



***WASIYYAH ADOPTION AND ITS BARRIERS AMONG MALAYSIAN MUSLIMS***

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MALAYSIAN MUSLIMS**

**ZAHIRAH BINTI HAMID GHUL**

**Thesis Submitted to Graduate School of Management, Universiti Putra  
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of Science**

**March 2015**

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## DEDICATION

This thesis is dedicated to :

My father, Hamid Ghul bin Sifar Muluk, who had been my source of motivation and inspiration throughout my life.

My husband, Mohd Nuruddin bin Othman, for his patience, love and encouragement and not to forget my son, Firaas Mishary who were born during my study and the pillar of my strength to complete this study.



Abstract of thesis presented to the Senate of Universiti Putra Malaysia in  
fulfilment of the requirements for the degree of Master of Science

**WASIYYAH ADOPTION AND ITS BARRIERS AMONG  
MALAYSIAN MUSLIMS**

By

**Zahirah Binti Hamid Ghul  
March 2015**

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**Faculty: Graduate School of Management, Universiti Putra Malaysia**

Islamic inheritance system is usually explained within the conceptual framework of *i.e. Faraidh, Wasiyyah* (Will) and *Hibah* (gift). In Islam, there is no restriction on the transfers of wealth during the lifetime, however the distribution of estates upon death is strictly subjected to *Faraidh* and *Wasiyyah* rules. The salient feature of *Faraidh* on inheritance is subjected to a predetermined quantum of shares of the eligible heirs. *Wasiyyah*, on the other hand, is limited up to one-third of the estates' value and is only allowed to be given to non-heirs. *Wasiyyah* can only be given to heirs with the consent of all eligible heirs. Islamic estate planning and Islamic inheritance system renders a new dimension in the Islamic economy and finance. Making a *Wasiyyah* (Will) is the more crucial element of the system. As such, this study selects *Wasiyyah*, which carries the meaning of a Will, as the main focus of this study.

This study aims to investigate the factors that influence *Wasiyyah* Adoption and its barriers among Malaysian Muslims. The research model posits relationship between four factors:

a) knowledge b) life events c) wealth management d) institutions (*Wasiyyah* writing providers). All these four factors are analysed using inferential analysis. Meanwhile, the barriers in Islamic inheritance distribution are analysed based on descriptive analysis. The theoretical model of this study is based on the Life Cycle, Altruism and Dynasty Model. In addition, Islamic theory of wealth is added as one of the theoretical underpinnings of this research.

This research uses the self-administered survey method using electronic mail (email) questionnaires and self-administered questionnaire as its data collection method. About 300 questionnaires were distributed in Selangor and Klang Valley and only 170 questionnaires were returned. Another 61 were gathered from the online survey. Total of data gathered were 231 respondents. The data was analysed via Reliability, Validity, Descriptive, and Binary Logistic Regression using SPSS version 20.0.

The findings from this study show that knowledge and wealth management have a significant effect towards *Wasiyyah* practices while life events and institutions have no significant effect towards *Wasiyyah* practices. This indicates that the more knowledge one has about Islamic inheritance, the higher the intention to make a *Wasiyyah* is. Hence the higher the planning of wealth is, the higher the intention to make a *Wasiyyah* is. In terms of

barriers in Islamic inheritance distribution, the biggest obstacle among all the factors are 1) estate management and 2) lengthy distribution process.

This study offers several implications for both the academic and industry. It has covered the identified gaps and added value to the field of *Wasiyyah* practices and inheritance distribution.



Abstrak tesis yang dikemukakan kepada Senat Universiti Putra Malaysia  
sebagai memenuhi keperluan untuk ijazah Master Sains

**PENULISAN WASIAT DAN HALANGAN-HALANGAN DALAM  
PENGAGIHAN HARTA PUSAKA DI MALAYSIA**

Oleh

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Malaysia**

Sistem harta pusaka Islam biasanya diterangkan dalam kerangka konsep iaitu *Faraid*, *Wasiyyah*(Wasiat) dan *Hibah* (*hadiah*). Menurut sistem harta pusaka Islam, tidak ada sekatan ke atas pemindahan harta semasa masih hidup, namun pengagihan harta selepas kematian adalah dengan ketat hanya tertakluk kepada hukum *Faraid* dan *Wasiyyah*(Wasiat). Ciri-ciri utama *Faraid* pada harta pusaka adalah tertakluk kepada jumlah yang telah ditetapkan untuk waris yang layak. *Wasiyyah*, juga adalah terhad kepada satu pertiga sahaja daripada nilai harta dan hanya dibenarkan untuk diberikan kepada bukan waris sahaja. *Wasiyyah* hanya boleh diberikan kepada waris dengan persetujuan semua waris yang layak. Perancangan harta Islam dan sistem pewarisan Islam menjadi satu dimensi baru sebagai sebahagian daripada ekonomi Islam dan sistem kewangan Islam. Membuat *Wasiyyah* (Wasiat) dikenalpasti sebagai sesuatu yang paling sukar dilakukan di dalam system pengurusan harta pusaka ini. Oleh itu kajian ini memilih *Wasiyyah* yang bermaksud Wasiat sebagai fokus utama kajian ini.

