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**FARAID AND HIBAH AS ISLAMIC ESTATE PLANNING TOOLS AMONG MUSLIM SOCIETY IN MALAYSIA, THE CONCEPT, IMPORTANCE AND ISSUES**<sup>i,\*</sup>Nurulain Md Rasul & <sup>i</sup>Mohd Soberi Awang<sup>i</sup>Faculty of Syariah and Law, Universiti Sains Islam Malaysia (USIM), 71800, Nilai, Negeri Sembilan, Malaysia\*(Corresponding author) e-mail: [ainmdrasul@raudah.usim.edu.my](mailto:ainmdrasul@raudah.usim.edu.my)**ABSTRACT**

If the rise in the Muslim population is not counterbalanced by a greater awareness and understanding of Islamic inheritance laws, including the process and procedure used in Malaysia to manage the property, the increase in unclaimed inheritance estate, which has reached more than RM 70 billion, will become more critical. In fact, because the heirs are unfamiliar with the property distribution procedure, they have chosen to ignore the current alternatives. Consequently, it may result in issues such as conflicting claims, undeveloped land, complexity of the trial procedure, and the possibility of losing the deceased's documents. Thus, this research aims to highlight the concept including the law governing and its procedure, significance, and related issue of *faraid* and *hibah* as Islamic estate planning tools among Muslim society in Malaysia as a mean of resolving inheritance distribution difficulties. Besides, this article applies a qualitative study by scrutinizing the literature descriptively including article journals from several online databases and semi structured interviews with the experts that involves related open-ended and probing questions for the purpose of finding the best and suitable tools of Islamic estate planning for the society according to their needs. Therefore, it is hoped that this article will be able to contribute to an effort of encouraging the Muslim's society in planning and managing their estate properly.

**Keywords:** *Faraid, hibah, Islamic estate planning*

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## Introduction

One of the significant topics that has been discussed in Al Quran and Hadith is regarding to Islamic estate planning. Estate planning regulations are being developed with the goal of protecting heirs' interests against financial abuse and mismanagement (Hasliza Talib, 2017). The need for estate planning is demonstrated in Surah Yusuf, verse 47:

Translation: “[Joseph] said, You will plant for seven years consecutively; and what you harvest leave in its spikes, except a little from which you will eat”.

(Surah Yusuf, 12:47)

The verse demonstrates that Islam encourages its adherents to prepare for the sustenance that God has provided to live properly in this world and as a means of ensuring eternal life in the future (Norazlina Abd. Wahab et al., 2021). Real estate planning refers to the effort that needs to be taken in dividing and distributing the property owned by a person to the heirs upon the owner's passing to prevent issues or disputes arisen (Azizi Abu Bakar et al., 2020). In general, Islam has offered variety of choices to Muslims in administering their inheritance and properties either before or after the death of the property's owner such as *faraid* and *hibah* (Suhaili Alma'amun, 2010).

This article is divided into three sections. The first section is the introduction which consists of background of topic, problem statement, research objectives, and methodology. Next, second section is regarding to discussion and finding which comprises with the concept, law governing, application and procedure, importance, and issues related to *faraid* and *hibah* in Malaysia. The last part is pertaining to the conclusion, summary, and recommendation for the improvement of administration of Islamic estate planning tools in Malaysia including *faraid* and *hibah* (Mahad Musa, Z.,2020).

## Problem Statement

Estate planning has become more important in the nation, yet surveys show that the most of Malaysians still have not done it. A survey in 2018 of 521 people by Rockwills International Group found that 63% of them had not made a will or established a trust fund for estate planning purposes (Yun, 2018). Additionally, according to one research, there are also 85% of Muslims living in the country have not taken part in estate planning (Abdul Karim, 2016).

The situation is getting serious based on the most recent data from Amanah Raya Berhad (ARB), which shows that unclaimed properties worth RM70 billion have not yet been recovered by the appropriate recipients and that Muslims hold 95% of the assets (Harian Metro, 2020). As a result, if this issue is not resolved right away with a proper strategy and workable solution, it will have a detrimental impact on the administration of Muslim's estate and will only get worse without any progress being made. Moreover, the longer the delay in the management of the property is made by the heir, the more issues may occur during the period after the death of the property's owner. For instance, a complex problem will arise if one of the heirs of the first decade passed away because it will involve a higher cost and may cause a burden for the heirs (Hasliza Talib, 2017).

Additionally, the understanding and awareness of Muslim towards the importance of managing their property is vital to ensure that the issue of unclaimed property and the burden of management cost can be lessened for the sake of the heirs and the decedent as the owner of the property. As example, the issue whereby there are circumstances of several people owning the same asset, conflicting claims, neglected assets, problems with the trial procedure for distributing the decedent's property and the possibility of losing the decedent's records (Rashid & Yaakub, 2010).

Hence, this article will focus on two types of Islamic estate planning tools regarding to *hibah* and *faraid*. Moreover, this study will give some exposure regarding to the practice and procedure of *Faraid* and *hibah* in Malaysia to encourage and ensure that Muslim society in this country will be having a clear understanding and awareness of the importance of managing their property in an accurate way that is relevant to their needs.

## Research Objectives

This study aims to explore the concept of Islamic estate planning, focusing on *faraid* and *hibah*, to establish a strong foundational understanding from an Islamic perspective. It examines the legal framework governing these instruments in Malaysia, considering both Syariah and Civil Law within the dual legal system. Additionally, it analyzes the procedures and practices of *faraid* and *hibah* to enhance awareness and equip Muslims with the knowledge to plan their estates effectively. The study also highlights their significance as estate planning tools to encourage responsible wealth distribution. Furthermore, it addresses various issues, including contemporary challenges, ensuring the research remains relevant to current needs. This study seeks to promote awareness and encourage the Muslim community in Malaysia to manage their assets effectively through these methods.

## Methodology

The writing of this study applies to a qualitative method by using library research method on article journals through several online databases such as ProQuest Central, ResearchGate, and Google Scholar. Moreover, this study also included several data pertaining to case laws and law governing topics from online databases, for instance, Lexis Nexis and Current Law Journal (CLJ). The final stage of the study included semi structured interviews with professionals around Islamic estate planning (*faraid* and *hibah*) for validation reasons regarding to the discussion and findings of this study. The experts who involved in this interview are from various backgrounds such as Mr. Hakim Nordin, a professional estate consultant from Kausar Wealth Management Sdn. Bhd. Ms. Nor Aishah Nordin, a legal practitioner (*Syarie* Lawyer) and Mr. Syahbani, a senior executive of Amanah Raya Berhad (Seremban). This interview includes related open-ended and probing questions to extensively discuss the topic.

## Discussion and Finding

### *Concept of Islamic Estate Planning, Faraid and Hibah*

#### *Concept of Islamic Estate Planning*

The property left by the deceased is referred to as an Islamic estate. According to Section 2 of the Enactment Islamic Will (Selangor) 1999, it mentioned that this property consists of both movable and immovable assets that were legally obtained in accordance with Islamic law and are regarded to have legally belonged to the deceased (Khairy & Azwan, 2016). Moreover, if it does not violate Islamic Law, Islam accepts ownership of property while a person is still alive, regardless of gender, genealogy, or other factors (Hussin & Abdullah, 2016).

Islamic estate planning is defined as a collection of guidelines for the administration and disposition of a person's possessions both during their lifetime and after death. It is constructed using the current Islamic estate planning tools, such as *waqf* (endowment), *hibah* (gift), *wasiyyah* (will), and *faraid* (inheritance) (Norazlina Abd. Wahab et al., 2021).

Islamic estate planning includes a few components in a cycle, including wealth creation or generation, expenditure of wealth, accumulation of wealth, purification of wealth, protection of wealth, and distribution of wealth (Basah & Tahir, 2019). According to this cycle of property management, the most important and contentious phase is wealth distribution, which has a considerable influence on people's lives (Ab. Aziz et al., 2014)

Islamic estate planning includes a few components in a cycle, including wealth creation or generation, expenditure of wealth, accumulation of wealth, purification of wealth, protection of wealth, and distribution of wealth (Basah & Tahir, 2019). According to this cycle of property management, the most important and contentious phase is wealth distribution, which has a significant influence on people's lives (Ab. Aziz et al., 2014).

Additionally, these five major components of Islamic property management have been stated in the Holy of Al Quran. For instance, the element regarding to property division by use of a *wasiyyah* as stated in Surah Al Baqarah, verse 180, *hibah* as mentioned in Surah Al Baqarah, verse 177, *waqf* as explained in Surah Ali Imran, verse 92 and *Faraid* as stated in Surah An Nisa, verse 11, 12 and 176 (Azhar & Md.Nor, 2019).

Furthermore, an earlier start and thorough planning for property management can meet *Maqasid Syariah* requirements, which are necessary to prevent property (*hifz al-mal*) in Malaysia from being unclaimed and not reaping its full benefits (Alias et al., 2024; Awang et al., 2019).

