sons had the right to inherit. Some unique features in those days also allowed a situation such as two unrelated men could bequest inheritance to each other via a "contract of alliance." In the beginning period of Islam, it transformed the scenario intensely. In addition, conception of understanding that property ultimately belonged to God, and that people only possessed a certain level of control of the property at the time of their deaths⁴. The wealth and physical property that we own in this planet is a custody from Allah. For the duration of our lifespan, we are demanded to use it in the way that is most delightful to our Lord. As reported by Ibn Masud and Abu Burazah, Prophet Muhammad (peace be upon him) said,

لَا تَزُولُ قَدَمُ ابْنِ آدَمَ يَوْمَ الْقِيَامَةِ مِنْ عِنْدِ رَبِّهِ حَتَّى يُسْأَلَ عَنْ خَمْسٍ عَنْ عُمُرِهِ
فِيمَ أَفْنَاهُ وَعَنْ شَبَابِهِ فِيمَ أَبْلَاهُ وَمَالِهِ مِنْ أَيْنَ اكْتَسَبَهُ وَفِيمَ أَنْفَقَهُ وَمَاذَا عَمِلَ فِيمَا
عَلِمَ

“The son of Adam will not be dismissed from his Lord on the Day of Resurrection until he is questioned about five

⁴ Imani Jaafar, “*Practical Islamic Estate Planning : A Short Primer*,” Hamline, Mitchell Review, Law 42, no. 3 (2016).

issues: his life and how he lived it, his youth and how he used it, his wealth and how he earned it and he spent it, and how he acted on his knowledge.”⁵

Therefore, on the Day of Judgement, as the servant of Allah, we will be being questioned about our wealth, in what manner did we get it, and in what way did we use it⁶. Thus, the IEP is the structured administration of Muslim’s property after passing away. As a matter of course, the Islamic inheritance law known as *faraid* is the existing law that carrying out as method of estate planning. The common scenario involving *faraid* execution was a family whom not bearing a deep understanding of the said law but execute it just for the sake of estate distribution.

The *faraid* can be best defined as the study of the calculation and allocation procedure of inheritance for each of the beneficiaries according to Islamic law⁷. The stated Islamic inheritance system is clearly the guidance by Allah (S.W.T) specifically based on verses 11, 12 and 176 from Surah an-Nisa. The division of the entitlement for the beneficiaries also elaborated in these verses. In the verse 176 of Surah an-Nisa, Allah decrees that, “When there are brothers and sisters, both men and women, the male’s share is equal to that of two females...”. Apart from that, *faraid* is categorized as one of the assets redistributions instruments in Islamic law⁸. The profound knowledge about the basis of the estate distribution is essential to determine individuals who will go through the procedure of distribution of the estate either sooner or later. In addition, the Prophet Muhammad (peace be upon him) had ordered Muslims to learn about the knowledge on *faraid*. As reported by Ibn Majah, Prophet Muhammad (peace be upon him) said,

يَا أَبَا هُرَيْرَةَ تَعَلَّمُوا الْفَرَائِضَ وَعَلِّمُوهَا، فَإِنَّهُ نَصْفُ الْعِلْمِ وَهُوَ يُنْسَى، وَهُوَ أَوْ
شَيْءٌ يُنَزَعُ مِنْ أُمَّتِي

⁵ Narrated by at-Tirmidhi.

⁶ Muhammad Al-Jibali, *The Final Bequest: The Islamic Will & Testament* (Al-Kitaab & As-Sunnah Publishing, 1999).

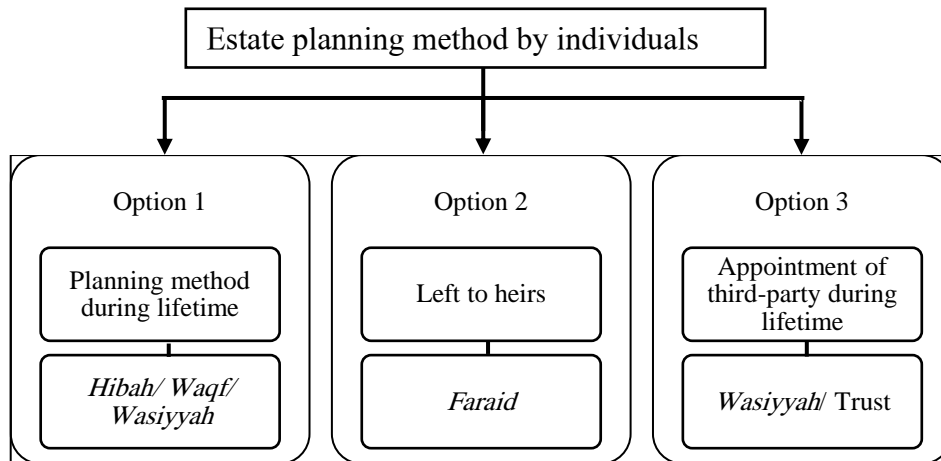
⁷ Siti Fatimah Abdul Rahman et al., “Asset Distribution among the Qualified Heirs Based on Islamic Inheritance,” 2017.

⁸ Zakiah Samori et al., “Towards Managing the Beneficiaries Rights via Writing a Will,” *Global Journal of Management and Business Research* 16, no. No.3-G (2016), <https://doi.org/10.17406/GJMBR>.

"O Abu Hurairah. Learn about the inheritance and teach it, for it is half of knowledge, but it will be forgotten. This is the first thing that will be taken away from my nation"⁹

There is a long-overdue duty of those who called them as a Muslims whereby they should materialize the practice of Islamic law of inheritance in order to ensure the survival of that valuable knowledge. Education and mindfulness about *faraid* can become a great springboard for the efficiency of the action required. Among others, the basic knowledge including the right of inheritance, property type and number, and form of the division. The basic comprehension may evade or at least bring down the probability of family drama caused by quarrels or question among family members. The final goal is to set up the society towards appropriate IEP routines and not just solely subject to the said law by grasping it in the shell only.

Figure 1: The Structure of Estate Planning by Individual



Source: Nur Shuhada Kamarudin et al 10 (adapted)

According to Kamarudin et al¹¹, the usual approach or method characterized in estate planning available in three phases. *Hibah* (gift) for example could be discovered basically in two types, with conditions

⁹ Narrated by Abu Hurairah.

¹⁰ Nur Shuhada Kamarudin et al., "The Conceptual Framework of the Intention on Islamic Estate Planning Practice among Muslim Entrepreneurs," *Journal of Islamic, Social, Economics and Development* 4, no. 20 (2019): 69–76.

¹¹ *Ibid.*, p.71.

or without conditions. However, according to Nor Muhamad¹², the prerequisite that made by giver have to obey the hibah conditions in order to hold up the legitimacy of the contract. Furthermore, it also suggested that the inaccurate requirement criteria will be caused modification to the original *hibah* contract to *wasiyyah* contract, for instance, the condition of giver is if only the ownership of wealth will be officially owned after the death of the giver. In addition, other estate planning instruments are *waqf* (endowment), *wasiyyah* (will), trust and the main is *faraid*.

Islamic Estate Planning in Malaysia

This section stating some history of the existence of IEP institution in Malaysia as well as the governing law that functioning to supervise the IEP industry. Following that is the information on key players in IEP industry including the operational type of each institutions. Details elaboration and flow of the processes in the administration, distribution and settlement of the Muslims deceased's estates also provided towards the end of this section.

The existence of IEP in Malaysia is not a new thing and some of the institution presence in public is a well-known appearance. However, to understand the industry in broad, it's better to have a look into the origination of the industry way back more than 90 years ago. ARB is Malaysia's premier trustee company wholly owned by the Government of Malaysia. In 1921, the Department of Public Trustee and Official Administrator was founded. Then, the institution was corporatized in 1995. The concentration of ARB is to offer legacy management keys to the entire Malaysians through innovative products and services. Legacy management that was promoted by ARB is the rebranding trademark of the estate planning which looks more attractive¹³. With the capacity of experience more than 90 years' in the legacy management industry, ARB seen to conquer the market leader status. The uniqueness of this pioneer institution, it has an exclusive act that leading their obligations in the legislation, it is the Public Trust Corporation Act 1995¹⁴. In another point

¹² Nasrul Hisyam Nor Muhamad, "Wasiat Sebagai Instrumen Perancangan Harta Islam: Prosedur Dan Pelaksanaan," *Jurnal Hadhari* 9, no. 1 (2017): 17–32, <http://ejournal.ukm.my/jhadhari/article/view/18517/5872>.