Kajian ini bertujuan untuk mengkaji factor-faktor yang mempengaruhi penulisan Wasiat dan halangan-halangan dalam pengurusan harta pusaka



Islam dikalangan orang Islam di Malaysia. Kajian ini telah mengenalpasti empat faktor :a)pengetahuan b) peristiwa-peristiwa hidup c) jenis-jenis aset pengurusan kekayaan d) Institusi (Agen Penulis Wasiat/Pengurus harta pusaka).

Keempat-empat faktor ini dikaji menggunakan analisis inferensi. Manakala,halangan-halangan dalam pengurusan harta pusaka Islam dikaji menggunakan analisis deskriptif. Model teori yang digunakan dalam kajian ini adalah berdasarkan 'Life Cycle', 'Altruism' dan 'Dynasty' Model. Tambahan lagi,teori harta megikut Islam(Islamic theory of Wealth) juga ditambah sebagai teori asas kajian ini.

Kajian ini menggunakan dua kaedah dalam pengumpulan data. Kaedah pertama adalah dengan menggunakan borang kaji selidik manakala kaedah kedua adalah melalui elektronik (email).Tiga ratus boring kaji selidik (300) telah diedarkan kepada responden di sekitar Selangor dan Lembah Klang dan hanya seratus tujuh puluh(170) borang kaji selidik telah diterima dari responden. Sementara sebanyak enam puluh satu (61) lagi kaji selidik diterima daripada responden melalui email. Secara keseluruhan menjadikan jumlah reponden untuk kajian ini adalah seramai dua ratus tiga puluh satu (231) respoden. Data yang diperolehi dianalisa dengan menggunakan perisian SPSS versi 20.0 (Kebolehpercayaan, Kesahihan, deskriptif, Regresi Binary Logistic).

Hasil kajian menunjukkan pengetahuan dan jenis-jenis aset pengurusan kekayaan mempunyai hubungan dalam mempengaruhi penulisan Wasiat manakala peristiwa-peristiwa hidup dan institusi tidak mempunyai

hubungan dalam mempengaruhi penulisan Wasiat. Ini menunjukkan bahwa semakin banyak pengetahuan yang diperoleh oleh seseorang tentang harta pusaka Islam, semakin tinggi keinginan untuk menulis Wasiat. Manakala semakin banyak pengurusan kekayaan yang dilakukan oleh seseorang, maka semakin tinggi keinginan untuk menulis Wasiat.

Dari segi halangan-halangan dalam pengurusan harta pusaka Islam, faktor tertinggi yang dikenal pasti adalah pengurusan dan pengagihan harta pusaka Islam mengambil masa yang lama. Kajian ini menawarkan beberapa implikasi untuk kedua-dua akademik dan industri dan meliputi jurang yang dikenal pasti dan menambah nilai kepada bidang amalan penulisan Wasiat serta dan halangan dalam pengagihan harta pusaka Islam.

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I certify that an Examination Committee met on 6 March 2015 to conduct the final examination of Zahirah Hamid Ghul on his Master of Science thesis entitled “**Wasiyyah Adoption and Its Barriers Among Malaysian Muslims**” in accordance with the Universities and University Colleges Act 1971 and the Constitution of the Universiti Putra Malaysia [P.U.( A) 106] 15 March 1988. The Committee recommends that the student be awarded the Master of Science degree.

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## GLOSSARY

(The Glossary for terminology used in this thesis is taken from Shanmugam et al.(2008)), Nasir (1986), Tanzil-ur-Rahman (1978), Tanzil-ur-Rahman (1980), Zayas (2003). Doi (1984), Yaakub (2006), Haqqi (2009), Laldin (2006) and Rasban and Mohd. (2006)).

**Faraid** : Succession to the estate of the deceased which is governed by compulsory rules *laid down in the Quran*.

**Fiqh** : An Arabic term for Islamic jurisprudence. It covers all aspects of life– religious, political, social or economics etc. In addition to religious observances (prayer, fasting, zakah and pilgrimage) it covers family law, inheritance, social obligations, commerce, criminal law, constitutional law and international relations, including war. The whole corpus of fiqh is based primarily on the Qur'an and the Sunnah and secondarily on ijma' and ijtihad.

**Hadith** : The tradition or collection of traditions attributed to the Prophet Muhammad (PBUH) that includes his sayings, acts, and approval or disapproval of things. Hadith is valued by Muslims as a major source of religious law and moral guidance.

