

# THE PRACTICES OF ISLAMIC FINANCIAL ESTATE PLANNING IN MALAYSIA: WASIYYAH, FARAID AND HIBAH

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**Abstract:** *The descriptive qualitative research methodology was used in this study, as well as secondary material from books, journals, newspapers, linked websites, and other sources. Many Malaysian authors are advocating for a more effective solution to the problem of collecting unclaimed property after a person dies. The author's journey is discussed in various ways. Islamic estate planning and assistance in locating unclaimed property, especially in Malaysia. As a result, it is recommended that wasiyyah (will) be used for real estate planning if the requirements are met in order to address the issue of unclaimed property accumulation, particularly in Malaysia. To avoid the accumulation of unclaimed property, it is also recommended that the grant be used only in cases of fara'id distribution after the death of the inconvenienced owner, such as when there are complicated legal procedures or lengthy approval procedures. When presenting gifts to children, the Messenger of Allah, peace and blessings be upon him, commanded equality, so there will be no discrimination between the recipient's children and the recipient's children if the gift (hibah) is in their favour. If no good reason can be found, distribution should be made in accordance with Islamic inheritance law (fara'id). When giving gifts to children, the Prophet (saw) demanded equality; therefore, if the gift (hibah) is made in favour of the donor's children, there shall be no discrimination between them. If no good explanation can be found, the Islamic rule of inheritance (fara'id) will be applied to the distribution.*

**Keywords:** *Islamic law of inheritance (fara'id), gift (hibah), bequest (wasiyyah), Islamic estate planning*

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## Introduction

Due to the intricacy of real estate distribution after death, numerous writers have supported Islamic real estate management. According to Ahmad Hidayat Buang (2008), family real estate management in relation to inheritance property is growing significantly as a result of the rise in wealthy Muslims in Malaysia and other Muslim countries. This is because the distribution of property according to the Islamic rule of inheritance (*fara'id*) is frequently complicated and taints family relationships. Furthermore, some authors believe that it is critical to carry out the deceased's estate planning during his lifetime due to a number of issues that may arise after his death. The goal should not be to prevent the distribution of property according to *fara'id*. According to Alma'amun, (2013) the main goal of estate planning is to make estate distribution easier. According to Bouteraa, (2019) the primary estate planning instruments that Muslims may use in estate planning based on Islamic inheritance law are *Wasiyyah* (bequest), *Hibah* (gift), and *Waqf* (charity).

The issue of frozen assets is thought to be heavily influenced by Malaysian Muslims' perceptions of Islamic estate planning (Nasrul & Salim, 2018). According to Ballin, (2022) the complexity of the legislation, a lack of understanding, the lengthy process, a lack of collaboration among the numerous parties, a lack of a cohesive structure, and the attitude are all reasons why Muslim decedents' estates go unclaimed. As a result, if this issue is not resolved, the number of frozen or unclaimed assets in Malaysia will continue to rise. As a result, it is critical to highlight the disadvantages that Muslims in Malaysia may face as a result of a lack of estate planning (Kamarudin & Nor Muhamad, 2018). In Malaysia, the limited use of Islamic estate planning has also been attributed to a lack of awareness and knowledge (Kamarudin & Nor Muhamad, 2018). Muslims in Malaysia, particularly Malays, are hesitant to make *wasiyyah* (Islamic bequests), believing that *fara'id* is an adequate system for distributing the wealth of a deceased person. They argue that because *fara'id* law assigns specific shares to legitimate successors, leaving a *wasiyyah* has no effect (GHUL, 2015). Furthermore, some Muslims believe that estate planning is only for the wealthy (Abubakar et al., 2019). According to a statistic from the division in charge of small estate administration, there is a significant backlog and delay in processing estate distribution. A number of variables have been linked to this delay. Despite efforts to address the issue, there is little indication that it will be resolved anytime soon (Abdullah et al., 2020). In 2005, 900,000 acres of unclaimed land were still listed under the names of deceased landlords out of 6.2 million acres.