¹³ Azi Haslin Abdul Rahman and Rusni Hassan, "Issues and Challenges in Islamic Estate Planning in Malaysia," in *7th Asean Universities International Conference on Islamic Finance 2019*, 2019, 1–14.

¹⁴ Laws of Malaysia Act 532, "Public Trust Corporation Act 1995" (2008).

of view, at this moment, the ARB is the only public trustee offering service for everyone when it comes to legacy management.

Considering the requirements and complexity of the estate planning, the arises of new private institutions that also catering the same scope of estate planning but in a more strategic approach comparable with the fee charges imposed to their clients. If the public trustee has its own specific act to govern their operation, the other player or the private trustee in the industry were administered according to Trust Companies Act 1949 15 and Companies Act 2016¹⁶. The other unique distinction, not all the IEP institutions required to register under Trust Companies Act 1949 and becoming a trustee company, however, they still can offer the product and services related to estate planning but feasibly on a certain limited condition. This unique distinction on the other hand can be interpret as the free standard to all IEP industry players. Compared with the institutions in Islamic finance sectors, a rigid rules and regulation provided by the respective authority for the institutions to adhere.

Nowadays, the industry containing several numbers of player. Some of the institution caters to tender services all-inclusive since they are a trustee by operation but some of the institutions only provide the consultation services whereas they will be engaging external trustee to work out the mandatory trust practices. There are few types of institutions and their operational nature is subjected to their establishment act. The following are the list of the institutions.

Table 1: Institutions in Islamic Estate Planning Industry¹⁷

No./ Item	Institution	Operational Nature	Year of Establishment
1.	Amanah Raya Berhad	Public Trustee	1921 (Corporatized in 1995)
2.	as-Salihin Trustee Berhad*	Private Trustee	2004
3.	Wasiyyah Shoppe	Private Trustee	2004

¹⁵ Laws of Malaysia Act 100, “Trust Companies Act 1949” (2006).

¹⁶ Laws of Malaysia Act 777, “Companies Act 2016” (2013).

¹⁷ The list of Trustees offering Islamic Estate Planning were obtained from the portal of Association of Trusts Companies Malaysia at the following address <http://www.atcm.com.my> accessed on 16th July 2019.

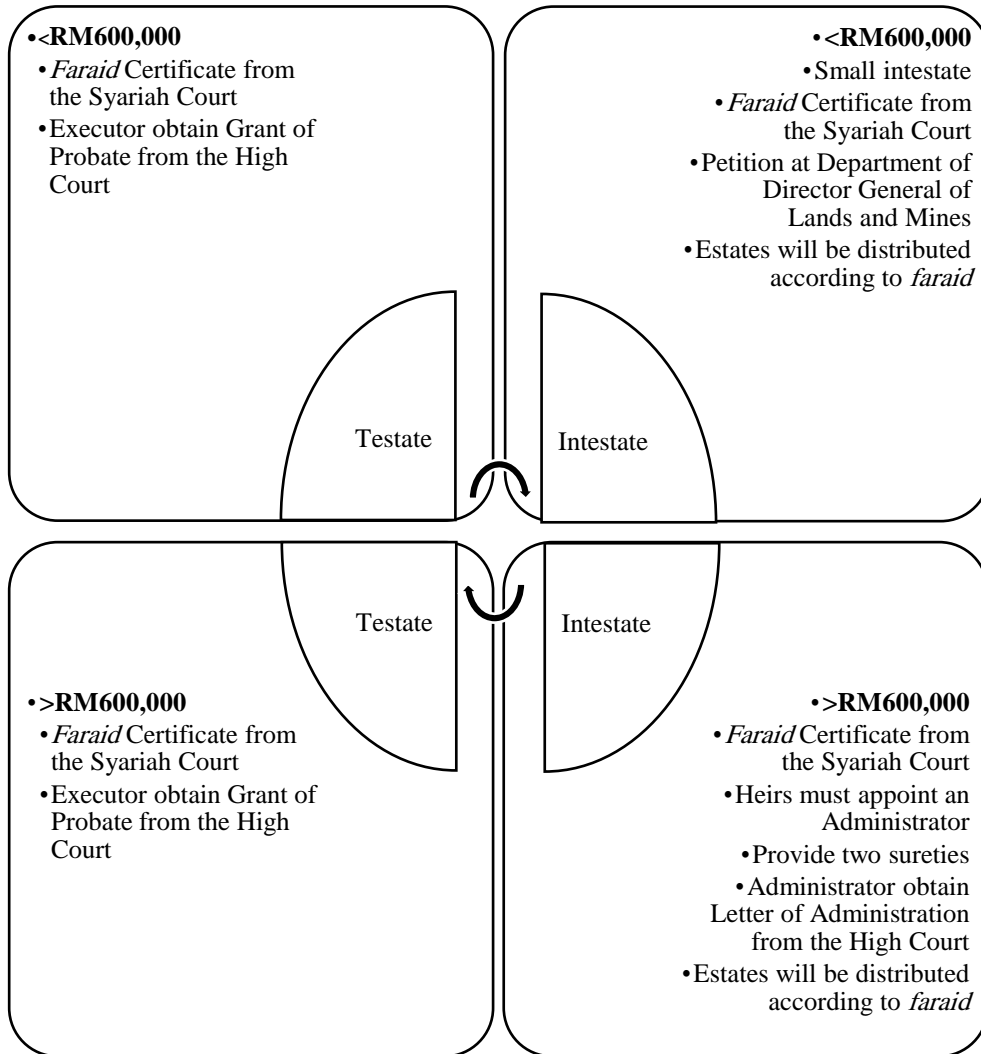
No./ Item	Institution	Operational Nature	Year of Establishment
	Berhad		
4.	MyAngkasa Amanah Berhad	Private Trustee	2014
5.	Amanah Warisan Berhad	Private Trustee	2018
6.	Selangor Islamic Religious Council	Religious Council	2008 (Muslim Wills Management, Muslims Will (Selangor) Enactment 1999)
6.	Pacific Trustees Berhad*	Private Trustee	1994
8.	Maybank Trustee Berhad*	Private Trustee	1963
9.	CIMB Islamic Trustee Berhad*	Private Trustee	1988
10.	RHB Trustee Berhad*	Private Trustee	2002
11.	PB Trustee Services Berhad*	Private Trustee	1968
12.	Affin Hwang Trustee Berhad*	Private Trustee	1990

Source: Author's own

Those listed institutions in Table 1, identified as the key industry player in IEP. On top of that, there are small companies set up by individual or group of people who are promoting the products and services on behalf of main industry player but actively do the promotion under their own companies' name. Looking into the listed institutions, most of them are backed by the anchor bank brands in the banking sector as they are established as subsidiary company in order to retain their own client within the group. Apart from the industry and the players, other information that is significant in IEP in Malaysia is the administration and the distribution of a deceased Muslim's estates. The current practice in Malaysia, civil law regulates the procedures of estate administration and settlement which lead to important impacts on estate planning

(Alma'amun, 2010). The following diagram indicates the flow and respective authority who is responsible for the activity.

Figure 2: Administration and the Distribution of a Muslim Deceased's Estates in Malaysia



Source: Suhaili Alma'amun¹⁸ (adapted)

¹⁸ Suhaili Alma'amun, "Islamic Estate Planning: Malaysian Experience," *Kyoto Bulletin of Islamic Area Studies* 3-2, no. March 2010 (2010): 165-185.

The figure presented above, explains the flow of the administration and the distribution of deceased Muslim's estate in Malaysia. The procedure begins with the discovery of either the deceased dies intestate or testate. The Department of Director General of Lands and Mines is responsible for handling small intestate matters after a petition is reported by any person declaring to have concern in the estate. In the situation where the deceased having a *wasiyyah*, the administration and distribution of an estate less than RM600,000 will be taken to the High Court. However, if the value of the estate exceeded RM600,000 nevertheless the deceased died intestate or testate, the necessary procedure required to pass through the High Court.