Next, there are several effects of the delay and negligence of the administration of Islamic estate. Firstly, it may have a severe impact on society from an economic, legal, social, and religious standpoint (Mohammada & Suratman, 2017). For instance, negligence in this case will cause an increase of unclaimed property and idle land in which if those lands are used and well developed, it will improve the economy of the country and vice versa (Md Yazid Ahmad et al., 2018).

Additionally, other issues that might come up include instances of several people owning an asset, conflicting claims, neglected assets, challenges throughout the trial process, and the possibility of losing the decedent's records (Rashid & Yaakub, 2010).

### ***Concept of Faraid***

Fundamentally, the determination of property inheritance according to the division of *Faraid* has been provided in surah An-Nisa, verses 11, 12 and 176, which describes on the eligible heirs as well as the determined portion for each heir to be received. Additionally, this system of *Faraid* also be used in accordance with Al Quran, Hadith of Prophet Muhammad PBUH and *ijma'* of the jurists (Wan Rushdan et al., 2021).

Furthermore, there are list of beneficiaries of *Faraid* comprises with 15 persons of male and 10 persons of female. For male, it consists of son, grandson of sons and below, father, paternal grandfather and above (from the father side), the brother of both parents, the brother of the same parents (father side), siblings of the same mother, a nephew of the same parents, a nephew of the same father and above, the uncle of the same parents, the uncle of the same father or below, son of the uncle of the same parents, the child's uncle father, husband, and a male master to a servant (Hasbullah et al., 2021). For female, it comprises with daughter, granddaughter of son, mother, the maternal grandmother, paternal grandmother, the sister of same parents, the sister of father, mother's sister, wife, and a female master to a servant (Mohd Shahril, 2016).

Although the system of *Faraid* is not specifically enshrined in written law of Malaysia, it is still practiced effectively by the Malaysian Syariah Court. This is to ensure that the position of property after the death of the decedent and the rights of the heirs in accordance with the Islamic law can be exercised (Hani Kamariah et al., 2020).

The distribution of *faraid* is a general fraction of the entire property owned by the decedent and does not distinguish between the division of movable and immovable assets. Thus, there is an issue regarding fragmentation of land or mass ownership because of the understanding of the distribution of *faraid* literally (Kamarudin & Abdullah, 2016).

However, there are few elements and methods that can be used in Malaysia as a solution to resolve the issue of immovable property which is land such as *takharuj* and *sulh* (Hashim et al., 2024; Mohd Khairy Kamarudin et al., 2015). This is because of the effect from the fragmentation and mass ownership of land that will contribute to economic problems and difficulty in selling and working on the asset (Mohd Shafiai & Moi, 2015) because there must be a mutual agreement between the owners of the land. For example, if there is one of the owners who does not agree with the idea of developing or selling the land, therefore, the land cannot be developed (Sulong & Taha, 2016).

### ***Concept of Hibah***

A Hibah is a present made of love for the recipient by the giver (Ibn Rushd, 2003). Both beneficiaries and non-beneficiaries may receive *hibah*. The transfer will go into effect right away during the award period or lifetime (Azhar & Md.Nor, 2019). *Hibah*, according to Islamic law, is an agreement that specifies the voluntary transfer of a person's possession to another person for the duration of that person's life without payment or other value, not honouring anyone or hoping for a reward in the hereafter, applying the *iiijab* and *qabuul*, or anything like (Al-Nawawi, 1985).

Moreover, the pillars and of *hibah* comprise with donor of *hibah* (Al-Wahib), recipient of *hibah* (Al-Mauhub Lahu), property for *hibah* (Al-Mauhub) and an offer and acceptance also known as *ijab* and *qabul* (*Sighah*) (Ibn Rushd, 2003).

The assets under *hibah* management must be in the form of real estate, such as a home, land, condominium, company shares, unit trusts, or takaful, as well as other priceless possessions that can be acquired and transferred (Azhar & Md. Nor, 2019). Due to the concept of *hibah* implementation is more flexible and has a greater reach than other instruments and can be given to preferred heirs even if they are not legally entitled to the wealth (Muhammad et al., 2019), such as converted Muslims (*muallaf*) and distant relatives (*dzawil arham*) (Baharuddin & Mohamed Said, 2017) or adopted children (Azhar & Md.Nor, 2019), therefore, there are numerous scholars have studied its relevance in implementing *hibah*.

According to Alma'mun, Kamarudin & Asutay, (2016), they show that internal elements like faith, attitude, the desire to exchange gifts and the desire to be charitable all have an impact on how *hibah* is implemented. Additionally, the quality of service, which includes marketing and advertising, is an external aspect (Al-Aidaros et al., 2018). According to Mr. Hakim Nordin, *Hibah* that applied in Malaysia is divided into two which including direct *hibah* (*hibah mutlak*) and conditional *hibah* (*hibah bersyarat*) that includes trust *hibah* (*hibah amanah*). The differences between these two types of *hibah* are regarding to the time when the *hibah* takes into effect and its procedure applied in Malaysia (Yaacob, 2006).

Additionally, there is a type of conditional *hibah* which consists of '*umra* and *ruqba*. For example, *hibah 'umra* is a grant during the life period of the *hibah* recipient with requirement that the property is returned to the grantor (Al Wahib) in the event of the death of the *hibah* recipient while the *hibah's* grantor is still alive (Ibn Qudamah, n.d.). Meanwhile, *hibah ruqba* is performed with the condition that the living party will own the property in the event that either the grantor or recipients of *hibah* pass away (Haydar, n.d.).

### **Law Governing on Faraid and Hibah**

#### *Law Governing on Faraid*

The current legal framework demonstrates unequivocally that the *faraid* system serves as Muslims' heirs' primary guide when deciding how to divide their inheritance.

#### *Civil Law*

According to the List 2, 9<sup>th</sup> Schedule of the Federal Constitution, it has stated that any matters relating to inheritance for Muslims is subject to the jurisdiction of the state (Halim & Arshad, 2014).

Next, by virtue of Section 25 of the Civil Law Act 1956, it has mentioned that nothing in Part VII (Disposal and Devolution of Property) of the said act will impact the disposing of any property in accordance with Muslim law or, in Sabah and Sarawak, native law and custom in which it means that the administration of inheritance for Muslim need to be referred to system of Faraid (Hassan & Abdul Rashid, 2014). In addition, as stated in Section 12(7) of the Small Estates (Distribution) Act 1955, it explained that the collector shall ascertain and determine, the law that governs the transfer of a decedent's estate in which if the decedent is a Muslim, therefore, the system of Faraid will be used. Next, the respective collectors shall find out the beneficiaries according to the law used which are consisting of the eligible heirs and proportions for each of them.

As in Malaysia, four well known bodies oversee working on the administration Muslim property under the process of division through Faraid with its provision Act (Nasri Naimi, 2016).

Firstly, the body of Amanah Raya Berhad (ARB) through the Public Trust Corporation Act 1955. Secondly, the body of Department of Director General of Lands and Mines (JKPTG) through Small Estate Distribution Unit by referring to the Small Estates (Distribution) Act 1955. Thirdly, the High Court of Malaya under the Probate and Administration Act 1959. The final body involves is the Syariah Court of Malaysia in accordance with Section 50 of the Administration of Islamic Law (Federal Territories) Act 1993, that will be discussing later in Syariah Law section.

### *Syariah Law*

In addition, the jurisdiction of Faraid for Muslims in Malaysia also has been stated in Section 46(2)(b)(viii) and (ix) of the Administration of Islamic Law (Federal Territories) Act 1993 and different section in other states' enactment. This provision mentioned that the jurisdiction of Faraid is given to the jurisdiction of the State (Mohd Yusof & Ahmad, 2013). Moreover, any case law related to this matter will be heard and held through Syariah Court of Malaysia (Halim & Arshad, 2014).

Moreover, as attested by Section 50 of the Administration of Islamic Law (Federal Territories) Act 1993, it has mentioned about the Faraid Certificates whereby if there is any court or authority body apart from Syariah High Court or a Syariah Subordinate Court, who is under the duty to ascertain the persons entitled to the property and its proportion during the proceeding of the distribution of inheritance upon a Muslim's decedent, the Syariah Court has jurisdiction to verify the information of the individuals who are eligible to receive shares from the estate and the entitled amount on the request of that body or on the application of the claimant to be a beneficiary or his representative and on the payment of fee (Noordin et al., 2011).

However, the Syariah Court has divided its jurisdiction in issuing Faraid Certificate into two departments that consist of Syariah Subordinate Court and Syariah High Court (Norsalwa, 2016). For example, Syariah Subordinate Court of Selangor has jurisdiction in issuing Inheritance Certificate of the property with a value not more than RM 100,000. Meanwhile, Syariah High Court of Selangor has jurisdiction in issuing Inheritance Certificate of the property with a value more than RM 100,000 as stated in Section 62(2)(b) of the Administration of the Religion of Islam (Selangor) Enactment 2003 (Mohd Zamro et al., 2008).