According to the preceding, many writers promoted Islamic real estate planning in Malaysia due to the high number of unclaimed properties caused by the complexities of how properties are distributed in accordance with Islamic law of inheritance (*fara'id*) after the owner's death. As a result, various Islamic estate planning strategies have been proposed by some authors to address this issue. However, there is concern that some people may try to use some of the suggested strategies to avoid dividing a decedent's fortune in accordance with Islamic law's (*fara'id*) inheritance rules.

*Wasiyyah* is supported by four primary pillars, according to Muslim legal scholars (Jusoh et al., 2019) the testator, beneficiary, subject matter, and offer and acceptance (*sighah*). The testator must be of legal age (*mukallaf*), the owner of the property, self-sufficient, and capable of exercising free will. Beneficiaries must be well-known (aside from charity *wasiyyah*), competent to own and administer the property, still alive after the testator's death, and not a legal heir. Subject matter can be tangible or intangible property, or a priceless usufruct that is transferable after the testator's death and still exists. An offer can be accepted either implicitly

(sarih) or explicitly (sighah) (kinayah). Wasiyyah can be accomplished verbally or in writing (Kamarudin & Nor Muhamad, 2018).

The use of wasiyyah in estate planning is thus recommended as a solution to the problem of unclaimed assets, particularly in Malaysia (Kamarudin & Nor Muhamad, 2018). Based on the aforementioned wasiyyah principles, it is recommended that wasiyyah be used for estate planning if the beneficiary is a non-legal heir and the amount shall not exceed one-third of the property unless the other legal heirs agree to provide more than one-third. Furthermore, if a wasiyyah is made with the approval of other legal heirs, the beneficiary may be a legal heir (Alma'amun, 2013). Furthermore, Muslims who consider wasiyyah to be obligatory may use it as a tool for estate planning.

### 1. Fara'id (Islamic Law Of Inheritance)

Islam is a faith that provides guidance from Allah (swt) through his Messenger, Prophet Muhammad, in all aspects of Muslim life (saw). Islam is a complete system that governs both social interactions and personal acts of prayer. One of the religion's tenets is the law of inheritance (fara'id), a unique mechanism provided by Shariah for distributing wealth left behind by a deceased individual. In order to prevent the misappropriation of the deceased person's estate, a system was established that precisely determined the share of each legal heir (Ramlan et al., 2022).

Additionally, distribution based on fara'id is required as stated in Surah An-Nisa, verses 11 and 12, which read:

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ ۖ فَإِن كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ ۖ وَإِن كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ ۚ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُ وَلَدٌ ۚ فَإِن لَّمْ يَكُن لَهُ وَلَدٌ وَوَرِثَتْهُ أَبَوَاهُ فَلِلْمِثْلِ ۚ فَإِن كَانَ لَهُ إِخْوَةٌ فَلِإِمِّهِ السُّدُسُ ۚ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ ۚ لِأَبَائِكُمْ وَأَبْنَاؤِكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفْعًا ۚ فَرِيضَةٌ مِنَ اللَّهِ ۗ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا ﴿١١﴾ ۖ وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِن لَّمْ يَكُن لَّهُنَّ وَلَدٌ ۚ فَإِن كَانَ لَهُنَّ وَلَدٌ فَلِكُمُ الرُّبْعُ مِمَّا تَرَكَنَّ ۚ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ ۚ وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكَنَّ إِن لَّمْ يَكُن لَكُمْ وَلَدٌ ۚ فَإِن كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكَتُمْ ۚ مِنْ بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ ۗ وَإِن كَانَ رَجُلٌ يُورِثُ كَلَالَةً أَوْ امْرَأَةٌ وَهِيَ آخٌ أَوْ أُخْتُ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ ۚ فَإِن كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ ۚ مِنْ بَعْدِ وَصِيَّةٍ يُوصَى بِهَا أَوْ دَيْنٍ غَيْرِ مُضَارٍ ۚ وَصِيَّةً مِنَ اللَّهِ ۗ وَاللَّهُ عَلِيمٌ حَلِيمٌ ﴿١٢﴾

