

# Issues and Challenges in Islamic Estate Planning in Malaysia

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**Abstract:** The Islamic estate planning is a crucial part for the wealth management cycle of a Muslim. Indeed, any Muslim who die without any planning on their estate are not abiding to the bequest guidance as stated in Quranic verses. Unfortunately, this good spirit of Islam is not embraced well, and many are not interested to plan on their estate thus causing huge family disputes and increase the unclaimed property after deceased's death. The current affairs of Islamic estate planning in Malaysia is still not encouraging despite the efforts by relevant institutions and industry players to improve the industry. The initiative was undertaken by the government to form a national institution known as Amanah Raya Berhad and followed by establishment of private Islamic estate planning companies to provide estates planning related services. However, thus far only 700,000 individuals have declared wasiyyah as compare the majority of Muslims among the 30 million Malaysians. What are the problems faced by Islamic estate planning in Malaysia? This is the question that motivates the researcher to study the issues in Islamic estate planning in Malaysia. The purpose of this study is to examine the problems and challenges faced by the industry practitioners. This research is qualitative in nature relying on the existing literatures sourced internet portal, document and library search. 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 Shariah advisory framework for the Islamic estate planning institutions.

## 1 INTRODUCTION

The establishment of pioneer estate planning institutions, which is Amanah Raya Berhad, get hold of nearly 90 years ago whereas the newer private companies come into being within 15 years ago which practically halve of the Islamic finance period in Malaysia. Unfortunately, estate planning which is equally important aspect of Islamic finance is neglected. The Islamic finance market showing less favourable concern on the Islamic estate planning. In term of profit orientation and business opportunity obviously resulting in different direction, 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. Only a few talks about the Islamic estate planning industry and again, Islamic estate planning is always associated with wealth management that goes back to Islamic banking and takaful, leaving behind estate planning which is the wealth distribution phase. The Islamic estate planning

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. According to the Islamic Wealth Management Report 2016, Islamic wealth management relatively under-developed as compared with other sub-sectors in Islamic finance, however Islamic wealth management has great ability for progression. The report also stating the current situation of 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.

Islamic wealth management comprise of wealth creation, wealth accumulation, followed by wealth protection, then wealth distribution and lastly wealth cleansing/purification. Thus, the scenario in the previous report extended to the wealth distribution stage or estate planning industry that believed to be left behind. Because of less attention for Islamic estate planning, significant issues raised concerning the practices particularly as regard to Shariah compliance aspects of Islamic estate planning. The

substance of the concern connected to the Islamic law, therefore there are needs for a check and balance in the practices applies in Islamic estate planning institutions. In another perspective, as written in the Economic Transformation Plan (ETP), "Shariah wealth management is a largely underserved market today that represents a unique opportunity for Malaysia, requiring specialized knowledge such as Shariah compliant wills and estate planning." ETP also realizes that building Shariah financial planning capability is a prerequisite for the well-developed personal wealth management industry. Obviously, the stated statement in ETP reaffirm substance of Shariah compliant wills and estate planning. Establishing the intended products and services that are fully compliant apparently needs the participation of Shariah expertise.

In relation, the time taken for the procedures reflecting the tedious phase that the beneficiaries need to endure. On top of that, the practices are unregulated, and the standard practices was not available due to the absence of requirement by the respected authority. Hence, the study is relevant and pertinent to the overall Islamic estate planning industry development thus, it is intended to put forward recommendations for enhancement of Islamic estate planning in Malaysia including the possibility of establishing Shariah advisory framework for the Islamic estate planning institutions. The modus operandi of the study utilizing variety of approach comprising reviewing data from libraries either the hardcopy or softcopy books, several journals and other publications. In another words, it's including of published printed resources, published electronic resources, government documentations and private sector documentations that available and searchable. Apart of that, the key information also received from identified internet portal that highlighted the relevant materials associated to the study objectives, existing rules and regulations on Islamic financial institutions and the fundamentals of Islamic inheritance law. Source of data in this research is secondary data where the researcher collecting a data from the sources that already been published. Thus, this research involves library based for the collection of secondary data and it is known as doctrinal study. Format of the paper will be discussing the concept of Islamic estate planning, the current situation and practices of Islamic estate planning in Malaysia followed by the dominant issues highlighted in Islamic estate planning and finally some recommendations.