The apparent disparity between both is that an executor is required for testate scenario to obtain Grant of Probate while an administrator is required to obtain Letter of Administration for intestate situation. In addition, if the person dies intestate, heirs must provide two sureties for the estates value more than RM600,000. Furthermore, the court which is the Syariah Court responsible to issue inheritance certificate (Administration of Islamic Law (Federal Territories)) Act 1993¹⁹ after determining the eligible heirs and verifying their entitled shares. On top of that, from the illustration in Figure 2, ARB has been given the authority to administer the movable estate with the value is not exceeding RM600,000. The procedures, bodies to approach for administration and distribution exercise, mostly depends on the amount of the estate. For instance, the person dies leaving behind some amount of cash money not exceeding RM50,000, ARB will directly issue order and deliver it to the heirs. However, if the amount of assets is more than RM50,000 but less than RM600,000, ARB will issue a declaration followed by a pooling together of the assets together in order to determine the net estates and finally continue to have a distribution procedure according to *faraid* portion. Thus, by understanding the flow of the necessary procedures in both situations, the main authorities that are involved in settling Islamic estate administration and distribution are the Department of Director General of Lands and Mines, the Syariah Court and Hight Court.

A considerable amount of literature has been published on IEP in Malaysia. The focus of the research area consist of utilization of IEP tools to overcome the case of frozen assets, discussion on IEP tools,

¹⁹ Laws of Malaysia Act 505, "Administration of Islamic Law (Federal Territories) Act 1993" (2006).

study on comparison practices among IEP institutions, case study on IEP instruments, research on perception as well as acceptance towards IEP practices, analysis regarding IEP tools application in specific type of estate and review on challenges in IEP in Malaysia. So far, however, there has been little discussion precisely about the issues in IEP. However, the presentation of the content regarding the issues highlighted during discussion on scenario and challenges in the IEP in Malaysia as well as conclusion part. Too little attention has been paid to the root cause that play a role in the development of IEP in Malaysia.

The issues that are becoming obstacle towards advancement of IEP in Malaysia has grown importance in light of recent study. Previous studies have reported legal aspect as one of the factor generating the problems in IEP state of affairs (Nor Muhamad, 2019²⁰ & 2017²¹; Muhammad Serji & Shapiee, 2018²²; Abdullah, 2018²³; Zulkafli & Ahmad, 2016²⁴; Ahmad Razimi, 2016²⁵; Ghul, Yahya & Abdullah, 2015²⁶; Mohd Yusof & Ahmad, 2013²⁷; Mujani, Wan Hussain, Yaakub & Abdul Rashid, 2011²⁸; and Muda, 2008²⁹). Besides that, IEP depend

²⁰ Nasrul Hisyam Nor Muhamad et al., "Islamic Intervivos Law Challenges in Malaysia," *Journal of Legal, Ethical and Regulatory Issues* 22, no. 1 (2019): 1–6.

²¹ Nasrul Hisyam Nor Muhamad, "Wasiat Sebagai Instrumen Perancangan Harta Islam : Prosedur Dan Pelaksanaan," *Jurnal Hadhari* 9, no. 1 (2017): 17–32.

²² Rabi'ah Muhammad Serji and Rohimi Shapiee, "Isu Dan Konflik Perundangan Dalam Hibah Hartanah Di Malaysia," *Journal of Muwafaqat* 1, no. 1 (2018): 84–101.

²³ Ahmad Termizi Abdullah, "Hibah Hartanah Bercagar; Prinsip, Aplikasi, Dan Pandangan Mahkamah," Seminar Hibah Hartanah Bercagar (Kuala Lumpur, 2018).

²⁴ Bibi Nur Adila Zulkafli and Md Yazid Ahmad, "Kekangan Dan Penyelesaian Kelewatan Pengurusan Aset Pusaka Tak Alih Orang Islam Di Malaysia," *Islamiyyat The International Journal of Islamic Studies* 38, no. 1 (2016): 53–63, <https://doi.org/http://dx.doi.org/10.17576/islamiyyat-2016-3801-06>.

²⁵ Mohd Shahril Ahmad Razimi, "Concept of Islamic Inheritance Law (Faraid) in Malaysia: Issues and Challenges," *Research Journal of Applied Sciences*, 2016, <http://docsdrive.com/pdfs/medwelljournals/rjasci/2016/1460-1464.pdf>.

²⁶ Z H Ghul, M H Yahya, and A Abdullah, "Wasiyyah (Islamic Will) Adoption and the Barriers in Islamic Inheritance Distribution among Malaysian Muslims," *International Journal of Humanities Social Sciences and Education (IJHSSE)* 2, no. 1 (2015): 1–11.

²⁷ Yusnida Mohd Yusof and Asmida Ahmad, "Hibah As an Alternative Mechanism in Muslims Assests Management: A," *South East Asia Journal of Contemporary Business, Economics and Law* 3, no. 3 (2013): 1–5.

²⁸ Wan Kamal Mujani et al., "Constructions of Failure Ad Delay under Islamic Estate Management," *International Business Management* 5, no. 6 (2011): 326–30, <https://doi.org/10.3923/ibm.2011.326.330>.

much on the fatwa. Fatwa is one of the most important types of Islamic law in Malaysia. Referring to the study by Kassan and Jamal in 2003 cited by Wan Khairuldin, Wan Nor Anas & Embong in 2018³⁰, the definition of fatwa is firstly, the action of mufti in providing laws. whereas, the second definition is that it is the name granted to the laws. As a result, it can be best explained as a solution to the question related to Islamic laws and the answer is provided by the mufti. Author observed that, the issue on fatwa standardization emerge in IEP situation due to governing enactment on estate planning of a Muslims which are different according to the states in Malaysia. Md Nor et al³¹ stated that some of the state issuing fatwa that contradictory to each other. Whereas, another study by Mohd Noor et al³² in year 2018, highlighting the complexity subject related to dual system of courts which currently implemented in Malaysia. As a result, author raised several concerns which interrelated to the running of the court system. Resulted from the court systems, the beneficiaries endured certain amount of period in settling the process of inheritance distribution. The existing of various IEP institutions in the market offering numerous products and services. However, Mohd Sa'afie et al³³ emphasizing on dissimilarity hibah practices and the governing law applied in different IEP institutions. Majority of the IEP institutions branding themselves as a fully Shari'ah compliant entity where their claims stated for the public viewing in the company's websited.

²⁹ Mohd Zamro Muda, "Instruments of Hibah and Wills: Analysis of the Regulations and Applications in Malaysia," *Hibah and Faraid National Convention 2008*, 2008, 1–42,

http://www.islam.gov.my/sites/default/files/instruments_of_hibah_and_wills.pdf.

³⁰ Wan Mohd Khairul Firdaus Wan Khairuldin, Wan Nur Izzati Wan Nor Anas, and Abdul Hanis Embong, "Fatwa as a Disseminator of Islamic Laws among Community of Malaysia," *International Journal of Academic Research in Business and Social Sciences* 8, no. 11 (2018): 516–521, <https://doi.org/10.6007/IJARBS/v8-i11/4925>.

³¹ Mohd Zakhiri Md Nor et al., "Legal Position of Fatwa : Observations from Selected Jurisdictions," in *Seminar on Law & Society School of Law*, Universiti Utara Malaysia, 2016, 1–5.

³² Nor Adila Mohd Noor et al., "Harta Wasiat Orang Islam: Satu Ulasan Ringkas Dari Perspektif Perundangan Di Malaysia," *E – Academia Special Issue TeMIC UiTM Cawangan Terengganu*, 2018, 39–46.

³³ Adilah Mohd Sa'afie et al., "Pengendalian Pengurusan Produk Hibah Di Wasiyyah Shoppe Berhad Dan As-Salihin Trustee Berhad," 2018, 112–119.