“Allah commands you regarding your children: the share of the male will be twice that of the female. If you leave only two ‘or more’ females, their share is two-thirds of the estate. But if there is only one female, her share will be one-half. Each parent is entitled to one-sixth if you leave offspring. But if you are childless and your parents are the only heirs, then your mother will receive one-third. But if you leave siblings, then your mother will receive one-sixth—after the fulfilment of bequests and debts. ‘Be fair to’ your parents and children, as you do not ‘fully’ know who is more beneficial to you. ‘This is’ an obligation from Allah. Surely Allah is All-Knowing, All-Wise. You will inherit half of what your wives leave if they are childless. But if they have children, then ‘your share is’ one-fourth of the estate—

after the fulfilment of bequests and debts. And your wives will inherit one-fourth of what you leave if you are childless. But if you have children, then your wives will receive one-eighth of your estate—after the fulfilment of bequests and debts. And if a man or a woman leaves neither parents nor children but only a brother or a sister 'from their mother's side', they will each inherit one-sixth, but if they are more than one, they 'all' will share one-third of the estate—after the fulfilment of bequests and debts without harm 'to the heirs'. 'This is' a commandment from Allah. And Allah is All-Knowing, Most Forbearing."

"Allah (thus) directs you as respects your Children's (Inheritance)" They are a wife or husband, mother and father, and a daughter (Arifin & Mahmudi, 2022).

Furthermore, there is no distinction between moveable and immovable properties in the fara'id-based property allocation. According to Shariah law, each legal heir is entitled to their share, and all assets are treated equally. Transportable assets, particularly money, are typically distributed more easily.

The fundamental issue is the fractional share distribution of immovable properties. According to Malaysian land office records, it was difficult to resolve heir disputes or track down a missing or unidentified heir, preventing some titles from being passed to legitimate heirs (Kamarudin et al., 2022). As a result, it is recommended that the ideal method of estate planning be the distribution of a deceased person's property based on fara'id in accordance with Shariah-prescribed shares of each lawful heir. This is applicable to both moveable and immovable properties. Allah (swt) is Merciful and Considers Humanity's Best Interests. As a result of wisdom He possesses that we as humans do not, He dispersed the deceased's property by giving specific shares to the lawful heirs. Therefore, estate planning must always follow fara'id principles, with the possible exception in some circumstances, such as when resolving the problem of unclaimed property, in which case hibah may be required. Even in this case, the application must be made with genuine intentions and without any sense of unfair distribution based on fara'id (Minnee, 2022).

## 2. Wasiyyah (Bequest)

A person may make a will that includes up to one-third of his wealth/assets, according to Islamic inheritance law (fara'id). A will is a declaration made by a person on his property during his lifetime for any Shariah-compliant purpose (Pitchay, 2022). Based on a verse in Surah Baqarah Allah (swt) ordered writing a will in favour of parents and nearest kin during the early days of Islam:

كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِن تَرَكَ خَيْرًا الْوَصِيَّةُ لِلْوَالِدَيْنِ وَالْأَقْرَبِينَ  
بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ ١٨٠

"It is prescribed that when death approaches any of you—if they leave something of value—a will should be made in favour of parents and immediate family with fairness. 'This is' an obligation on those who are mindful 'of Allah'."

"It is prescribed for you, when death approaches any of you, that He make a bequest. However, Shariah prohibits making a Will for an heir (heir). According to Ibn Abbas (ra), the Prophet of Allah (saw) said, "Allah has Himself given everyone who has a right his right." A bequest to