### ***Law Governing on Hibah***

There is no allocated provision in Malaysia specifically for the implementation of *hibah*.

### *Civil Law*

As of now, we exclusively implement the rules governing the Syariah Court's jurisdiction as outlined in Item 1, List II, the Ninth Schedule of the Federal Constitution which stated the term 'gift' in that provision. Additionally, according to that provision, Hibah is a matter that falls under each state's Islamic religious administration and is thus subject to the Syariah Court's authority (Azhar & Md.Nor, 2019).

In addition, the National Land Code 1965 also included in the case of *hibah* related to immovable property such as land. As stated in Section 215(1) of the National Land Code 1965, any land that has been alienated under this Act must be transferred using a document in Form 14A (Mohd Khairy Kamarudin et al., 2019).

### *Syariah Law*

Furthermore, by virtue of Section 46(2)(b)(v) and (vi) of the Administration of Islamic Law (Federal Territories) Act 1993 and different section in other states' enactment. This provision provided that Syariah Court has jurisdiction in hearing and determining any cases related to the Hibah including death-bed gifts (marad al maut) of the Muslim's decedent and gifts inter vivos (alang semasa hidup), or settlements made without adequate consideration in money or money's worth, by a Muslim (Adnan & Md Supi, n.d.).

According to this provision, there are three distinct phrases are used to refer to Hibah in relation to the provisions included in the state-level Islamic Religious Laws. The first term is used in Selangor, Melaka, Pulau Pinang, Johor, Perak, Kedah, Terengganu, Sabah, and Sarawak in which it is regarding to the term 'alang' during the death-illness (marad al maut) or during alive and 'non-reciprocal settlement'. Meanwhile in Negeri Sembilan, they are using the simple term which is '*hibah*'. Next, Pahang and Perlis are applying the term 'gift' while in Kelantan, the term used is 'alang hayat' (Wan Harun, 2006).

### ***Application and Procedure of Faraid and Hibah in Malaysia Application and Procedure of Faraid***

Before distributing the decedent's property to the legitimate heirs in Malaysia, the procedure of Islamic estate administration begins with the collecting of the property, debt settlement, and the balance will be divided among heirs. A grant of representation must be obtained in three steps either from the High Civil Court (Large Inheritance), the Small Estate Distribution Unit of Department of Director General of Lands and Mines (Small Inheritance), or Amanah Raya Berhad (ARB) (Simple Inheritance) (Abdullah et al., 2019).

The Syariah Court, on the other hand, is only authorised to certify the list of heirs and issue Inheritance Certificate. Depending on the size and shape of the deceased's bequest, the accumulated Islamic estate will be handled. Therefore, the heir needs to claim for the inheritance at any three respective bodies above, based on the value and size of the property (Halim & Arshad, 2014).

In fact, based on some of the rules controlling Islamic estate implemented in Malaysia, the Syariah Court is not the required reference in the subject of Islamic estate planning, so the division of current Islamic estate administration is still unproductive (Ab Rahman et al., 2018).

Additionally, there are three methods that are used in Malaysia to distribute the inheritance to the legitimate heirs. The first method is through *takharuj* whereby the heirs who do not wish to inherit may transfer their rights to other heirs. The second way is called *sulh*, and it involves the heirs coming to an agreement on how to distribute the inheritance. If the heirs disagree with the above procedures, the faraid approach will be used in the end (Ahmad Termizi Abdullah, 2017).

#### *Procedure*

This discussion will be derived from the official and authorized website of the three main bodies who are responsible for this matter.

#### *Simple Inheritance (Pusaka Ringkas)*

According to the information from official website of Amanah Raya Berhad (ARB), a simple inheritance is pertaining to the movable property with a value of not exceeding RM 600,000. The examples of movable property are including savings, shares including Amanah Saham Nasional Berhad (ASNB), Kumpulan Wang Simpanan Pekerja (KWSP) and Tabung Haji, vehicle and insurance.

According to Ms. Nor Aishah Nordin, she further explained that the application for simple inheritance distribution must be made to Amanah Raya Berhad (ARB) based on the Amanah Raya Corporation Act 1995. The decedent's property will be administered by a representative among the eligible heirs with the consent from Amanah Raya Berhad (ARB) after the issuance of Grant of Letter of Administration. The distribution will be carried out according to Faraid.

In addition, the simple estate management administered by Amanah Raya Berhad will be charged according to the fees set by the respective act such as 2% on the first RM 1,000,000.00 and 1% on the balance. There is no fee for savings amounting to RM5,000 and below. While service and processing fees are charged accordingly. The application form for estate administration can be found at the website or the office nearby.

There are two types of the division through Amanah Raya Berhad (ARB), whether the decedent is left the property with or without will (*wasiyyah*). According to Mr. Syahbani, the process of inheritance administration will take up to one year depending on the cooperation given by the heirs.

#### *Small Inheritance (Pusaka Kecil)*

Based on the information given from an official website of Small Estate Distribution Unit of Department of Director General of Land and Mines (JKPTG), small inheritance is a type whereby it is under the governance of the Small Estate Distribution Unit of Department of Director General of Land and Mines (JKPTG). It is fundamentally based on the Small Estate (Distribution) Act 1955 and Land Code and Distribution Act 1958. In addition, the property involved in including movable and immovable assets with the value of less than RM 2 million.

There are few criteria of small inheritance, whereby the immovable property is regarded as land or house or the immovable property with movable property of cash, stocks, vehicle, Kumpulan Wang Simpanan Pekerja (KWSP), insurance (without nominee), and Amanah Saham Nasional Berhad (ASNB). Furthermore, the value of the property must not be more than RM 2 million.

The application will be made through Form A as stated in Section 8 of the Small Estate (Distribution) Act 1955. Next, it must be compiled with a document related to the proof of death either death certificate or permission to bury, or affidavit by 2 independent witnesses who witnessed the burial, or the Presumption of Death Order issued by the High Court.

Secondly, immovable property documents, the copy of entitle recognized as valid by the Land Office or Official Search Certificate that is showing the ownership of immovable property or deed of sale and purchase agreement for house that does not yet have separate title, copies of door tax receipts for residences/buildings that do not have Strata Title issued and land tax receipt.

Thirdly, the copies of movable property documents such as copies of share certificates, copies of savings account books, copies of vehicle titles, copies of EPF statements and so on.

The application can be made by the heirs of decedent, or ARB, or others entitled person listed, through the Small Estate Distribution Unit or Land Office whereby the immovable property of the decedent is located. Besides, if the property is in different places, therefore, only choose one of the places.

In appearing before the Court, all the original documents needed must be brought during the hearing. Then, the parties involved also shall appear to court at that stated date of the hearing. Next, any heir who is unable to attend may present a Letter of Consent signed in front of the Land Administrator, Magistrate, Commissioner of Oaths or Notary Public. Please clearly state the desired division method. The Declaration of Consent can be obtained at all Inheritance Division Units, Land Offices or at the department's website.

#### *Large Inheritance (Pusaka Besar)*

According to an authorized website of MyGovernment regarding large inheritance, it stated that the value of the property is more than RM 2 million. The management of large estates is subject to the Probate and Administration Act 1959. The application must be made in the Civil High Court by the appointment of a lawyer or any party such as Amanah Raya Berhad (ARB) or Trust Company.

The application consists of two stages that is need and compulsory to be completed (mandatory), named, application to obtain a Grant of Letter of Administration and Application to make partition from the High Court. Once the grant is obtained, the administrator must register the grant at the relevant Land Office, so that all the ownership property of the decedent are registered on the administrator's name.

The administrator is responsible for gathering all information on the decedent's assets and settling the decedent's liabilities including funeral expenses and decedent's debts. The administrator is then responsible for applying for a partition order from the same High Court.

If it involves Muslim decedent, the administrator must firstly obtain a *Faraid* Certificate from the Syariah High Court. The division can be made according to Faraid system or by consensus or *takharuj*.

#### ***Application and Procedure of Hibah***

##### *Application*

As we have mentioned earlier, there is still no specific law on *hibah* which means that the State Legislature and Parliament (for Federal Territories) have never passed any specific statute or bill on this instrument to be implemented in Syariah Court (Adnan & Md Supi, n.d.), except the previous provisions related to its jurisdiction.

As in the existing provision, we can conclude that Syariah Court of Malaysia is not only govern matters related to direct *hibah*, but also related to *hibah* of a person who is suffering from illness or condition that could result in death (*marad al maut*). There are also cases related to *hibah* in Malaysia regarding to confirmation of *hibah*, dispute of the extent or rate of *hibah* and withdrawal of *hibah* in court (Adnan & Md Supi, n.d.).