## 2 LITERATURE REVIEW

### 2.1 The Concept of Islamic Estate Planning

Islamic estate planning stems from the Qur'an, which is the holy book of Muslims, and its interpretations in the hadith. The Qur'an is a 1400-year-old religious text that has been deduced over time to be applied to the modern age. Before the advent of Islam, women commonly could not receive at all, even from their spouses, and sometimes these women were part of a man's estate. During that time, those who are blood relatives and adopted sons were permitted to inherit. In a limited exception to this rule, two unrelated men could bequest inheritance to each other via a "contract of alliance." Islam changed these concepts dramatically and introduced the idea that property ultimately belonged to God, and that people only possessed a certain level of control of the property at the time of their deaths (Jaafar, 2016). The money and material property that we possess in this world is a trust from Allah. During our lifetime, we are required to use it in the way that is most pleasing to our Lord. On the Day of Judgement, Allah will surely ask us about our wealth, how did we earn it, and how did we spend it (Al-Jibali, 1999). Therefore, the Islamic estate planning is the administration of Muslim's property after passing away. Customarily, the Islamic inheritance law branded as *faraid* is the existing law that carrying out as estate planning. Majority of the Muslims community relying on the *faraid* totally without understanding the origin of the guidance as stated in Al-Quran. *Faraid* is the study of the calculation and allocation procedure of inheritance for each of the beneficiaries according to Islamic law (Abdul Rahman, Yaakob, Fadzil, & Shaban, 2018). The mentioned 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 necessary explanation on each of the entitlement by the beneficiaries' according to the condition are 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...". *Faraid* could be considered as one of the asset redistribution mechanism in Islamic law (Samori, Khalid, Yaakob, Harun, & Hamid, 2016). The deep understanding about the principle of the estate distribution is crucial to ascertain individuals who will go through the process of distribution of the estate either sooner or later. In addition, the Prophet Muhammad (pbuh) had ordered us to "learn the laws of inheritance and teach them to the people for they are one-half of useful knowledge." Holy Prophet (pbuh) had also

cautioned us "The first branch of knowledge which will be taken away from my Ummah will be Ilmu *Faraid* (knowledge pertaining to inheritance)". Hence, it is the duty of us Muslims to be aware of the importance of the Islamic law of inheritance and the consequences of an un-Islamic Will and to put to practice the laws, to ensure the survival of the knowledge. Knowledge and awareness about *faraid* can become a great steppingstone for the smoothness of the action required. Among others, the basic knowledge including the right of inheritance, property type and number, and form of the division. This importance identification may avoid or at least reducing the possibility of family drama caused by arguments or dispute among family members. The ultimate objective is to prepare the society towards proper Islamic estate planning practices and not just solely depending to the said law by appreciating it in the surface only.

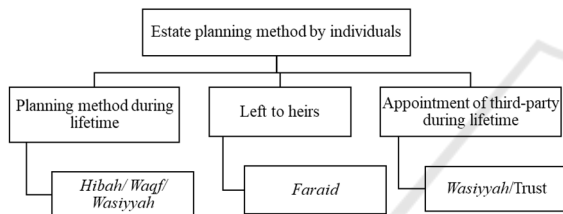


Figure 1: The Method of Estate Planning by Individual.

Sources: (Kamarudin, Mohd Hashim, Jamil, & Abdul Hadi, 2019) with some modifications by the author.

According to (Kamarudin et al., 2019), the common suggestion or instruments available in estate planning can be segregated into three phases. *Hibah* (Gift) for example could be discovered basically in two types, with conditions or without conditions. However, according to Nor Muhamad (Nor Muhamad, 2017), the condition that made by giver have to follow the *hibah* criteria in order to sustain the validity of the contract. Further, it also suggested that the incorrect 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*.