an heir is not permitted because it would amount to giving preference to some heirs over others, which would be improper. Muslim jurists agree that wasiyyah has four main pillars: testator, beneficiary, subject matter, and offer and acceptance (sighah) (Abubakar et al., 2019). Testator must be of puberty (mukallaf), the owner of the subject matter, independent, and of free will. The testator must be of puberty (mukallaf), the owner of the subject matter, independent, and of free will. Beneficiary must be known (except for charity wasiyyah), capable of owning and managing the property, alive after the testator's death, and a nonlegal heir. Subject matter can be movable or immovable property or a valuable usufruct, transferable after the testator's death and in existence. In terms of offer and acceptance (sighah), it can be explicit (sarih) or implied (sighah) (kinayah). Wasiyyah can be completed orally or in writing (Kamarudin & Nor Muhamad, 2018). As a result, it is suggested that incorporating wasiyyah into estate planning will help to solve the problem of unclaimed assets, especially in Malaysia. Thus, based on the aforementioned principles of wasiyyah, it is suggested that wasiyyah may be used for estate planning if the beneficiary of the wasiyyah is a nonlegal heir and it does not exceed one-third of the property, unless the remaining legal heirs agree to give more than one-third. Furthermore, if wasiyyah is made with the consent of other legal heirs, a legal heir may be a beneficiary of it. Furthermore, Muslims who accept obligatory wasiyyah can use it to plan their estate.

### 3. Hibah (Gift)

Hibah is an Islamic contract whose suitability for use in estate and financial planning (Worthington & Marzuki, 2021), and financial institutions has been widely debated. It is a contract for a voluntarily made gift of wealth during the owner's lifetime with no expectation of recompense or compensation (Rahim et al., 2021). The legality of hibah is supported by Surah an-Nisa 4:

وَأَتُوا النِّسَاءَ صَدَقَاتِهِنَّ نِحْلَةً فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِّنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَّرِيئًا ۚ  
Give women 'you wed' their due dowries graciously. But if they waive some of it willingly, then you may enjoy it freely with a clear conscience.

"And give the women (on marriage) their dower as a free gift; but if. In Islam, it is encouraged to give hibah to the closest family members in order to foster love and affection among family members for those who ask.... (2:177). And, according to Abu Hurayrah (AlBukhari, n.d.), Prophet Muhammad also said, "Give gifts, and you will love one another." Three elements must be present in order to complete a valid hibah: contracting parties, contract (aqd), and subject matters. The donor and the recipient are the contracting parties. The donor must intend to make the hibah, have the contractual capacity (puberty and prudence), be the owner of the wealth, and act freely (devoid of coercion, undue influence, etc.)

﴿لَيْسَ الْبِرَّ أَنْ تُوَلُّوا وُجُوهَكُمْ قِبَلَ الْمَشْرِقِ وَالْمَغْرِبِ وَلَكِنَّ الْبِرَّ مَنْ ءَامَنَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَالْمَلَائِكَةِ وَالْكِتَابِ وَالنَّبِيِّينَ وَءَاتَى الْمَالَ عَلَى حُبِّهِ ذَوِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسْكِينِ وَابْنَ السَّبِيلِ وَالسَّائِلِينَ وَفِي الرِّقَابِ وَأَقَامَ الصَّلَاةَ وَءَاتَى الزَّكَاةَ وَالْمُؤْمِنُونَ بَعَثَهُمْ إِذَا عَاهَدُوا وَالصَّالِحِينَ فِي النَّبَأِ وَالضَّرَّاءِ وَحِينَ النَّبَأِ ۗ أُولَٰئِكَ الَّذِينَ صَدَقُوا ۗ وَأُولَٰئِكَ هُمُ الْمُتَّقُونَ ١٧٧﴾

Righteousness is not in turning your faces towards the east or the west. Rather, the righteous are those who believe in Allah, the Last Day, the angels, the Books, and the prophets; who give charity out of their cherished wealth to relatives, orphans,

the poor, 'needy' travellers, beggars, and for freeing captives; who establish prayer, pay alms-tax, and keep the pledges they make; and who are patient in times of suffering, adversity, and in 'the heat of' battle. It is they who are true 'in faith', and it is they who are mindful 'of Allah'.

The recipient, among other things, can be a Muslim or a non-Muslim, has the ability to manage the wealth, and is present at the time of the hibah. Both the donor and the recipient must understand the terms of the contract in terms of offer and acceptance (ijab and qabul). Hibah is classified into two types: 'umra hibah and ruqba hibah. Hibah al-'umra is a type of hibah in which the property passes to the donee upon the death of the donor. If the donor dies first, the property is transferred to the donee in the case of Hibah al-ruqba. If the donor dies before the donee, the property is returned to the donor rather than being transferred to the donee's legal heirs (Nusholtz, 2019).