In the case of Harun bin Muda dan Lain-lain lawan Mandak binti Mamat dan Lain-lain (Jurnal Hukum, 1999: 63), it involves a dispute of confirmation of a land over the *hibah* rate. The plaintiffs made this claim to support that Muda bin Tahir, the dead, gave them the land. A claim is made for the plaintiff to be declared as the legal owner of the land. The Syariah High Court of Terengganu held that the claim was true and confirmed that *hibah* from the decedent to the plaintiffs did exist and legally accepted by referring to the action of plaintiff in developing the land after *ijab* had been done as a form of *qabul* in *hibah* (Adnan & Md Supi, n.d.).



According to the above cases, we can infer that *hibah* can only be contested or challenged considering to its legality under Islamic law or if the grantor's heirs disagree with the *hibah*'s contents after the grantor's passing. In addition, if there are other issues highlighted, that issue still cannot deny the jurisdiction of the Syariah Court over *hibah* cases. In other words, the status of *hibah* should be decided by Syariah courts to comply with Islamic law. The civil court was only then allowed opportunity to hear the case (Adnan & Md Supi, n.d.).

As mentioned by Mr. Hakim Nordin, the form of *hibah* that applied in Malaysia comprises with two types. The first type is direct *hibah* as the simplest form of *hibah* and the second type is conditional *hibah*. In addition, the application of conditional *hibah* in Malaysia is mostly regarding to *ruqba* type in which it also includes trust *hibah* (*hibah amanah*).

In the case of Rafizah bt Abd Karim lawan Kamar bin Ab Karim dan Empat Defendan yang lain, the plaintiff's mother named Lamah binti Sa'at died on May 15, 2011. The plaintiff stated that during his mother's lifetime, she made a grant in writing through a property declaration document on January 20, 2011, by stating that the *hibah* property became belonging to the recipient (the plaintiff).

Therefore, the plaintiff requested the court to confirm the grant made by his mother. The court has found that there was an issue of *hibah ruqba* because of the words spoken during the *hibah* contract that linked to the death of one of the parties. Therefore, the judge has confirmed that the *hibah ruqba* in this case was legally accepted (Azalan & Mohamed Said, 2019).

Moreover, conditional *hibah* also could be any conditions that it does not contradict to Islamic law, such as the recipient of *hibah* must commit adultery with the grantor before the asset of *hibah* is given to him or vice versa (Hasbullah et al., 2017).

On the other hand, *hibah takaful* is also included in the type of conditional *hibah* as it is involving a condition that if a person dies, a sum of money will be given to his or her heirs based on the stated name of *hibah* recipient (Azhar et al., 2014). This application of *hibah* is now evolving tremendously and become one of the products provided by most of the companies in takaful industry (Ismail & Mohamed Said, 2017).

Since 2003, Bank Negara Malaysia's Syariah Advisory Council approved the concept of conditional Hibah and have used the principle of conditional Hibah in the implementation of Takaful benefits (BNM, 2010). Next, the 56th Federal Territories Syariah Law Consultation Committee Meeting on October 5, 2000, decided that conditions are allowed between grantor and recipient of *hibah* after *ijab* and *qabul* (Mohd Zamro, 2008).

However, the procedure of *hibah takaful* is like *hibah* trust, whereby the trustee is appointed to manage the transaction of the property to the recipient of *hibah* upon the death of the grantor and it is also equivalent to the above discussed *'umra* and *ruqba* in theory (Azhar & Md.Nor, 2019).

Furthermore, *hibah* trust is now used extensively in managing immovable property such as house and land plus, movable property including the benefits of takaful. The third party is still involved in this variety of *hibah* as a trustee who is usually from a trustee company, or any trusted individual appointed by the property owner (Azhar & Md. Nor, 2019).

Therefore, the use of *hibah* is expanding today, and it is evident in all industries including Islamic estate administration (Kamarudin et al., 2019). The second field is takaful sector (Ismail & Mohamed Said, 2017), and the third industry also found in the Islamic banking sector, including the *al-ijarah thumma al-bai*, *al-wadi'ah* contract, and *al-qard* contract (Ali, 2015).

### *Procedure*

#### *Direct Hibah (Hibah Mutlak)*

The simplest type of *hibah* is called direct *hibah*, and it is ended when the recipient accepts the gift. This is followed by a technical process that transfers the property rights between the parties concerned (Suhaili Alma'amun, 2010). For instance, a father can grant a house as an asset of *hibah* to his son by using Form 14A of the National Land Code 1965 (Mohd Khairy Kamarudin et al., 2018).

After that, the payment of assessment tax, duty stamping need to be done Lembaga Hasil Dalam Negeri (LHDN). Next, the registration of the transaction will be made at the Land Office, and its process will take up to one month period (Adnan & Md Supi, n.d.).

Besides, the declaration of *hibah* transaction is important to ensure that the direct *hibah* is valid by the fulfilment of *hibah* pillars such as donor, recipient, *ijab* and *qabul*.

Therefore, after the name of the grant is changed to the name of recipient of *hibah*, the grantor will not then be the owner of property after the direct *hibah* has been done according to its procedure because the ownership falls under the recipient of *hibah* as a new owner of property (Adnan & Md Supi, n.d.). This explanation is also the same as the explanation made by Mr. Hakim Nordin through an interview session.

#### *Conditional Hibah (Hibah Bersyarat)*

Conditional *hibah* consists of two steps which include the declaration of the transaction and a process of preparing deed of trust among parties involved.

According to Mr. Hakim Nordin, some documents are required in the preparation of grant documents including identity card, bank account, unit trust, takaful policy or shares in business. Moreover, there are some properties that can apply *hibah* such as unit trust, Amanah Saham Berhad (ASB), fixed deposit and gold saving account, Tabung Haji and company shares not including Kumpulan Wang Simpanan Pekerja (KWSP), and jewellery. The first stage of this type of *hibah* is regarding to declaration of *hibah* transfer with the fulfilment of *hibah* pillars including donor, recipient, *ijab* and *qabul* similar to direct *hibah* (Yaacob, 2006).

The second procedure is pertaining to the deed of trust whereby the grantor of *hibah* and its recipient agree on the appointment of trustee. Upon request of *hibah* procedure by the grantor, there will be confirmation of grantor, recipient, and the asset of *hibah*. After that, the determination of *hibah* conditions (*umra* and *ruqba*) will be made and included in the deed of trust (Yaacob, 2006).

After that, the trustee will check on the conditions and agreement of the parties involved who are signing the document and form of transaction plus, the payment of prescribed fee. Then, the duty stamping needs to be done towards the document and the registration of the asset of *hibah* including movable and immovable property at its respective body. Next, the document needs to be saved in a safe place and the copy of deed of trust with *ijab* and *qabul* will be given to the grantor (Adnan & Md Supi, n.d.).

According to Mr. Hakim Nordin, the procedure above has shown that the process of *hibah* does not involve any conflict arises. However, when the grantor, recipient, or one of them passes away and the heir later files a claim for confirmation of the *hibah* in court and the defendant is not present, that is the issue that is in dispute in court. Therefore, the burden of proof that the transaction of *hibah* did exist between the grantor and the recipient of *hibah* with the witness of two witnesses, falls under the plaintiff.

For that reason, the parties involved are recommended to use the service provided by Syarie Lawyer in the process of drafting agreement of *hibah* because they have a broad experience regarding to the important and needed document in *hibah*'s transaction according to the law in Malaysia and Islam. Apart from Syarie Lawyer, there are also some companies that provide this kind of service such as Amanah Raya, As-Salihin Trustee and Wasiyyah Shoppe Berhad.

Additionally, the service made by these companies is usually assisting in so many aspects of the client for the purpose of ensuring that the document is legally accepted and in accordance with the procedure applied in Malaysia and to guarantee that the transaction of *hibah* is valid and applicable.

For example, the preparation of documents for *hibah* by using the service provided by the respective company will only need the grantor to submit all the information needed. Then, they will send the draft of the document for us to review and check if there is any correction that needs to be made. After that, the stated document will be prepared for us to sign along with the signature of the company. Next, the company will send the document for endorsement to court and the copy of the document will be given to the client. Finally, the document will be kept and stored in a safe to prevent any issue of losing records or damage of the document.

As provided in application section, *hibah* takaful is considered as a conditional *hibah* of movable property because there is some condition indicated whereby a sum of money will be given upon the death of the grantor who is the holder of takaful policy. Then, there are also some companies including *hibah* takaful as *hibah* trust. However, the procedure itself is still the same, starting from the drafting of document for declaration of *hibah* until the management of the transaction to the recipient of *hibah*. Additionally, *hibah* takaful also can be involved with a trustee like *hibah* trust to manage the transaction of benefits getting from takaful company after the death of the grantor.