The other issue that appeared as dilemma surrounding IEP in Malaysia as written in the study of Mohammad³⁴ in year 2015 is the mindset of Muslims and the lack of education about the benefits of wills. In a different study, researcher examined beneficiaries conduct adding up the upsetting in inheritance management and settlement.³⁵ Referring to the numerous studies stated abovementioned, the researchers have attempted to explain why the IEP progress in Malaysia is still left behind. It has conclusively been shown that the coming discussion of the issues is unique and relevant to the overall IEP industry as the past literatures does not address explicitly the research area.

The Dilemma Surrounding Islamic Estate Planning in Malaysia

The predicaments that happened in the vicinity of IEP in Malaysia are not new and the existence of the dilemmas for quiet sometimes suggests that it is something that should be taken care of by stages through a proper channel and by a respective authority. The issues surrounding IEP in Malaysia involving various scopes and related to different interest group. The issues are as the following:

- a. Legal landscape;
- b. Fatwa standardization;
- c. Civil and Syariah court: a tale of two courts;
- d. Extended procedures;
- e. Hibah applications;
- f. Governing law;
- g. Shari'ah compliant status;
- h. Knowledge on the Islamic inheritance concepts; and
- i. Beneficiaries conduct.

This section will be discussing each predicament and further highlighting the necessary material that related and significant to the issues presented.

³⁴ Mohammad Tahir Sabit Mohammad, "The Contemporary Application of Wasayah (Muslim Will) in Malaysia," *International Journal of Real Estate Studies* 9, no. 1 (2015): 1–15.

³⁵ Fatin Afiqah Md Azmi and Mohammad Tahir Sabit Mohammad, "The Causes of Unclaimed, Late Claimed or Distributed Estates of Deceased Muslims in Malaysia," *2011 International Conference on Sociality and Economics Development* 10 (2011): 440–444.

Legal Landscape

The Islamic inheritance law is also known as *faraid* or Islamic law of succession. The Islamic law of inheritance has been regarded by the Muslim jurists as immutable and final considering that it consists mainly of rules laid out by the Qur'an and the traditions of the Prophet (S.A.W)³⁶. The research by Tagorano in 2009 also remark the appreciation given to this law with respect to its completeness and comprehensiveness as well as the achievements with which it has accomplished to response and resolve all queries concerning the entitlement of a person to succeed who are bound to the deceased by mutual ties and responsibilities which stem from blood relationship. However, as the legislative changes all over the world, it hits the Islamic inheritance law as well. Those so-called legislative reformation are scenarios which require a dedicated study in order to ensure it is within the purview of the traditional Islamic law of succession (*fiqh al-mawarith*). An example of this is the controversial provision on obligatory bequest, the major and important principle introduced into the Law of Wills to some Muslim countries³⁷. In relation to the Islamic law applies in law of inheritance, during year 2016, Asni & Sulong³⁸ points out that unstandardized Islamic laws lead to uncertainties in the implementation of legislation and injustice. From the legislative perspective of law, the existence of contrary fuqaha' opinions which directly result to some disputes and for the matter of execution, it is hard to be implemented. The similar researcher also stated that, in the administration of law and the enforcement fatwa, only one opinion should be selected for inclusion as the adopted opinions to ensure consistency in the implementation of law.

The parallel study stated, at this current moment, a special statute of *hibah* remains unallocated. Therefore, outlining of the law written particularly about the *hibah* or its corresponding is significant because it will be able to consider all disputes and clarifications on the issue of *hibah* in the form of uniform legitimate provisions that have legislative

³⁶ Mariam Saidona Tagoranao, "Problems and Issues on the Right of a Person to Inherit the Islamic of Succession," *Syariah and Law Discourse Issue*, no. 4 (2009): 75–85.

³⁷ *Ibid.*, p.76.

³⁸ Muhammad Fathullah Al Haq bin Muhamad Asni and Jasni bin Sulong, "Fatwa Concerning Qabd in Hibah and the Insertion of Qabd Element in States Fatwa in Malaysia," *Journal of Islamic Studies and Culture* 4, no. 1 (2016), <https://doi.org/10.15640/jisc.v4n1a17>.

control. Again, Ghul, Yahya, & Abdullah³⁹ draw attention to the impediment that lie in the rules and regulations that are related to estate administration and settlement. The author is of the opinion that this kind of barrier is a major drawback on the development of IEP in Malaysia.

In recent studies, due to absence of specified law regarding *hibah*, the IEP institutions or private estate planner have to make reference from fatwa bodies or *Shari'ah* advisors for reliable views or approvals⁴⁰. Besides that, the other common issue is about the application of *hibah*. At this moment, *hibah* is popular tools for estate planning, however the possibility of *hibah* to function as estate planning management, specific law should be available which governs the substantive and procedural aspect of law. This is because it is widely recognized that there must be certain law in order to legalize the rule⁴¹. However, the writer argues that the so-called action taken by the institutions will narrowly feed the needs of sole institutions and can't be implemented to the overall states because of the issues on separation of fatwa body coverage. The major implication out of this scenario contribute to the failure of the Muslim community to understand the matters related to *hibah*. The long-term planning is by having a comprehensive and uniform *hibah* law among states in Malaysia.

The recommendation is something achievable because some states in Malaysia have formed several laws associated with *waqf* (endowment) and wills. According to recent information, currently there are four states⁴² having a specific substantive law bequest which are Selangor, Negeri Sembilan and Malacca and Kelantan⁴³. Although all of four aforementioned enactments have been legalized, only Selangor has

³⁹ Ghul, Yahya, and Abdullah, "*Wasiyyah (Islamic Will) Adoption and the Barriers in Islamic Inheritance Distribution among Malaysian Muslims.*"

⁴⁰ Nor Muhamad et al., "*Islamic Intervivos Law Challenges in Malaysia.*"

⁴¹ Rusnadewi Abdul Rashid, Siti Asishah Hassan, and Noor Inayah Yaakub, "A Need for Legal Framework of Gift Inter Vivos (Hibah) in Malaysian State Planning," *International Journal of Business, Economics and Law* 2, no. 3 (2013): 29–31.

⁴² Mohd Khairy Kamarudin and Nasrul Hisyam, "Islamic Estate Planning and Management: Malaysian Experience," *International Journal of Management Applications* 1, no. 1 (2018): 9,

<https://www.researchgate.net/publication/322975181>.

⁴³ Selangor-Muslims Will Enactment (State of Selangor) 1999 (No. 4/1999) that effectively started on 1st July 2004 [Sel P.U. 9/04], Negeri Sembilan-Muslims Will Enactment (State of Negeri Sembilan) 2004 (No.5/2004) which effective on 5th November 2004 [N.S. P.U. 20/2004], Kelantan-Muslims Will Enactments (State of Kelantan) 2009 and Malacca- Muslims Will Enactment (State of Malacca) 2005 (No. 4/2005) effective on 1st August 2005 [M.P.U. 37/05].

actually started practicing fully. Selangor Islamic Religious Council or Majlis Agama Islam Selangor (MAIS) also provides will services based on the Muslim Wills Enactment (State of Selangor) (No. 4/1999) and Rules of Wills Management (State of Selangor) 2008 (No.13/2008) (Nor Muhamad, 2017). Selangor became the first state in Malaysia to approve and implement provision or enactment related to *wasiyyah*. The duty of providing a role as an effective wealth planning instrument brought by MAIS is something that supposed to be available in every state as it is seems huge necessity in the current Muslim society setting. The suggestion is to legislate *hibah* law has been mentioned since 2004 in various workshops and seminars that are arranged by many parties, but until now the bill has not yet passed.

An interesting and contentious Syariah court verdict regarding secured property may drive the reasoning on how and why. For the record, according to Abdullah⁴⁴, following are the references for some cases: Awang bin Abdul Rahman vs. Shamsuddin bin Awang & Anor, Syariah High Court Kuala Terengganu⁴⁵ and another case is Wan Noriah binti Wan Ngah, Syariah High Court Kuala Terengganu⁴⁶. However, the verdict of the judge is different in case of Raihanah binti Mohd Ali vs. Kamaruddin bin Mohd Nor & Anor, Syariah High Court Kuala Terengganu⁴⁷. Captivatingly, the *syarie* judge stating that *hibah* is allowable and valid if written approval from financier obtained initially. Intriguingly, in the case of Yati Suraya vs. Supiah Binti Abu, Syariah Court of Negeri Sembilan⁴⁸ is another story. Thus, the verdict trend may trigger the validity as if it varies according to the judges' preferences and understanding of four major Islamic school of thoughts.