## 2.2 Islamic Estate Planning in Malaysia

Islamic estate planning in Malaysia already in existence for quiet sometime. However, to comprehend the industry in general, it's better to have a look into the commencement of the industry way back more than 90 years ago. Amanah Raya Berhad

is Malaysia's premier trustee company wholly owned by the Government of Malaysia. In year 1921, the Department of Public Trustee and Official Administrator was established. Then, the institution was corporatized in year 1995. The focus of Amanah Raya is to provide Legacy Management solutions to the entire Malaysians through innovative products and services. Legacy Management that was marketed by Amanah Raya is the rebranding of the estate planning which looks more appealing. With the capacity of experience more than 90 years' in the Legacy Management industry, Amanah Raya seen to occupy the market leader status. The uniqueness of this pioneer institution, it has specific Act that guiding their provisions in the legislation, it is the Public Trust Corporation Act 1995 (Laws of Malaysia Act 532, 2008). In another perspective, at this moment, the Amanah Raya is the only Public Trustee and accommodating holistic solutions for everyone when it comes to Legacy Management.

Considering the needs 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. The other player in the industry set up within the purview of the Trust Companies Act 1949 (Laws of Malaysia Act 532, 2008) and Companies Act 2016 (Laws of Malaysia Act 777, 2013). However, on a certain condition, it is not necessarily the institutions required to become a Trustee Company to sustain a business in estate planning industry, despite that being a Trustee Company is the suitable way to offer a comprehensive business solution.

At this moment, the industry player in Islamic estate planning in Malaysia applauded by various institutions. Some of them cater the services all-inclusive since they are a Trustee by operation but some of the institutions only provide the consultation whereas they will be employing external Trustee to resolve the obligatory procedure. To get clearer picture on the type of the operation of Islamic estate planning institutions, following are the list of the institution.

Table 1: Key Players in Islamic Estate Planning Industry.

| Institution                        | Operational Nature |
|------------------------------------|--------------------|
| Amanah Raya Berhad                 | Public Trustee     |
| as-Salihin Trustee Berhad*         | Private Trustee    |
| Wasiyyah Shoppe Berhad             | Private Trustee    |
| MyAngkasa Amanah Berhad            | Private Trustee    |
| Pacific Trustees Berhad*           | Private Trustee    |
| Selangor Islamic Religious Council | Religious Council  |
| Maybank Trustee Berhad*            | Private Trustee    |
| CIMB Islamic Trustee Berhad*       | Private Trustee    |
| RHB Trustee Berhad*                | Private Trustee    |
| PB Trustee Services Berhad*        | Private Trustee    |
| Affin Hwang Trustee Berhad*        | Private Trustee    |

Sources: Association of Trusts Companies Malaysia, <http://www.atcm.com.my> accessed on 16th July 2019.

Those listed institutions in Table 1, recognized as the main industry player in Islamic estate planning. On top of that, there are small entity who are promoting the products and services on behalf of main industry player but actively carry out under their own companies' name. Looking into the listed institutions, most of them, backed by the big entity in the banking sector as they established as subsidiary company in order to retain their own client within their group. Once obtained the bigger picture of the industry and tiers in it and later the players in the industry, another information that are significant in digesting the Islamic estate planning in Malaysia is the administration and the distribution of a Muslim deceased'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). Following diagram testifying the flow and designated authority who responsible for the activity.

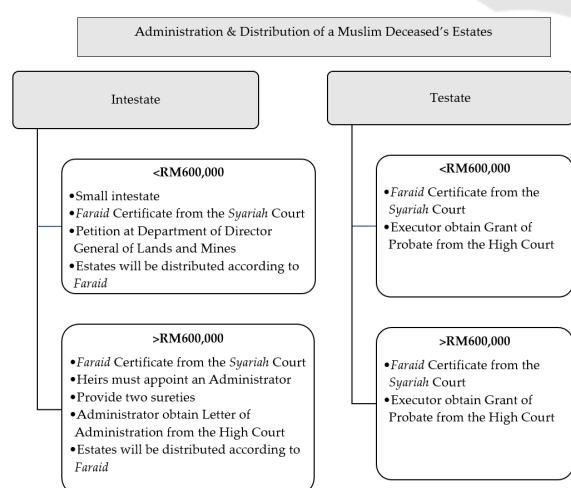


Figure 2: Administration and the Distribution of a Muslim Deceased's Estates in Malaysia.