As provided above, the trustee will be the one who is managing and administering the property of a child and an unsound of mind person and becomes a representative of them. *hibah* trust can be implemented towards the movable and immovable property. The trustee can be any individual or trust company that has been appointed by the grantor. However, the grantor is recommended to appoint a trustee from trust company to avoid any conflict arise upon the death of the property owner. According to Adnan & Md Supi, n.d., the process of *hibah* trust requires a minimum of six months period.

### ***Importance of Faraid and Hibah***

#### ***Importance of Faraid***

##### ***Ensuring the welfare of the heirs***

As we have discussed earlier, the proportion of each heir has been determined in Al Quran and Hadith whereby the division for the heirs of *ashab al-furud* has been decreed by Allah SWT either 1/2, 1/4, 1/8, 2/3, 1/3 or 1/6 (Azhar & Md.Nor, 2019).

In addition, the heirs who receive the inheritance are among the closest to the deceased such as husband or wife, parents, children, brothers, uncles who are connected to the decedent. Therefore, usually the death of a person will cause the heirs to grieve for the death of the deceased. However, with the sanctioning of Faraid prioritizing the closest heirs in the inheritance, it will give some joy to the heirs to continue living especially the heirs who are in need (Mohd Ridzuan Awang, n.d.).

##### ***Recognizing the eligible heirs regardless of their background***

The heirs who are entitled and eligible to receive the inheritance include all heirs or relatives, whether old or young, rich or poor, male or female, they are all vested in the inheritance. Likewise, a husband or wife is entitled to receive some of inheritance even though they are not considered as relatives, but they have a marital relationship which is the reason why they are permissible in inheritance of the decedent's property (Mohd Ridzuan Awang, n.d.).

Additionally, the rights of women and children are also guaranteed in the Islamic inheritance. The rates and proportion that women should receive are 2/3, 1/3, 1/6, 1/2, 1/4 or 1/8 according to certain conditions. Then, the children also get their portion accordingly without any discrimination (Mohd Ridzuan Awang, n.d.).

##### ***Maintaining good relationships among family members***

As Muslims, we are required to follow all of Allah's instructions and refrain from doing whatever He forbids. Therefore, there will not be any misunderstanding or unhappiness toward the heirs if each heir accepts and complies with Allah's directive about the partition of Faraid as it is stated in the Quran and Sunnah. Consequently, the heirs' family ties will be solid and strong (Mohd Ridzuan Awang, n.d.).

### ***Importance of Hibah***

#### ***Property can be distributed to heirs and non-heirs***

As opposed to the Faraid system, which grants rights solely to the heirs, the gift of *hibah* is not restricted to a particular set of people. *Hibah* does not prevent any person from obtaining their rights the same way as a will does, which disqualifies the heir from receiving the will (Abd Wahab et al., 2015).

Therefore, the property owner is allowed to leave his property to whoever he thought would benefit from it while he is still living. This is because, in Islam, there is no prohibition on making *hibah* to the heirs themselves. Like *hibah*, which may be donated to non-beneficiaries, this circumstance enables spouses who have adopted children to distribute their property among the children (Abd Wahab et al., 2015).

Additionally, a non-Muslim can also receive a *hibah*. People who have recently converted to Islam, for instance, can still preserve a strong family tie by transferring their property to the family such as to their parents, in recognition of the sacrifices made in giving birth to and raising them despite their distinct religious beliefs (Ahmad, 2013).

#### *No restricted rates for property*

According to the Faraid system, property should be distributed to heirs in line with the rates specified in surah An Nisa, verses 11, 12, and 176 of Al Quran. While the property being left as a bequest must not be more than one-third (1/3) of the net estate (Jaafar, 2015). However, the asset of *hibah* that will be given is unlimited and not limited to any fixed value.

#### *Estate-related problem-solving instruments*

The application of *hibah* can assist in accelerating the process of property partition, both during life and after death. The distribution of the decedent's property will take a longer period due to the difficulties of navigating the estate settlement administration application procedure (Abd Wahab et al., 2015).

*Hibah* is now more effective in terms of cost, time, and legal procedures, and if *hibah* is used to organise an estate, there won't be a need to apply for a letter of administration, probate, or order from any of the different authorised agencies, which also reduces the costs and time for such settlement (Yaacob, 2006).

#### *The process of distribution of property through Hibah is easier*

Many individuals believe that because there is already a *faraid* system, they do not need to organize their inheritance. However, they are unaware that once a person passes away, the heirs must first navigate challenges in the administrative procedure before the property can be divided according to Faraid (Jaafar, 2015).

This technique of implementing the *hibah* is stated to not only guarantee the ownership of the property to the beneficiaries according to the grantor's desires, but also to decrease the number of estate cases across the nation, so ensuring the smooth administration and distribution of the property (Abd Wahab et al., 2015).

#### *Property can be distributed to the entitled and responsible person*

Planning and management of the property should be done while the owner is still alive. This is since the owner of the property is better aware of who is qualified to receive *hibah* or any party that may be assumed to be able to maintain and get benefit from it or a person that is in need. This is because each person's demands are often unique. As a result, the grantor can choose the *hibah* beneficiary and the suitable amount of the property (Rusnadewi & Nor Hisyam, 2013).

In the case of Norizah Bt Mansor [JH XIX/I BHG 1, Feb 2005], Hibah implementation, which is viewed as flexible, has been demonstrated in this instance where a foster mother has made a letter of declaration stating that she wanted to give the plaintiff a portion of her land because she felt sympathetic and because she was aware of the hardships the plaintiff was experiencing in raising a child without a husband. If the faraid legislation is used in this case to distribute property, it is certain that the plaintiff's mother will not have had the chance to do so.

### ***Issues of Faraid and Hibah and its Solutions Issues of Faraid and its Solutions***

#### *Division of immovable property among heirs*

In accordance with Section 15(5) and the First Schedule of the Small Estates (Distribution) Act 1955, the Land Office has established rules for the land administrator to follow when issuing estate distribution orders. By virtue of this provision, the heirs are free to divide the estate as they see fit without adhering to the *faraid* judgement if all of the heirs are all in agreement (Wan Rushdan et al., 2021).

This distribution, in fact, complies with the sulh system established by Islam, is legal, valid, and binding on the heirs (Rusnadewi & Noor Inayah, 2010). The Malay tradition, which upholds the equality and sincerity of the right to property, has also been known to engage in this practise (Jasni Sulong, 2016).

Therefore, if the inheritance left by the decedent is pertaining to immovable property such as land, the heirs is not restricted to only use Faraid or narrowing the application of the Faraid law which has resulted in its implementation becoming impractical (Jasni Sulong, 2016).

#### *Lost Heirs (Mafqud)*

In cases where the identity of an heir is unknown, they cannot be reached, or it is unclear whether they are living or dead, the law presumes that they are still alive because they were at one time alive unless it can be demonstrated that they have passed away (Ahmad Termizi Abdullah, 2017).

It can be assumed that the heir has passed away based on the date of death that the JPN has verified if a search for information is done at the National Registration Department (JPN) and the JPN confirms that they have passed away. To find out more details about the heir's passing, a search of death certificates can be made (Ahmad Termizi Abdullah, 2017).

Existing heirs may request the presumption of death under section 108 of the Evidence Act 1950 in the High Court if they believe there is sufficient evidence to support the assumption that the absent heir has already passed away (Ahmad Termizi Abdullah, 2017).

According to Mr. Syahbani, an application for presumption of death may also be brought in a Syariah Court as an alternative, although according to the author, this option has only been used by parties to request the dissolution of their marriages. This is mentioned in Section 80 of the Syariah Court Evidence (Federal Territories) Act 1997, whereby it stated about the burden of proving that person is alive who has not been heard of for four years.

The trustee company chosen by the land administrator, or the court must receive the share of the heirs who passed away earlier but are still regarded to be alive. In addition, Mr. Syahbani further explained that frequently, the ARB will be named as a trustee for the unaccounted-for heirs until those heirs show up to assert their claims. The ARB will open a file or account and record the information to the extent that it is made known to them. This is according to Section 12 of the Public Trust Corporation Act 1995.

The name of the missing heir will be written on the Faraid certificate as it was stated in the applicant's and witnesses' testimony given during the hearing session in the Faraid certificate application, with their identifying part typically being recorded as "no information" (Ahmad Termizi Abdullah, 2017).

#### *Simultaneous death (Kematian serentak)*

Traffic accidents, plane or helicopter crashes, earthquakes, landslides, tsunamis, fires, or situations where it is unknown who killed first and who died afterwards are examples of simultaneous death cases (Ahmad Termizi Abdullah, 2017).

Considering this matter, the *Muzakarah* of the National Fatwa Committee for Malaysian Islamic Religious Affairs, which met for the 83rd time on October 22–24, 2008, in Kelantan, covered the topic of inheritance law in circumstances of simultaneous death. They are not entitled to inherit from one another, as *Muzakarah* has decided. According to the rules of inheritance, the heir (*al-warith*) must be alive at the time of the inheritor's passing (*al-muwarriith*) (Amir Bahari, n.d.).