***Fatwa* Standardization**

Apart from that, a clear *fatwa* or ruling should be issued by the National Fatwa Council as well to meet the current needs and the Islamic

⁴⁴ Abdullah, "*Hibah Hartanah Bercagar; Prinsip, Aplikasi, Dan Pandangan Mahkamah.*"

⁴⁵ *Hibah* on secured property is invalid because the property not fully own by the owner and it's still under liability.

⁴⁶ Refusing the application for *hibah* verification on the property that still under financing of Treasury Malaysia.

⁴⁷ Disallowing the plaintiff request to verify the *hibah* made by her brother (deceased) due to absence of evidence that the deceased obtained the approval from the financier (*bai' bi thaman ajil*) allowing the deceased to make a *hibah* property to the plaintiff.

⁴⁸ Granting a *hibah* on secured property even though without the approval of financier as long as the secured property protected by takaful/insurance.

law requirements so it can be a clear guidance to be used and followed by the Muslims in Malaysia⁴⁹. Asni & Sulong⁵⁰ suggested that the uniformity and consistency in the enforcement of fatwa and the decision making regarding the hibah can be achieved through a standardized fatwa. It is understandable that in Malaysia, legislative context states that the administration of Islam in Malaysia is under purview of the state, this steered to difference practices among the states. Again, when looking into the administration of Islamic law practices in Malaysia, it falls under the jurisdiction of each individual state thus, the duty for the enforcement of *fatwa* also falls under the jurisdiction of each individual state. Due to this kind of execution, no individual state can be pressed to accept a *fatwa* released by the National Fatwa Council. All the above directly affects the enforcement of *fatwa* and the public's perception towards the *fatwa* itself. Among others, why are different *fatwa* issued on the same legal problem? Different *fatwas* between states on the same *fiqh* problem may raise confusion among the public⁵¹. The relationship of IEP and *fatwa* are closely related as any practices in the estate planning shall referring to the *fatwa*'s available that related to the scenarios. However, due to this version of dilemma has contributed to the bigger elements of discrepancy which doubting the smoothness concept and practical of IEP in general. As to date, no major advancement has been made to get the better of calibration as it involves multiple layers of jurisdiction and religious rulings that involving the sovereignty of each state. Further treatment on this issue by the authority reveals that the journey that the industry player needs to endure for standardization will be slow and hard.

Civil and Syariah Courts: A Tale of Two Courts

Referring to Md Azmi & Mohammad⁵² and Noordin, Shuib, Zainol, & Mohamed Adil⁵³, the unclaimed estates might be a result of the

⁴⁹ Mohd Yusof and Ahmad, "Hibah As an Alternative Mechanism in Muslims Assesses Management : A Study In Melaka Tengah."

⁵⁰ Muhammad Fathullah Al Haq Muhamad Asni and Jasni Sulong, "Fatwa on Wajibah Will and Uniformity of Provision in the Malaysian States Fatwa," *Al-Qanatir International Journal of Islamic Studies* 5, no. 1 (2016): 1–15, <http://al-qanatir.com/index.php/qanatir/article/view/42>.

⁵¹ Zaini Nasohah et al., "Standardisation of Fatwa in Malaysia: Management and Problems," *Advances in Natural and Applied Sciences* 6, no. 6 (2012): 923–929.

⁵² Md Azmi and Mohammad, "The Causes of Unclaimed, Late Claimed or Distributed Estates of Deceased Muslims in Malaysia."

empowerment of two courts under substantive law and the complex procedures to be followed make the process lengthy and costly. For example, the High Court has been empowered to grant a Probate in testate cases under Section 3 of Probate and Administration Act 1959, and Letter of Administration in intestate cases according to Section 18 of Probate and Administration Act 1959. The period of getting a Letter of Administration is longer than Probate for testate estates. It may take up to four years to settle the case. Instead of concerns on period taken in resolving the process, the grand issue in relation to court appearance is secured property⁵⁴ and the other one is conditional *hibah*⁵⁵. Thus, this kind of issues portrays an undesirable aspect of the existing legislative procedure. In relation to this study, the presented issues revealing that interrelated problems causing a massive damage to the image of IEP in Malaysia. Anyhow, the personality and the credentials of Syariah advisors, if they authoritatively appointed, is supposed to uphold the status of the estate planning industry and progressing in line with other Islamic finance area.

The major implication of estate classification either large or small resulting the distribution procedures falls within jurisdiction of two courts and two administrative agencies⁵⁶. Corresponding to Section 25 of the Civil Law Act 1956, the administration of Muslim's estate shall be in accordance with the Islamic law. However, Article 74 (1) of Malaysian Federal Constitution read with Ninth Schedule Paragraph 4 (e) (i), provides that the Civil High Court has the jurisdiction over matters relating to succession, testate and intestate, probate and letters of administration. Thus, considering Article 121A Muslims must go to Syariah and civil courts for retrieving the estate of a deceased person. Simultaneously, Section 17 (1) of Public Trust Corporation Act 1995

⁵³ Noraini Noordin et al., "Problem to Petition Rights to Islamic Inheritance- Practical Solution Found Elsewhere than the Legal System of Malaysia," *Special Issue on Science for Sustainability*, no. December (2011): 41–80.

⁵⁴ Abdullah, "*Hibah Hartanah Bercagar; Prinsip, Aplikasi, Dan Pandangan Mahkamah.*"

⁵⁵ *Hibah* is an act of transferring of ownership of an asset or usufruct without an exchange of counter value during the lifetime of the transferor. In current practice, there are two type of *hibah* which are *hibah al-umra* and *hibah ruqba*. *Hibah al-Zmra* is *hibah* which is contingent to the lifetime of either the one who makes the gift or the recipient whilst *hibah ruqba* referring to a conditional *hibah* stipulated by the one who makes the gift, where the recipient will own the gift upon the death of the former.

⁵⁶ Md Azmi and Mohammad, "*The Causes of Unclaimed, Late Claimed or Distributed Estates of Deceased Muslims in Malaysia.*"

(Act 532) bestows the capacity to ARB to dispose movable possessions whether testate or intestate which is less than RM 2 million, while the applicant can go to the Land Office for immovable properties which is not surpassing RM 2 million. Besides, Section 8 (1) of Small Estates (Distribution) Act 1955 (Act 98) proposes ARB has the control in small estate distribution included movable and immovable properties even though in the absent of a will. This portion reveal that estates of Muslims, movable or immovable, exceeding RM 2 million comes within the powers of High Court. Section 77 of Probate and Administration Act 1959 (Revised-1972) (Act 97) enjoins that an executor has unlimited power to distribute estates of a deceased person but under this Act the executor must apply for letter of execution from Civil High Court. Unlikely, if the estate worth does not exceed RM 2 million, the process for example in Land Office, can start on without lawyers going to Court. It may incur a period from five and a half months.

The current practice of Malaysian legal system is a dual – civil and Syariah – court system. It is function as a dual system of courts. Civil court were set up under Article 121 of the Malaysian Constitution and dominate the larger portion of the constitution, thus all Malaysians are subject to their jurisdiction⁵⁷. In addition, Syariah courts were set up by the States and these courts administer Islamic law only on Muslims. The Federal Constitution cannot be used to determine the authority of the Syariah courts to issue judgments. However, there are no provisions in the State laws to issue judgments on some cases, thus the functions of the Syariah courts cannot be properly executed, such as cases involving a non-Muslim. Due to this, clients have to process their inheritance cases through both civil and Syariah courts which will cost time and money⁵⁸.

Extended Procedures

As mentioned earlier, the empowerment of two courts under substantive law and the procedures to be followed may be the reason for unclaimed estates simply because the process is too lengthy and costly⁵⁹. On any transaction or application to claim the estate, naturally it involves

⁵⁷ Farid Sufian Shuaib, “Powers and Jurisdiction of Syariah Courts in Malaysia,” no. August (2008), <https://www.researchgate.net/publication/327106276>.