To avoid the accumulation of unclaimed assets, it is recommended that hibah be used in estate planning only in situations where division based on fara'id after the owner's death is inconvenient, such as legal complexity, a lengthy process, and so on. That is, the donor must make the gift (hibah) with good intention, not to avoid distribution based on Islamic law of inheritance, as some writers claim. There is no inequality in distribution according to Islamic inheritance law. The Shariah-provided division of a deceased person's property is perfect and must be followed at all times. However, in some cases, such as the fear of a continuous accumulation of unclaimed assets in Malaysia, it is recommended that hibah be used if there are no other options.

Hibah is one of the best options in Islamic financial planning for dealing with inequalities in inheritance. As a result, if a valid hibah is made, the shares of legal heirs under fara'id will inevitably be reduced because hibah properties will not be considered property to be divided based on fara'id. As a result, when a legally binding hibah is made, the subject matter does not become property to be distributed under fara'id (Azhar & Nor, 2019).

## Conclusion

According to the study, complications can arise when distributing real estate left behind by a deceased Muslim, resulting in an accumulation of unclaimed property, particularly in Malaysia. As a result, many authors proposed solutions to this problem based on Islamic estate planning. As a result, this study recommends that wasiyyah be used for estate planning if the beneficiary is a non-legal heir and that it not be more than one-third of the property unless the other legal heirs agree to give more than one-third. This is in order to address the issue of the accumulation of unclaimed property, particularly in Malaysia. Furthermore, if a wasiyyah is formed with the approval of other legal heirs, a legal heir may be the beneficiary.

تِلْكَ حُدُودُ اللَّهِ ۚ وَمَنْ يُطِيعِ اللَّهَ ۖ وَرَسُولَهُ يُدْخِلْهُ جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ خَالِدِينَ فِيهَا ۚ وَذَلِكَ الْفَوْزُ الْعَظِيمُ ۝ ١٣ وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ وَيَتَعَدَّ حُدُودَهُ يُدْخِلْهُ نَارًا خَالِدًا فِيهَا وَلَهُ عَذَابٌ مُهِينٌ ۝ ١٤

These 'entitlements' are the limits set by Allah. Whoever obeys Allah and His Messenger will be admitted into Gardens under which rivers flow, to stay there forever. That is the ultimate triumph! But whoever disobeys Allah and His Messenger and exceeds their limits will be cast into Hell, to stay there forever. And they will suffer a humiliating punishment.

Furthermore, in order to avoid the accumulation of unclaimed assets, it is recommended that hibah be used in estate planning only in situations where division based on fara'id after the owner's death is inconvenient, such as legal complexity, a lengthy process, and so on. That is, when making the gift (hibah), the donor must have good intention, not intending to avoid distribution based on Islamic law of inheritance, as some writers claim hibah is a tool that can address inheritance inequalities.

There is no inequality in distribution according to Islamic inheritance law. The Shariah-provided division of a deceased person's property is perfect and must be followed at all times. However, in certain situations, such as the fear of a continuous accumulation of unclaimed assets in Malaysia, it is suggested that hibah al-'umra be used if no other solution is available. However, if the gift (hibah) is made in the name of the donor's children, there shall be no discrimination between them, as the Prophet (saw) requires equality when giving gifts to children.

Again, it is suggested that the best method of estate planning is to distribute property left behind by a deceased person based on fara'id in accordance with Shariah-mandated shares for each legal heir. This is applicable to both movable and immovable property (Abubakar et al., 2019). Allah (swt) is Compassionate and knows what is best for humanity. As a result, when He distributed a deceased person's property by allocating specific shares to legal heirs, it was because He possesses wisdom that we as humans do not. As a conclusion, estate planning must always adhere to fara'id principles, with the exception of certain situations, such as resolving the issue of unclaimed assets, where hibah may be required. Even in this case, the application must be made with good intentions, without any sense of unequal distribution based on fara'id, and children must be treated equally.

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