Therefore, the portion of the family members who also passed away will not be considered while dividing the deceased's wealth among the live heirs. A medical expert's certificate must be adopted and included in the death certificate in order to indicate the time of death (Amir Bahari, n.d.).

#### *Nominee status in the division of inheritance*

Because he is the executor or administrator of the deceased's estate, when someone is named as a nominee, that person is not automatically the recipient of all of the deceased's property. Since *hibah* takes effect immediately and the goal of the naming procedure is not to accomplish the instant transfer of property, placing the nominee's name is not regarded as a kind of *hibah* (Ahmad Termizi Abdullah, 2017).

The fact that someone is listed as a nominee by the deceased does not make that person the sole beneficiary of the deceased's property because that person is only performing as the deceased's administrator. Adding the nominee's name is also not considered a kind of *hibah* because *hibah* takes effect right away, but the naming procedure's goal is not to affect an immediate transfer of property (Ahmad Termizi Abdullah, 2017). For instance, the nominee status of Kumpulan Wang Simpanan Pekerja (KWSP).

This matter is also ineligible for classification as a will because a will is only valid for one-third of the estate of the decedent. However, if the deceased wishes to bequeath 1/3 of his accumulated property to the nominee, this should be clearly stated in a separate will document to avoid any dispute arisen among heirs. This is because a will is only considered valid when it is clearly stated and cannot be understood figuratively or by implied meaning (Ahmad Termizi Abdullah, 2017).

The National Council for Islamic Religious Affairs' Fatwa Committee, which met on September 20, 1973, and the 49th National Fatwa *Muzakarah* Council, which met on September 19, 2000, made the decision that the nominee serves as the estate administrator and is required to divide the decedent's estate in accordance with Faraid law (Narizan Abdul Rahman, 2008).

### **Constraints on the division of land inheritance schemes**

The inheritance division of land under the schemes of FELDA, FELCRA, RISDA, RTN AND RTP is subject to Land Act (Group Settlement Areas) 1960. By virtue of Section 14, 15 and 16 of the Act, the process of transferring the ownership is only allowed to one heir in which it causes a constraint in distributing to other heirs (Md Yazid & Iknor Azli 2010).

Therefore, the *takharuj* and *sulh* approach is encouraged to be applied in this situation as a mean of resolving any complicated issue that may arise. Besides, the *Muzakarah* National Fatwa Committee for the 38th time stated that in case of there is difficulty to come up with a mutual agreement among the heirs, the assets under this Act should be sold by prioritizing the sale to the heirs before outsiders and the profit will be divided according to faraid (Md Yazid & Iknor Azli 2010).

### **Issues of *Hibah* and its Solutions**

#### ***Placing condition that the grantor still entitle to the property during his lifetime***

The *hibah* recipient's absolute *tasarruf* on the property is deemed to be prohibited by this condition. This is because the grantor, who is still living, can continue to hold and use the *Hibah* property (Othman et al., 2017).

In the case of Rozaimi b Awang, Rosnida bt Awang, Mustafa Kamal Arifin bt Awang, Rohaya bt Awang dan Cik Rosnaini bt Abdul Hamid lwn Fatimah bt Ishak (11200-044-0148-2011). Awang bin Muda, the grantor, has performed a *hibah* by putting various restrictions in his Letter of Grant. The recipients agree to the *hibah*'s stipulations during the duration of grantor's life, and it must remain in effect on the property.

However, the validity of these conditions is subject to some requirements, it must be for a permitted purpose and in a reasonable period. The determination of a reasonable period is determined by the court and the purpose must be solid, clear, and valid (Othman et al., 2017).

#### ***Hibah of charged property (Hibah harta bercagar)***

The use of charged property *Hibah* products intends to assist the community in managing the homes, properties, and cars acquired through loan financing more efficiently. This is because most Muslims today have assets purchased with bank loans, whose payback terms range from 25 to 30 years (Mohamed Said & Wan Ayub, 2021).

As a result, the opinion of *Madhhab* Hanafi can be applied because he stated that the transaction of the mortgagor on collateral property, including *Hibah*, is stopped (*mawquf*). This means that *Hibah* does not immediately cancel but may still be valid in the future with the occurrence of certain circumstances, such as getting the collateral holder's consent, or the property being fully owned by the grantor of *hibah* (Zuhayli, 2004).

In the Seremban Syariah Appeal Court trial of Shahirah Aimi binti Shahrudin v. Siti Hawa binti Abu Talib and Shamimi Aqilah binti Shahrudin (05000-044-0002-2014). The Syariah High Court Judge initially declared that the *hibah* in the form of the house was illegal since the grantor did not fully own the property and it was still subject to Maybank loan liability. The Syariah Appeal Court Judge revoked the Syariah High Court Judge's ruling, nonetheless, on the grounds that the appellant had secured consent to transfer the property from the Maybank, who held the collateral, when Maybank received RM 50,000 from the appellant to settle the debt. Even though there is no actual bank policy in place, the bank's indirect action amounts to consent for the property to be granted as Hibah.

Looking at the situation, the charged property *hibah* can be made with the approval of the collateral holder and the property is covered by the takaful policy, so the hibah can be executed and recognised by the Syariah Court. The Syariah Court's judgement will be greatly impacted by the takaful element's existence. The presence of a takaful policy can solve the issue of the grantor's property not being fully owned (Mohamed Said & Wan Ayub, 2021).

The *hibah* of property that is still owned by others is *mawquf* until the owner grants permission or the property eventually becomes his own, in the opinion of *fuqaha* Hanafi. Since the buyer's takaful policy, either Mortgage Reducing Term Takaful (MRTT) or Mortgage Level Term Takaful (MLTT), will pay full compensation and guarantee against the loan debt in the event of any misfortune or death to the buyer, the author is of the opinion that there is no question as to the validity of the charged property *hibah* (Mohamed Said & Wan Ayub, 2021).

On the other hand, a property must abide by the rules established by the National Land Code of 1965 if it is related to land. According to the National Land Code 1965, land encumbrances like mortgages would not be lifted until the debt has been completely repaid (Farahwaheda, 2015).

#### **Sickness that can cause demise (*Marad Al Maut*)**

There are several opposing viewpoints on the topic of awarding *hibah* regarding to the disease can result in death (*marad al maut*). The circumstances surrounding *marad al-maut* must first be determined (Wan Ismail et al., 2020).

The conditions of this issue are including a disease that has the potential to kill, diseases that can give patients a fear of dying, and symptoms that the condition is severe and chronic (Ahmad Farraj Husayn, 1986).

In addition, according to the stated conditions, there are few *marad al-maut* requirements that need to be fulfilled. For example, it relates to the time frame that must be within one year and it does not consider as *marad al maut* if the duration is more than a year. Next, the illness must be one of the most prevalent fatal illnesses, like cancer, which makes the victim once closer off to the outside world (Majallah Majma 'al-Fiqh al-Islami, 1990).

#### **Conclusion and Recommendation**

Malaysia currently lacks a formal and specific law governing the administration of faraid and hibah, necessitating the introduction of clear and comprehensive regulations to enhance their role as Islamic estate planning instruments. This will ensure that the Muslim community can better understand and follow the proper procedures under Malaysian law. Additionally, *khairat pusaka* (inheritance expenses) should be promoted as a means to ease financial burdens on heirs in managing the deceased's affairs, helping to reduce service and processing costs in estate distribution. Establishing an Islamic estate planning clinic is also recommended as a dedicated platform to disseminate information, educate the public, and offer free advisory services, particularly for those in need.

In summary, faraid and hibah are complementary mechanisms in Islamic estate planning, each serving a crucial role. Hibah allows property transfer during the donor's lifetime, ensuring a smooth transition of ownership, while faraid governs the distribution of assets left behind. Awareness and understanding of these instruments are vital for the Muslim community to ensure proper estate planning. This article aims to highlight the significance of property planning by discussing relevant issues and procedures, ultimately encouraging better estate management among Muslims in Malaysia.