⁵⁸ Noraini Noordin et al., “Review on Issues and Challenges in Islamic Inheritance Distribution in Malaysia,” *OIDA International Journal of Sustainable Development* 3, no. 12 (2012): 29–38.

⁵⁹ Md Azmi and Mohammad, “The Causes of Unclaimed, Late Claimed or Distributed Estates of Deceased Muslims in Malaysia.”

costs; this may play substantial part in making the beneficiaries refuse to proceed with the necessary procedures, mainly when the amount after distribution to be claim value is relatively small. In cases where an application is made by the beneficiaries, the time between application and final settlement of the case will be long and therefore the distribution of the estate will also be long. For further contemplating, the general concerns after all including the issues on large quantity of *wasiyyah* possessions that are growing year by year without appropriate dissemination among the testator's beneficiary, verify that the *wasiyyah* issues in Malaysia is not a clear-cut assignment⁶⁰. In addition, lengthy processes may extend to a number of years to clear up the case of dying intestate resulted to an episode of frozen estate problems and delays in the settlement period⁶¹. Another researcher also mentioning the about the time taken and comparison of the processes endure in the case of dying intestate and testate estate (Ghul, Yahya, & Abdullah, 2015).

Hibah Applications

According to Azhar et al⁶² and Mohd Sa'afie & Muda⁶³, there are diversity of *hibah* management in Amanah Raya Berhad, Wasiyyah Shoppe Berhad and as-Salihin Trustee Berhad, thus the differences may affect the administration in future if there are disagreements arises. In general, *hibah* validation falls under jurisdiction of Syariah High Court, however if there is any contract or other known elements joined together, it will automatically go to the administration under civil court. For examples, the elements of *hibah* practices attach with trust contract, this will make it fall under civil court prerogative. Another point to ponder, the customers should mindful on what nature of transactions that they expect to enter as it may have great implications on estate entitlement in near future. The availability of various practices of *hibah* among institutions might as well increase debates among scholars who reviewing this kind of exercises. Cultivation of knowledge may provide us the advantages and disadvantages of which application benefited most.

⁶⁰ Samori et al., "Towards Managing the Beneficiaries Rights via Writing a Will."

⁶¹ Ibid., p.25.

⁶² Alias Bin Azhar et al., "*Hibah Komersial: Satu Tinjauan Terhadap Prosedur Dan Amalan Di Malaysia Commercial Gifts (Hibah): An Overview of the Procedure and Practice in Malaysia*," 1995, 542–552.

⁶³ Adilah Mohd Sa'afie and Mohd Zamro Muda, "The Variety of Hibah As an Wealth Planning Instrument: A Literature Review," *Al-Qanatir International Journal of Islamic Studies* 10, no. 1 (2018): 31–41, <http://al-qanatir.com/index.php/qanatir/article/view/3/7>.

However, the chances of making it standard throughout institutions is still far away as the industry itself not a streamline business.

Governing Law

Referring to Table 1, the operational nature of each institutions is different mainly due to their establishment act. The business operation may subject to the distinctive governing law which are Public Trust Corporation Act 1995, Companies Act 2006, Trust Companies Act 1949 and Muslim Wills Management, Muslims Will (Selangor) Enactment 1999). ARB is a pioneer estate planning institution in Malaysia. In year 1995, ARB operated under Act 532, Public Trust Corporation Act 1995⁶⁴. As-Salihin Trustee (as-Salihin) is a trust company incorporated under the Companies Act 2006 and registered under Trust Companies Act 1949⁶⁵. Special attributed Act for ARB make ready to provide provisions in legislative as the first public trustee. Furthermore, as-Salihin was established in 2004 to meet the needs of Muslims to preserve, protect and distribute their assets for the benefit of their heirs once they depart for the hereafter⁶⁶. Thus, the establishment of Wasiyyah Shoppe Berhad prior year 2018 were solely under Companies Act 2006 whereas as-Salihin Trustee registered both under Companies Act 2006 and Trust Companies Act 1949. However, later in year 2018, Wasiyyah Shoppe Berhad had obtained their approval to become a Trustee. Therefore, the disparity of legal jurisdiction for both companies reflected the operational practices required⁶⁷. Furthermore, MAIS who also offering the estate planning services to the public conferring to Muslims Will (Selangor) Enactment 1999. Considering all stated governing law, trigger a huge predicament for the IEP features presented by each of the existing institutions. The different spectrum of roles and services for each institution may open up to a bigger opportunity on streamlining the industry, however the challenges ahead are yet to be determined.

⁶⁴ Al Azifah Mohd Safie, “*Penderafan Dokumen Wasiat Islam Di Amanah Raya Berhad: Analisis Menurut Perspektif Islam*,” Jabatan Syariah Dan Undang-Undang Akademi Pengajian Islam Universiti Malaya (2010), <https://doi.org/10.1093/ocmed/kqq062>.

⁶⁵ Laws of Malaysia Act 100, Trust Companies Act 1949.

⁶⁶ Samori et al., “*Towards Managing the Beneficiaries Rights via Writing a Will*.”

⁶⁷ Adilah Mohd Sa’afie et al., “*Pengendalian Pengurusan Produk Hibah Di Wasiyyah Shoppe Berhad Dan As-Salihin Trustee Berhad*,” 2018, 112–119.

***Shari'ah* Compliant Status**

The IEP companies that exist nowadays proudly declare in their official portal that their companies are *Shari'ah* compliant and mentioned their *Shari'ah* advisors' line up. In addition, as-Salihin aims to provide all its services on estate planning in a manner based strictly on the *Shari'ah*⁶⁸. Among others, the companies that claims there are *Shari'ah* compliant entities including Wasiyyah Shoppe, Amanah Warisan Berhad and MyAngkasa Amanah. Bank Negara Malaysia (the Bank) places great importance in ensuring that the overall Islamic financial system operates in accordance with *Shari'ah* principles. This is to be achieved through the two-tier *Shari'ah* governance infrastructure comprising two (2) vital components, which are a centralized *Shari'ah* advisory body at the Bank and an internal *Shari'ah* Committee formed in each respective Islamic financial institution (IFI) 69. However, the IEP industry in Malaysia did not have any kind of structure or regulation that perform the function of supervising or monitoring the operation of the companies whether it is accordance to *Shari'ah* principle or not. Thus, such assertions made by the companies in the IEP industry are subject to unknown validation body. As of latest development, each and every one claims of *Shari'ah* compliant status made by the institutions are widely used as their marketing strategy and competitive tools to attract potential customers. The scholars and academic figures who appointed as *Shari'ah* advisors may function according to the requirement stated by the companies, yet their roles and practices still subject to argument in term of standardization and uniformity.

Knowledge on the Islamic Inheritance Concepts

In curbing the continual increase in unclaimed properties among Muslims, it is high time to educate Muslims in Malaysia to fully understand about the Islamic inheritance law or *faraid*⁷⁰. The researcher did mention that understanding of the Muslims society in Malaysia is still far behind and greater efforts are needed to increase the knowledge about Islamic inheritance law. On the other hands, the early picture provided by the quantitative data shows that a majority of the respondents (60.62%)

⁶⁸ Samori et al., "Towards Managing the Beneficiaries Rights via Writing a Will."

⁶⁹ BNM, "*Shari'ah Governance Framework Bank Negara Malaysia*" (2010).

⁷⁰ Abdul Nasir Zulkifli, Qais Ali Batiha, and Mustafa Moosa Qasim, "Design and Development of M-Faraid: An Islamic Inheritance Mobile App," *Journal of Advanced Research in Dynamical and Control Systems* 10, no. 10 Special Issue (2018): 1569–1575.

cited family disputes and disagreements as the reason that the transfer process falls through. The research conducted in Felda Settlers in Bentong indicate that a majority of these problems are caused by the failure of the beneficiaries to agree on a solution to divide their portion of the land⁷¹. Therefore, a good understanding on the possible implication and the benefit of the Islamic system supposedly being nurtured in the beginning and assumed to prevent this kind of situation. Furthermore, Muslim society have less understanding about Islamic inheritance laws, despite from their background, profession or which sectors there are from. There are also those Muslims who have a plan on their wealth management, but it is not accordance with Islamic wealth distribution⁷². In relation to the scenario abovementioned, the awareness on IEP still the most important elements whether the individual opting for Islamic wealth distribution or leave the planning part unattended. The purpose to have better understanding on Islamic inheritance concept and followed by knowing about the essential procedure involved will reduce the possibilities of misjudgment made by the Muslims towards individual planning.