Sources: (Alma'amun, 2010) with some modifications by the author.

The figure presented above explaining flow of the administration and the distribution of Muslim deceased's estate in Malaysia. The procedure begins with the discovery of either the deceased pass away intestate or testate. The Department of Director General of Lands and Mines responsible to handle 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 1993 (Laws of Malaysia Act 505, 2006) after determining the eligible heirs and verify their entitled shares. On top of that, from the illustration in Figure 2, Amanah Raya Berhad (ARB) has been given the authority to administer the movable estate with the value is not exceeding RM600,000. The procedures and which bodies to approach for that administration and distribution exercise mostly depending on the amount of the estate. For instance, the person dies and leaving behind some amount of cash money not exceeding RM50,000, ARB will straightly issue Order and deliver it to the heirs. However, if the amount of assets more that RM50,000 but not exceeding RM600,000, ARB will issue Declaration and followed by pooling off 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 on both situations, the main authorities that involves in settling Islamic estate administration and distribution are the Department of Director General of Lands and Mines, *Syariah* Court and Hight Court.



### 3 ISSUES & CHALLENGES IN ISLAMIC ESTATE PLANNING IN MALAYSIA

The issues that happened in the vicinity of Islamic estate planning in Malaysia are not new and the existence of the issues for quiet sometimes suggesting that it is something that should be taken care of by stages through a proper channel and respective authority.

#### 3.1 Complexity, Unstandardized & Absence of Law

The Islamic inheritance law 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 by the Quran and the Traditions of the Prophet (S.A.W) (Tagoranao, 2009). The author 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 scenarios so called legislative reformation requires a pure study in order to ensure it is within the purview of the traditional Islamic law of succession. 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 countries (Tagoranao, 2009). In relation to the Islamic law applies in law of inheritance, during year 2016, Asni & Sulong 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 hardly 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 incorporate all disputes and clarifications on the issue of *hibah* in the form of uniform legitimate provisions that have legislative

control. Again, Ghul, Yahya, & Abdullah (2015) draw attention to the impediment lies in the rules and regulations that are related to estate administration and settlement. This kind of barrier providing a major drawback on the development of Islamic estate planning in Malaysia.

In recent studies, due to absence of specified law regarding *hibah*, the Islamic estate planning institutions or private estate planner have to make reference from *fatwa* bodies or *Syariah* advisors for reliable views or approvals (Nor Muhamad et al., 2019). 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 rule (Abdul Rashid, Hassan, & Yaakub, 2013). However, the writer argued that the so-called action taken by the institutions will narrowly feed the needs of sole institutions and unable to 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 cum wish list however something achievable because some states in Malaysia have formed several laws associated to *waqf* (endowment) and will. Recent information, currently there are three states having a specific substantive law bequest which are Selangor-Muslims Will Enactment (State of Selangor) 1999 (No. 4/1999) that effectively started on 1<sup>st</sup> July 2004 [Sel P.U. 9/04], Negeri Sembilan-Muslims Will Enactment (State of Negeri Sembilan) 2004 (No.5/2004) which effective on 5<sup>th</sup> November 2004 [N.S. P.U. 20/2004], and Malacca-Muslims Will Enactment (State of Malacca) 2005 (No. 4/2005) effective on 1<sup>st</sup> August 2005 [M.P.U. 37/05]. Although all of three aforementioned enactment has been legalized, only Selangor start practicing in total. Selangor Islamic Religious Council also providing the 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 the will substantive law bequest. The duty of providing a role as an effective wealth planning instrument brought by Selangor Islamic Religious Council is something that supposed available in every state. The suggestion to legislate *hibah* law has been mentioned since 2004 in various workshops and seminars that arranged by many

parties, but until now the law has not yet to be accomplished.