## References

- Ab Rahman, S., Khalid, R. M., Razak, A. A., & Jaafar, A. B. (2018). Pemerkasaan Mahkamah Syariah dalam pentadbiran harta pusaka masyarakat Islam menurut kerangka federalisme di Malaysia. *Akademika*, 88(3), 113–125.
- Ab. Aziz, M. R., Nooh, M. N., Khairi, K. F., Johari, F., & Mirza, A. A. I. (2014). A review on literatures in planning and managing of Islamic wealth distribution (2001-2013). *Library Philosophy and Practice (E-Journal)*, 1.
- Abdul Karim, N. A. (2016). Estate planning: The benefits of estate planning: Part 1. *Edge Weekly*. Retrieved from <https://www.theedgemarkets.com/article/estate-planning-benefits-islamic-estate-planningpt-1> (Accessed: May 15, 2018).
- Ahmad Farraj Husayn. (1986). *Ahkam al-Wasaya wa al-Awqaf fi al-Shari'ah al-Islamiyyah*. Beirut: Dar al-Jamiiyyah.
- Ahmad Termizi Abdullah. (2017). Pelaksanaan pembahagian harta pusaka berdasarkan faraid: Kedudukan dan pelaksanaannya mengikut undang-undang dan amalan guaman di Malaysia. *Seminar Hibah vs Faraid*, Fakulti Syariah dan Undang-undang USIM & Persatuan Guaman Hartanah Malaysia, 21-30.
- Ahmad, R. A. (2013). Pengurusan harta melalui hibah: Kepentingan dan manfaat dari pelbagai aspek untuk kemajuan ummah. *Jurnal Hadhari*, 91-104.
- Akmal Hidayah Halim, & Tajul Aris Ahmad Bustami. (2017). Pelaksanaan hibah amanah sebagai suatu instrumen pengurusan harta Islam di Malaysia. *Jurnal Undang-Undang*, 90-115.
- Al-Aidaros, A.-H., Ishak, A. F., & Wan Mahamud, W. M. F. (2018). Empirical study of hibah awareness in Kedah State of Malaysia. *International Journal of 'Umranic Studies*, 1(2), 14–22.
- Ali, M. F. (2015). Modern application of hibah in the light of Shari'ah objectives of gift and donation contract (At-Tabarru'at). *Islamic Sciences*, 13(1), 27–43.
- Alias Bin Azhar, Mohammad Azam Hussain, Muhammad Hafiz Badarulzaman, & Fauziah Mohd Noor. (2014). Pengurusan harta dalam Islam: Perspektif hibah di Malaysia. *Journal of Human Development and Communication*, 3, 115-128.
- Alias, A., & Mohd Zakhiri Md. Nor. (2019). Hibah in the administration of Islamic property: Ijtihadi elements and reality in Malaysia. *UUMJLS*, 10(2), 103-119.
- Alias, M. A. A., Mohd Jailani, M. R., Wan Ismail, W. A. F., & Baharuddin, A. S. (2024). The integration of five main goals of shariah in the production of science and technology for human well-being. *AL-MAQASID: The International Journal of Maqasid Studies and Advanced Islamic Research*, 5(1), 1–16. <https://doi.org/10.55265/al-maqasid.v5i1.79>
- Alma'amun, S., Kamarudin, M. K., & Asutay, M. (2016). Motivations of inter vivos transfers among Malaysian Muslims. *Acta Universitatis Danubius: Oeconomica*, 12(3), 149–162.
- Al-Nawawi, A. Z. M. (1985). *Rawdat al-Talibin* (Vol. 5). Beirut: al-Maktab al-Islami.
- Al-Zuhayli, W. M. (2012). *Al-Fiqh al-Islami wa Adillatuh* (Vol. 4). Damascus: Dar al-Fikr.
- Amanah Raya Berhad. (2022). Soalan lazim penamaan Amanah Raya bagi simpanan di KWSP. Retrieved from <https://www.amanahraya.my/ms/pentadbiran-pusaka/soalan-lazim-pusaka/> (Accessed: July 30, 2022).
- Amanah Raya Berhad. (2022). Soalan lazim pentadbiran pusaka. Retrieved from <https://www.amanahraya.my/ms/pentadbiran-pusaka/soalan-lazim-pusaka/> (Accessed: July 30, 2022).
- Amir Bahari. (2012). *Soal jawab wasiat Islam: Solusi permasalahan pewarisan Islam*. Telaga Biru, 139-140.
- Awang, A. B., Awang, A., Sulaiman, H., Rabbi, A. A. M., & Hanafi, F. H. (2019). The objectives of Shariah in will: A case study of As-Salihin Trustee Company. *International Journal of Fiqh and Usul Al-Fiqh Studies (IJFUS)*, 3(1), 29–40.
- Azizi Abu Bakar, Muhammad Ashraf Aliff Mohamad Rapi, & Mohd Rashdan Sallehuddin. (2020). Property inheritance management: Issues of unclaimed property. *Webology*, 17(2), 874-881.
- Bank Negara Malaysia. (2010). *Shariah resolution in Islamic finance*. Bank Negara Malaysia.
- Basah, S., & Tahir, P. R. (2019). Towards acceptance of Islamic wealth management. *Journal of Islamic, Social, Economics and Development (JISED)*, 4(24), 14–21.
- Bibi Nur Adila Zulkafli, & Md Yazid Ahmad. (2016). Kekangan dan penyelesaian kelewatan pengurusan aset pusaka tak alih orang Islam di Malaysia. *Islamiyyat*, 38(1), 53-63.
- BNM. (2019). Retrieved from <http://www.bnm.gov.my>.



- Farahwaheda Abdul Rahman. (2015). Isu hibah hartanah dan aplikasi terhadap Kanun Tanah Negara 1965. *Disertasi Sarjana Pengajian Islam, Jabatan Syariah, Universiti Kebangsaan Malaysia*.
- Fazira Shafie, Wan Zahari Wan Yusoff, & Syed Muhammad Dawilah Al-Edrus. (2014). Pengurusan harta tanah di Malaysia menurut perspektif Islam: Isu dan cabaran bagi pewarisan harta dalam konteks pembangunan modal insan. *Prosiding Seminar Antarabangsa Kelestarian Insan 2014*.
- Halim, A. H., & Arshad, A. (2014). Penentuan harta pusaka di Malaysia: Kajian dari perspektif undang-undang sivil dan syariah. *Jurnal Undang-Undang Malaysia*, 26(2), 153–172.
- Hani Kamariah Mat Abdullah, Suhaimi Ab Rahman, Rasyikah Md. Khalid, & Nurul Aiman Mat Abdullah. (2020). Perkembangan pengurusan dan pentadbiran harta pusaka Islam Malaysia. *BITARA International Journal of Civilizational Studies and Human Sciences*, 3(1), 42–53.
- Harian Metro. (2020). Harta RM70 bilion tergantung. Retrieved from <https://www.hmetro.com.my/utama/2020/01/534382/harta-rm70-bilion-tergantung> (Accessed: December 30, 2022).
- Hasbulah, M. H., & Daud, M. Z. (2015). Perancangan pembahagian harta semasa hidup dalam Islam: Konsep dan kepentingannya. *Global Journal Al-Thaqafah*, 5(1), 119–131.
- Hasbullah, M., Ab. Rahman, A. ., Ismail, A. M., Salleh, A. Z., Zakaria, M. Z., Musa, Z. M. ., ... Ab Ghani, N. A. (2021). Model pusat sehenti pengurusan harta pusaka islam (faraid): the model of faraid one-stop centre (FOSC). *Malaysian Journal of Syariah and Law*, 9(1), 114–124. <https://doi.org/10.33102/mjisl.vol9no1.293>
- Hashim, H., Wan Ismail, W. A. F., Baharuddin, A. S., Alias, M. A. A., Mamat, Z., Abdul Mutalib, L., Chow Jen-T'Chiang, N. Z., & Jusof, N. (2024). Pelaksanaan sulh dalam Islam: Kajian terhadap sistem perundangan syariah di Malaysia: Implementation of sulh in Islam: A study on the syariah legal system in Malaysia. (2024). *LexForensica: Journal of Forensic Justice and Socio-Legal Research*, 1(2), 86-95. <https://doi.org/10.33102/zxq3zs86>
- Hasliza Talib, Nurhayati Abdul Ghani, Nur Zulfah Md Abdul Salam, Nurul Syafini Abd Rahman, Noor Syahida Abdul Rahman, & Farhana Abd Samad. (2022). Isu-isu tuntutan harta pusaka: Satu sorotan literatur. *ResearchGate*. Retrieved from <https://www.researchgate.net/publication/352150954> (Accessed: July 5, 2022).
- Hassan, A. S., & Abdul Rashid, R. (2014). The legal rights and duties of administrators and executors of deceased Muslims' property in Malaysia. *The Social Sciences*, 9(2), 98–101.
- Haydar, 'A. (n.d.). *Durar al-Hukkam Sharh Majallat al-Ahkam*. Beirut: Dar al-Kutub al-Ilmiyyah.
- Hussin, M. N. M., & Abdullah, R. (2016). Amalan pembahagian harta sepencarian di Malaysia: Satu sorotan literatur. *Journal of Shariah Law Research*, 1(1), 75–88.
- Ibn Qudamah, 'A. A. (n.d.). *Al-Mughni* (Vol. 5). Beirut: Alim al-Kutub.
- Ibn Rushd, M. A. (2003). *Bidayat al-Mujtahid wa Nihayat al-Muqtasid* (Vol. 5). Beirut: Dar al-Kutub al-Ilmiyyah.
- Ibn Rushd, M. bin A. (2003). *Bidayat al-Mujtahid wa Nihayat al-Muqtasid* (Vol. 5). Beirut: Dar al-Kutub al-Ilmiyyah.
- Ismail, S. R., & Mohamed Said, N. L. (2017). Position of conditional hibah in takaful products: A literature review. *Al-Qanatir International Journal of Islamic Studies*, 8(1), 29–41.
- Jaafar, M. T. (2015). *Pengurusan harta pusaka*. Alor Gajah, Melaka, Malaysia: Jabatan Penyelidikan Mahkamah Syariah Negeri Melaka.
- Jabatan Ketua Pengarah Tanah dan Galian Persekutuan. (n.d.). *Permohonan pusaka*. Retrieved July 30, 2022, from <https://www.jkptg.gov.my/index.php/my/permohonan-pusaka>
- Kamarudin, M. K., Zaman, N., & Meor Razak, R. (2019). Thematic analysis on the necessity of hibah law in Malaysia. *Al-Qanatir International Journal of Islamic Studies*, 16(1), 1–13.
- Mahad Musa, Z. (2020). Agihan faraid melalui kaedah al-radd (pulangan semula) sebagai mekanisme kebajikan waris dan amalan di Malaysia: Faraid distribution through al-radd method (reinstatement) as a welfare mechanism for heirs and its practice in Malaysia. *Malaysian Journal of Syariah and Law*, 8(2), 1–14. <https://doi.org/10.33102/mjisl.vol8no2.26>.
- Majallah Majma 'al-Fiqh al-Islami. (1990). *Majallah Majma 'al-Fiqh al-Islami* (Vol. 1, No. 6). Malaysia. (n.d.). *Prosedur permohonan probate & pentadbiran (Harta Pusaka Besar)*. Retrieved July 30, 2022, from <https://www.malaysia.gov.my/portal/content/30337?language=my>
- Md Yazid Ahmad, & Iknor Azli Ibrahim. (2010). Kekangan statut ke atas bidang kuasa Mahkamah Syariah dalam pentadbiran harta orang Islam di Malaysia. Bangi: Jabatan Syariah, Fakulti Pengajian Islam, Universiti Kebangsaan Malaysia.