Beneficiaries Conduct

Pertaining to the attitude dilemma whereby among the reality is those unresolved inheritance scenarios caused by the unnecessary conduct of beneficiaries. It is pertaining human factor. Previous research has been stating the same statement. The disagreements frequently cause beneficiaries, who are often siblings, to feud among themselves for ownership of the land⁷³. For instance, one of the major issues highlighted on *hibah* in this paper is the dissatisfaction of the beneficiaries on the distribution of properties⁷⁴. In addition, the negative personal attitude displayed by the beneficiaries in a way interrupt the smooth process of

⁷¹ Zulkifli Mohamad, Johari Talib, and Ruzman Noor, "Issues of Land Inheritance from FELDA Settlers' Perspective: A Case Study among Settlers in Lurah Bilut," *International Business Research Conference*, 1998, 1–15.

⁷² Nurul Aein Abd Aziz et al., "A Study on Perception If Writing Wassiyah Among Muslim in Malaysia," *Journal of Applied Environmental and Biological Sciences* 7, no. 7 (2017): 147–151.

⁷³ Mohamad, Talib, and Noor, "Issues of Land Inheritance from FELDA Settlers' Perspective: A Case Study among Settlers in Lurah Bilut."

⁷⁴ Khairiah Ahmad et al., "Acceptance of Hibah as an Alternative Mechanism in Muslims Asset Management," *SHS Web of Conferences* 36, 2017, 1–5.

estate administration⁷⁵. The author viewed this scenario as one of the causes and closely related with the knowledge among the beneficiaries, limited understanding followed by the feelings among heirs and additional opinions given by extended families members resulted in major incidence that cause a chaotic scene. That is the experience of the nowadays scenario when the IEP is applied in reality. Despite the level of academic background and the financial status of the families, the disputes still happening and affected the family relationship. In addition, on certain cases, the heated discussion does not end at families meeting but extended to court case which consumes time and capital. Thus, in avoiding further unnecessary beneficiaries conduct that may harmful to the family dignity, a proper IEP should take place in the very beginning.

Conclusion

The barrier of the advancement of IEP in Malaysia found in this study provide the highlights of the concerns existed in IEP in Malaysia and it is adequate to determine the impacts on the significance in overall situation. The findings show that the barrier appeared in specific segments namely the authority, the service operator and the customer. The combinations of this multiple barriers lead towards the slower progress of IEP in Malaysia. The findings also draw attention to initiative taken by the service operator in enriching their governance aspect without regulatory enforcement. The author believes that due to little progress in IEP, the acceptance of this kind of practices among Muslim society may be affected and the intention to encourage the Muslims to begin having proper estate planning will endure some hardship journey. The proper IEP will lead to better asset utilization by the beneficiaries and finally strengthen the Muslims economy in general. Furthermore, this research will open-up the possibility of establishing or adaptation of *Shari'ah* advisory framework which tailor to the IEP institutions.

⁷⁵ Nasrul Muhammad Amrullah and Wan Noraini Mohd Salim, "Administration of Estates in Malaysia: Determinant of Factors behind the Delay in the Distribution of the Deceased's Asset," *Journal of Nusantara Studies (JONUS)* 3, no. 1 (2018): 75, <https://doi.org/10.24200/jonus.vol3iss1pp75-86>.

BIBLIOGRAPHY:

Abd Aziz, Nurul Aein, Suhana Mohamed, Nurul Farhana Mazlan, Nurul Ashykin Abd Aziz, and Hasfina Mohaini. "A Study on Perception If Writing Wassiyah Among Muslim in Malaysia." *Journal of Applied Environmental and Biological Sciences* 7, no. 7 (2017): 147–151.

Abdul Rahman, Azi Haslin, and Rusni Hassan. "Issues and Challenges in Islamic Estate Planning in Malaysia." In 7th Asean Universities International Conference on Islamic Finance 2019, 1–14, 2019.

Abdul Rahman, Siti Fatimah, Abdul Malek Yaakob, Ahmad Adnan Fadzil, and Firdaus Shaban. "Asset Distribution among the Qualified Heirs Based on Islamic Inheritance," 2017.

Abdul Rashid, Rusnadewi, Siti Asishah Hassan, and Noor Inayah Yaakub. "A Need for Legal Framework of Gift Inter Vivos (Hibah) in Malaysian State Planning." *International Journal of Business, Economics and Law* 2, no. 3 (2013): 29–31.

Abdullah, Ahmad Termizi. "Hibah Hartanah Bercagar; Prinsip, Aplikasi, Dan Pandangan Mahkamah." Seminar Hibah Hartanah Bercagar. Kuala Lumpur, 2018.

Ahmad, Khairiah, Rozaiha Ab Majid, Zaharah Abdullah, Siti Fatimah Noor Minhad, and Shafinar Ismail. "Acceptance of Hibah as an Alternative Mechanism in Muslims Asset Management." SHS Web of Conferences 36, 2017, 1–5.

Ahmad Razimi, Mohd Shahril. "Concept of Islamic Inheritance Law (Faraid) in Malaysia: Issues and Challenges." *Research Journal of Applied Sciences*, 2016.

<http://docsdrive.com/pdfs/medwelljournals/rjasci/2016/1460-1464.pdf>.

Al-Jibali, Muhammad. *The Final Bequest: The Islamic Will & Testament*. Al-Kitaab & As-Sunnah Publishing, 1999.

Alma'amun, Suhaili. "Islamic Estate Planning: Malaysian Experience." *Kyoto Bulletin of Islamic Area Studies* 3–2, no. March 2010 (2010): 165–185.

Azhar, Alias Bin, Mohammad Azam Hussain, Muhammad Hafiz Badarulzaman, and Fauziah Mohd Noor. “*Hibah Komersial: Satu Tinjauan Terhadap Prosedur Dan Amalan Di Malaysia*,” 1995, 542–552.

BNM. *Shariah Governance Framework Bank Negara Malaysia* (2010).

Edbiz Consulting. “*Islamic Wealth Management Report 2016*.” Kuala Lumpur, 2016.

Ghul, Z H, M H Yahya, and A Abdullah. “Wasiyyah (Islamic Will) Adoption and the Barriers in Islamic Inheritance Distribution among Malaysian Muslims.” *International Journal of Humanities Social Sciences and Education (IJHSSE)* 2, no. 1 (2015): 1–11.

Ismail, Azman. *Islamic Inheritance Planning 101*. 1st ed. Kuala Lumpur: IBFIM, 2013.

Jaafar, Imani. “*Practical Islamic Estate Planning: A Short Primer*.” Hamline, Mitchell Review, Law 42, no. 3 (2016).

Kamarudin, Mohd Khairy, and Nasrul Hisyam. “Islamic Estate Planning and Management: Malaysian Experience.” *International Journal of Management Applications* 1, no. 1 (2018): 9.
<https://www.researchgate.net/publication/322975181>.

Kamarudin, Nur Shuhada, Azreen Jihan Mohd Hashim, Nurul Nazlia Jamil, and Noradilah Abdul Hadi. “The Conceptual Framework of the Intention on Islamic Estate Planning Practice among Muslim Entrepreneurs.” *Journal of Islamic, Social, Economics and Development* 4, no. 20 (2019): 69–76.

Khairuldin, Wan Mohd Khairul Firdaus Wan, Wan Nur Izzati Wan Nor Anas, and Abdul Hanis Embong. “Fatwa as a Disseminator of Islamic Laws among Community of Malaysia.” *International Journal of Academic Research in Business and Social Sciences* 8, no. 11 (2018): 516–521. <https://doi.org/10.6007/IJARBSS/v8-i11/4925>.

Laws of Malaysia Act 100. Trust Companies Act 1949 (2006).

Laws of Malaysia Act 505. Administration of Islamic Law (Federal Territories) Act 1993 (2006).