An interesting and contentious *Syariah* Court verdict regarding secured property may drive the reasoning on how and why. For the record, according to Abdullah (2018), following are the references for some cases. Awang bin Abdul Rahman vs. Shamsuddin bin Awang & Anor, *Syariah* High Court Kuala Terengganu decided that *hibah* on secured property is invalid because the property not fully own by the owner and it's still under liability. In another case, Wan Noriah binti Wan Ngah, *Syariah* High Court Kuala Terengganu also refusing the application for *hibah* verification on the property that still under financing of Treasury Malaysia. 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 Terengganu 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. 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 Sembilan granting a *hibah* on secured property even though without the approval of financier as long as the secured property protected by *takaful*/insurance. 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.

### 3.2 Roles of Fatwa

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 law requirements so it can be a clear guidance to be used and followed by the Muslims in Malaysia (Mohd Yusof & Ahmad, 2013). As Asni & Sulong (2016) suggested a standardized *fatwa* so that there is uniformity and consistency in the enforcement of *fatwa* and in the making decision regarding the *hibah*. It is understandable that in Malaysia, legislative context states that the administration of Islam in Malaysia is under the state, this steered to divergent conducts of administration within the country.

<sup>1</sup> Secured property is the property bought through securing loan from the financial institutions which always requires the property to be charged to them.

<sup>2</sup> *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

### 3.3 The Dual System of Courts

Referring to Md Azmi & Mohammad (2011) and Noordin, Shuib, Zainol, & Mohamed Adil (2012), the unclaimed estates might be a result of the 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 epic issue in relation to Court appearance are secured property<sup>1</sup> (Abdullah, 2018) and the other one is conditional *hibah*<sup>2</sup>. Thus, this kind of issues portraying an undesirable connotation about the existing legislative procedure. In relation to this study, the presented issues revealing that interrelated problems causing a massive damage to the image of Islamic estate planning in Malaysia. Anyhow, the personality and the credentials of *Syariah* advisors if they authoritatively appointed supposed to uphold the estate planning industry and progressing in line with other Islamic finance area.

he major implication of estate classification either large or small resulting the distribution falls within jurisdiction of two courts and two administrative agencies (Md Azmi & Sabit Mohammad, 2011). 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 Shariah and Civil Courts for retrieving the estate of a deceased person. Simultaneously, Section 17 (1) of Public Trust Corporation Act 1995 (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

are *hibah al-umra* and *hibah ruqba*. *Hibah al-Umra* 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.

the control in small estate distribution included movable and immovable properties even though in the absence of a will. This portion reveals that estates of Muslims, movable or immovable, exceeding RM 2 million come 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 civil court and a *Syariah* court. Its function as a dual system of courts. Civil courts were set up under article 121 of the Malaysian Constitution and dominate the larger portion of the constitution, thus all Malaysians are subject to this jurisdiction (Shuaib, 2008). 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 money (Noordin et al., 2012).

### 3.4 Lengthy and Costly 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 costly (Md Azmi & Sabit Mohammad, 2011). On any transaction or application to claim the estate, naturally it involves costs; this may play a substantial part in making the beneficiaries refuse to proceed with the necessary procedures, mainly when the amount after distribution to be claimed 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 assignment (Samori et al., 2016). 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 period (Samori et al., 2016). Another researcher also mentions about the time taken and comparison of the processes endured in the case of dying intestate and testate estate (Ghul, Yahya, & Abdullah, 2015).

### 3.5 Variations in Hibah Practices

According to Mohd Safie (2010), there are a variety of *hibah* management in Wasiyyah Shoppe Berhad and As-Salihin Trustee Berhad, thus the differences may affect the administration in future if there are disputes arise. In general, *hibah* validation falls under jurisdiction of *Syariah* High Court, however if there is any contract or other known elements joint together it will automatically go to the administration under Civil Court. For instances, the elements of *hibah* practices attach with trust contract will make it fall under Civil Court prerogative. Another point to ponder, the customers should be aware of what type of transactions that they intend to enter as it may give great implications of estate entitlement in near future.