- Md Yazid Ahmad, Mohd Nasran Mohamad, Mohd Zamro Muda, Ezad Azraai Jamsari, Wan Zulkifli Wan Hassan, & Mohd Izhar Ariff Mohd Kashim. (2018). Confronting the problem of managing unclaimed inheritance property of Muslims in Malaysia. *International Journal of Civil Engineering and Technology*, 9(4), 1459–1466.
- Md Yazid Ahmad, Wan Najmiyah Wan Ali, & Anwar Fakhri Omar. (2019). Relevance of takharuj approach in resolving problems of Islamic inheritance distribution in Malaysia. *Islamiyyat*, 41(2), 17–28.
- Mohamed Redouane Riad, Rusni Hassan, Syed Ahmed Salman, & Adnan Yusoff. (2021). *Development of takaful industry in Malaysia*. ResearchGate. Retrieved November 4, 2022, from <https://www.researchgate.net/publication/351118955>.
- Mohammada, M. T. S. H., & Suratman, R. (2017). Complexity of intestate estates distribution and escheat law. *International Journal of Law, Government and Communication (IJLGC)*, 2(4), 1–12.
- Mohd Faiz Adnan, & Siti Shamsiah Md Supi. (n.d.). *Hibah dan hadiah: Hukum, prosedur dan pengalaman di Malaysia*.
- Mohd Faiz Adnan. (2019). Hadiah dan hibah: Hukum, prosedur dan pengalaman di Malaysia. *Kursus Asas “Kaedah Pengurusan Harta Keluarga Islam”*. Institut Kefahaman Islam Malaysia.
- Mohd Faiz bin Adnan, & Siti Shamsiah Md Supi. (n.d.). *Hibah dan hadiah: Hukum, prosedur dan pengalaman di Malaysia*.
- Mohd Khairy Kamarudin, & Azwan Abdullah. (2016). Amalan pembahagian faraid di Malaysia. *Journal of Global Business and Social Entrepreneurship (CBSE)*, 2(3), 11–19.
- Mohd Khairy Kamarudin, Azwan Abdullah, Mohd Asrul Hery Ibrahim, & Siti Fariha. (2015). Pembahagian pusaka di kalangan waris: Pendekatan AHP. *Prosiding Seminar Hibah Dalam Pengurusan Harta Islam 2015*.
- Mohd Khairy Kamarudin, Nasrul Hisyam Nor Muhamad, & Kamaliah Abdul Karim. (2018). Peranan undang-undang dalam mempengaruhi amalan pemberian hibah di Malaysia. *Seminar Serantau Peradaban Islam 2018, Institut Islam Hadhari, UKM*, 491–502.
- Mohd Ridzuan Awang. (n.d.). *Faraid: Manifestasi kesyumulan pengurusan harta dalam Islam*.
- Mohd Shafiai, M. H., & Moi, M. R. (2015). Financial problems among farmers in Malaysia: Islamic agricultural finance as a possible solution. *Asian Social Science*, 11(4), 1–16.
- Mohd Yusof, Y., & Ahmad, A. (2013). Hibah as an alternative mechanism in Muslims asset management: A study in Melaka Tengah. *South East Asia Journal of Contemporary Business, Economics and Law*, 3(3), 1–5.
- Mohd Zamro Muda, Mohd Ridzuan Awang, Abdul Basir Mohamad, & Md Yazid Ahmad. (2008). *Undang-undang dan pentadbiran pusaka, wasiat dan wakaf orang Islam di Malaysia*. Bangi: Jabatan Syariah, Fakulti Pengajian Islam, Universiti Kebangsaan Malaysia.
- Mohd Zamro Muda. (2008). Instrumen hibah dan wasiat: Analisa hukum dan aplikasi di Malaysia. *Kertas Kerja Konvensyen Faraid dan Hibah Kebangsaan Anjuran JAKIM*.
- Mohd. Fitri Abdul Rahman. (2007). *Bagaimana mengurus harta pusaka*. PTS Professional Publishing Sdn. Bhd.
- Muhamad, N. H. N., Kamarudin, M. K., Abdullah, A. H., Sholehuddin, N., Abdul Hamid, M. F., Muhidin, I., & Abdul Karim, K. (2019). Islamic inter vivos law challenges in Malaysia. *Journal of Legal, Ethical and Regulatory Issues*, 22(1), 1–6.
- Muhammad Mui'zz Abdullah, Naimah Mohamad Nasir, Nasrul Hisyam Nor Muhamad, Muhammad Ridhwan Ab. Aziz, & Abdul Bari Awang. (2020). A literature review on Islamic estate planning from year 2014 to 2019. *DigitalCommons @ University of Nebraska Lincoln*. Retrieved June 4, 2022, from <https://digitalcommons.unl.edu/libphilprac/4290>.
- Mushaddad Hasbullah, Zahari Mahad Musa, & Zaharuddin Zakaria. (2017). Pensyariatan faraid mengikut kerangka fiqh Islam. *Seminar Hibah vs Faraid*, 6–13.
- Narizan Abdul Rahman, & Siti Mashitoh Mahamood (Eds.). (2008). *Pentadbiran harta amanah orang Islam*. Kuala Lumpur: Universiti Malaya.
- Nasri Naiimi. (2016). *Pengurusan pusaka Islam, wasiat dan hibah di Malaysia: Isu dan aplikasi*. Sintok: UUM Press.
- Noordin, N., Shuib, A., Zainol, M. S., & Mohamed Adil, M. A. (2011). Problem to petition rights to the Islamic inheritance - Practical solution found elsewhere than the legal system of Malaysia. *PERINTIS E-Journal*, 44–60.

- Wan Ismail, W. A. F., A Rashid, M. R., Mas'ad Saleh, M. A., Abdul Shukor, S., Baharuddin, A. S., Mamat, Z., & Alias, M. A. A. (2020). Pelaksanaan hibah dalam kes-kes mardh al-mawt COVID-19 Dalam Kalangan Orang Islam di Malaysia: Hibah Implementation in Mardh Al-Mawt COVID-19 cases in muslim society in Malaysia . *INSLA E-Proceedings*, 3(1), 124-135. Retrieved from <https://insla.usim.edu.my/index.php/e proceeding/article/view/26> (Original work published November 7, 2020).
- Wan Ismail, Wan Abdul Fattah, A Rashid, M. R., Mas'ad, M. A., Abdul Shukor, S., Abdul Mutalib, L., Baharuddin, A. S., ... Alias, M. A. A. (2021). Konsep pelaksanaan hibah bagi kes-kes maradh al-mawt COVID-19 dalam kalangan orang Islam di Malaysia: The concept of implementation of hibah for the cases of maradh al-mawt Covid-19 among Muslims in Malaysia. *Malaysian Journal of Syariah and Law*, 9(1), 61–72. <https://doi.org/10.33102/mj sl.vol9no1.272>