Laws of Malaysia Act 532. Public Trust Corporation Act 1995 (2008).

Laws of Malaysia Act 777. Companies Act 2016 (2013).

Md Azmi, Fatin Afiqah, and Mohammad Tahir Sabit Mohammad. “*The Causes of Unclaimed, Late Claimed or Distributed Estates of Deceased Muslims in Malaysia.*” 2011 International Conference on Sociality and Economics Development 10 (2011): 440–444.

Md Nor, Mohd Zakhiri, Hairuddin Megat Latif, Md. Rejab Desa, Al Hanisham Mohd Khalid, and Muhammad Azam Hussain. “*Legal Position of Fatwa: Observations from Selected Jurisdictions.*” In Seminar on Law & Society School of Law, Universiti Utara Malaysia, 1–5, 2016.

Mohamad, Zulkifli, Johari Talib, and Ruzman Noor. “*Issues of Land Inheritance from FELDA Settlers’ Perspective: A Case Study among Settlers in Lurah Bilut.*” International Business Research Conference, 1998, 1–15.

Mohammad, Mohammad Tahir Sabit. “The Contemporary Application of Wasiyah (Muslim Will) in Malaysia.” *International Journal of Real Estate Studies* 9, no. 1 (2015): 1–15.

Mohd Noor, Nor Adila, Che Zuina Ismail, Nor Azlina Mohd Noor, and Siti Mashitoh Mahamood. “*Harta Wasiat Orang Islam: Satu Ulasan Ringkas Dari Perspektif Perundangan Di Malaysia.*” E – Academia Special Issue TeMIC UiTM Cawangan Terengganu, 2018, 39–46.

Mohd Sa’afie, Adilah, and Mohd Zamro Muda. “The Variety of Hibah As an Wealth Planning Instrument: A Literature Review.” *Al-Qanatir International Journal of Islamic Studies* 10, no. 1 (2018): 31–41. <http://al-qanatir.com/index.php/qanatir/article/view/3/7>.

Mohd Sa’afie, Adilah, Mohd Zamro Muda, Noor Liza Mohamed Said, and Md. Yazid Ahmad. “*Pengendalian Pengurusan Produk Hibah Di Wasiyyah Shoppe Berhad Dan As-Salihin Trustee Berhad.*” 2018, 112–119.

Mohd Safie, Al Azifah. “*Penderafan Dokumen Wasiat Islam Di Amanah Raya Berhad: Analisis Menurut Perspektif Islam.*” Jabatan Syariah Dan

Undang-Undang Akademi Pengajian Islam Universiti Malaya, 2010. <https://doi.org/10.1093/occmed/kqq062>.

Mohd Yusof, Yusnida, and Asmdia Ahmad. "Hibah As an Alternative Mechanism in Muslims Assests Management: A." *South East Asia Journal of Contemporary Business, Economics and Law* 3, no. 3 (2013): 1–5.

Muda, Mohd Zamro. "Instruments of Hibah and Wills: Analysis of the Regulations and Applications in Malaysia." Hibah and Faraid National Convention 2008, 2008, 1–42.

http://www.islam.gov.my/sites/default/files/instruments_of_hibah_and_wills.pdf.

Muhamad Asni, Muhammad Fathullah Al Haq bin, and Jasni bin Sulong. "Fatwa Concerning Qabd in Hibah and the Insertion of Qabd Element in States Fatwa in Malaysia." *Journal of Islamic Studies and Culture* 4, no. 1 (2016). <https://doi.org/10.15640/jisc.v4n1a17>.

Muhamad Asni, Muhammad Fathullah Al Haq, and Jasni Sulong. "Fatwa on Wajibah Will and Unifomity of Provision in the Malaysian States Fatwa." *Al-Qanatir International Journal of Islamic Studies* 5, no. 1 (2016): 1–15. <http://al-qanatir.com/index.php/qanatir/article/view/42>.

Muhammad Amrullah, Nasrul, and Wan Noraini Mohd Salim. "Administration of Estates in Malaysia: Determinant of Factors behind the Delay in the Distribution of the Deceased's Asset." *Journal of Nusantara Studies (JONUS)* 3, no. 1 (2018): 75. <https://doi.org/10.24200/jonus.vol3iss1pp75-86>.

Muhammad Serji, Rabi'ah, and Rohimi Shapiee. "Isu Dan Konflik Perundangan Dalam Hibah Hartanah Di Malaysia." *Journal of Muwafaqat* 1, no. 1 (2018): 84–101.

Mujani, Wan Kamal, Hirwani Wan Hussain, Noor Inayah Yaakub, and Rusnadewi Abdul Rashid. "Constructions of Failure Ad Delay under Islamic Estate Management." *International Business Management* 5, no. 6 (2011): 326–30. <https://doi.org/10.3923/ibm.2011.326.330>.

Nasohah, Zaini, Hayatullah Laluddin, Zuliza Mohd Kusrin, and Mohd Rizal Muwazir. "Standardisation of Fatwa in Malaysia: Management and

Problems.” *Advances in Natural and Applied Sciences* 6, no. 6 (2012): 923–929.

Noordin, Noraini, Adibah Shuib, Mohammad Said Zainol, and Mohamed Azam Mohamed Adil. “Problem to Petition Rights to Islamic Inheritance- Practical Solution Found Elsewhre than the Legal System of Malaysia.” *Special Issue on Science for Sustainability*, no. December (2011): 41–80.

———. “Review on Issues and Challenges in Islamic Inheritance Distribution in Malaysia.” *OIDA International Journal of Sustainable Development* 3, no. 12 (2012): 29–38.

Nor Muhamad, Nasrul Hisyam. “Wasiat Sebagai Instrumen Perancangan Harta Islam: Prosedur Dan Pelaksanaan.” *Jurnal Hadhari* 9, no. 1 (2017): 17–32.

———. “Wasiat Sebagai Instrumen Perancangan Harta Islam: Prosedur Dan Pelaksanaan.” *Jurnal Hadhari* 9, no. 1 (2017): 17–32. <http://ejournal.ukm.my/jhadhari/article/view/18517/5872>.

Nor Muhamad, Nasrul Hisyam, Mohd Khairy Kamarudin, Abdul Hafiz Abdullah, Nawal Sholehuddin, Mohd Firdaus Abdul Hamid, Ihsan Muhidin, and Kamaliah Abdul Karim. “Islamic Intervivos Law Challenges in Malaysia.” *Journal of Legal, Ethical and Regulatory Issues* 22, no. 1 (2019): 1–6.

PEMANDU Jabatan Perdana Menteri. “*Economic Transformation Programme Report*.” Economic Planning Unit Malaysia, 2010.

Samori, Zakiah, Mohammad Mahyuddin Khalid, Mohd Ashrof Zaki Yaakob, Hanifah Musa Fathulah Harun, and Nadirah Abdul Hamid. “Towards Managing the Beneficiaries Rights via Writing a Will.” *Global Journal of Management and Business Research* 16, no. No.3-G (2016). <https://doi.org/10.17406/GJMBR>.

Shuaib, Farid Sufian. “Powers and Jurisdiction of Syariah Courts in Malaysia,” no. August (2008). <https://www.researchgate.net/publication/327106276>.

Tagoranao, Mariam Saidona. "Problems and Issues on the Right of a Person to Inherit the Islamic of Succession." *Syariah and Law Discourse Issue*, no. 4 (2009): 75–85.

Zulkafli, Bibi Nur Adila, and Md Yazid Ahmad. "Kekangan Dan Penyelesaian Kelewatan Pengurusan Aset Pusaka Tak Alih Orang Islam Di Malaysia." *Islamiyyat The International Journal of Islamic Studies* 38, no. 1 (2016): 53–63.

<https://doi.org/http://dx.doi.org/10.17576/islamiyyat-2016-3801-06>.

Zulkifli, Abdul Nasir, Qais Ali Batiha, and Mustafa Moosa Qasim. "Design and Development of M-Faraid: An Islamic Inheritance Mobile App." *Journal of Advanced Research in Dynamical and Control Systems* 10, no. 10 Special Issue (2018): 1569–1575.