### 3.6 Disparities of Establishment Act

Amanah Raya Berhad is a pioneer estate planning institution in Malaysia. In year 1995, Amanah Raya operated under Act 532, Public Trust Corporation Act 1995 (Mohd Safie, 2010). As-Salihin Trustee (as-Salihin) is a trust company incorporated under the Companies Act 1965 and registered under Trust Companies Act 1949 (Laws of Malaysia Act 100, 2006). Special attributed Act for Amanah Raya made ready to provide provisions in legislative as the first public trustee. Furthermore, as-Salihin was established in 2005 to meet the needs of Muslims to preserve, protect and distribute their assets for the benefit of their heirs once they depart for the hereafter (Samori et al., 2016). Thus, the establishment of Wasiyyah Shoppe Berhad solely under Companies Act 1965 whereas as-Salihin Trustee registered both under Companies Act 1965 and Trust Companies Act 1949. Therefore, the disparity of legal jurisdiction for both companies reflected the operational practices that required. (Mohd Sa'afie, Muda, Mohamed Said, & Ahmad, 2018).

### 3.7 Claims on Shariah Compliant Status

The Islamic estate planning companies that exist nowadays proudly declare in their official portal that their companies are *Shariah* compliant and mentioned about their *Shariah* advisors line up. In addition, as-Salihin aims to provide all its services



relatives to estate planning in a manner based strictly on the *shariah* (Samori et al., 2016). Among others, the companies that claims there are *Shariah* compliant entities including Wasiyyah Shoppe and My Angkasa Amanah. Bank Negara Malaysia (the Bank) places great importance in ensuring that the overall Islamic financial system operates in accordance with *Shariah* principles. This is to be achieved through the two-tier *Shariah* governance infrastructure comprising two (2) vital components, which are a centralized *Shariah* advisory body at the Bank and an internal *Shariah* Committee formed in each respective Islamic financial institution (IFI) (BNM, 2010). However, the Islamic estate planning 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 *Shariah* principle or not. Thus, such assertions made by the companies in the Islamic estate planning industry are subject to unknown validation body. The scholars and academic figures who appointed as *Shariah* advisors may functioning according to the requirement stated by the companies, yet their roles and practices still subject to argument in term of standardization and uniformity.

### 3.8 Lack of Understanding on the Islamic Inheritance Terminology/ Concepts/ Procedures

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* (Zulkifli, Batiha, & Qasim, 2018). The researcher did mention that understanding of the Muslims society in Malaysia still far behind and more efforts towards increasing 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%) 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 land. (Mohamad, Talib, & Noor, 1998). Therefore, a good understanding on the possible implication and the benefit of the Islamic system supposedly being nurtured in the beginning 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 distribution (Abd Aziz, Mohamed, Mazlan, Abd Aziz, & Mohaini, 2017). In relation to the scenario abovementioned, the awareness on Islamic estate planning still the most important elements whether the individual opting for Islamic wealth distribution or the other way around.

### 3.9 Attitude of Beneficiaries

Pertaining to the attitude dilemma whereby among the reality is those unresolved inheritance scenarios caused by this 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 land (Mohamad et al., 1998). For instance, one of the major issues highlighted on *hibah* in this paper is the dissatisfaction of the beneficiary on the distribution of properties (Ahmad, Ab Majid, Abdullah, Minhad, & Ismail, 2013). In addition, the negative personal attitude displayed by the beneficiaries in a way interrupt the smooth process of estate administration (Muhammad Amrullah & Mohd Salim, 2018).

## 4 CONCLUSIONS

Conclusions may be discretionary in research articles where consolidation of the study and general implications are covered in the Discussion section. However, the presentation of the issues appeared in Islamic estate planning institutions in Malaysia adequate to wrap up the impressions on the significance of the overall situation. If the normal practices carry out, the Islamic finance development may not progress proportionately among all the segments and create disparity which allowing the loophole to be questioned by the customers at large and the practitioner who may interest in all segments. Besides that, the weaknesses in the practices may continue discourage the Muslims to begin having proper estate planning yet increasing the frozen assets and eventually weakened the Muslims economy in general. This research will open-up the possibility of establishing or adaptation of *Shariah* advisory framework which tailor to the Islamic estate planning institutions.

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