**Hibah** : An Arabic term for gift. Literally it means a gift awarded voluntarily in return for a loan. Islamic law defines hibah as a transfer of a determinate amount of property without any exchange from one person to another, and accepted by or on behalf of the latter.

**Hukm** : Rulings

**Ibadah** : Refers to devotional matters or worship in Islam. It is the term given to any and all acts which demonstrated obedience and commitment to Allah.

**Ijma'** : The secondary source of the Shari'ah. It is the consensus of opinion of the companions of the Prophet Muhammad.

**Ijtihad** : The total expenditure of effort by a jurist to infer, with a degree of probability, the rules of Shari'ah from their detailed evidence in the sources.

**Muamalat** : The rules which pertain to the actions of people and their dealings among themselves as in sale, mortgage, hire, disputations, evidences, judgment and the like.

**Sadaqah** : Voluntary charitable giving.

**Shari'ah** : It is an Arabic word meaning the „Path“ to be followed. It is defined as rules which are ordained by Allah for His servants by sending His Messenger.

**Takaful** : It means guaranteeing each other. It is a system of Islamic insurance based on the principle of ta'wun (mutual assistance) and tabarru (voluntary) where the risk is shared collectively by the group voluntarily.

**Tawhid** : Faith

**Waqf** : An endowment or a charitable trust set up for Islamic purposes

**Wasiyyah** : Is an act through which one makes certain disbursement of his

property absolute for the period following his own death. Instruction regarding appropriation in the estate of a deceased person after his death.

**Zakah** : Is a yearly premium on all forms of accumulated productive wealth as well as on a variety of agricultural products, calculated at various rates according to the nature of the wealth or product, and due to the needy individuals of the Muslim community for their rehabilitation.

**Wisayah/ Wisoyah**: A trusteeship to be executed upon the death such as paying off the debt and executing a bequest made by the deceased.

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# CHAPTER 1

## RESEARCH OVERVIEW

### 1.1 Introduction

Muslims are allowed to manage their property based on *Shari'ah* principles. Wealth accumulation is permissible in Islam on the condition that there is no element of manipulation, injustice or monopoly of wealth. Besides that, the way wealth is accumulated must be acceptable and permissible by *Shari'ah* laws. The wealth should also be spent in ways that gets Allah's blessing and reward.

Islam also permits innovation and creativity as long as it does not contravene with the principles of *Shari'ah*. According to the devolution of property rules in Malaysia, no devolution is allowed unless for obligatory or commendable purposes. Otherwise, it is better for one to make charitable donations to help poor and needy people who really need donations to survive. According to Islamic estate planning property can be transferred by means of contractual obligations in the form of bequest (*Wasiyyah*), gift (*Hibah*) and trust property (*Waqf*). Today, *Shari'ah* principles are being used as a guide not only in the Islamic banking and finance system but also in the management of wealth. Muslims are encouraged to use the Islamic system and leave the conventional system that is based on interest or *riba'* that is clearly prohibited by Allah (*s.w.t*). Islamic estate planning relies on the combination of *Shari'ah* laws pertaining to inheritance, civil law, financial planning and Islamic wealth management.



## 1.2 Islamic Wealth Management

Wealth is related to prosperity. It refers to the belongings of a person, in terms of land, money, business, house and much more. Unforeseen circumstances might happen affecting individual's belongings or properties. Therefore, proper management of wealth is necessary in ensuring proper distribution of wealth.

Wealth management consists of 1) wealth creation/wealth accumulation, 2) wealth enhancement, 3) wealth protection/wealth preservation, and 4) wealth distribution. Wealth creation (or wealth accumulation) is the beginning of wealth management because wealth management cannot exist without wealth creation. As an important function of wealth management, wealth creation involves the activity of identifying the various means of creating and accumulating wealth. With respect to the means of generating wealth, Islam stresses that it should be honest and lawful. There are several channels of generating wealth such as 1)in the compensation of work or services rendered,2) a purchasing transaction, 3)receiving a gift, 4)inheriting an estate (Billah, n.d.a; Rasban, 2006:25–28; INCEIF, 2006:10 and 16–19).

The first component of wealth management is 'created wealth'. Individuals are likely to manage their lives together with this 'created wealth'. Throughout history, scholars have described the meaning and distribution of wealth through philosophical, economic and also legal perspectives (Alma'amun,2010). This study intends to investigate how wealth is distributed by individuals in the form of inheritance and bequest modes.

Wealth enhancement is the second component of wealth management. It encourages Muslims to find ways to enhance their wealth. Efficiency in harnessing and allocating funds is not neglected but it must be in line with *Shari'ah* (Islamic law) requirements. Methods in enhancing wealth are quite similar to the methods in creating wealth, but with addition of another method – investment. This includes *Mudharabah* current account, *Mudharabah* investment account, Islamic Unit Trust, *takaful* with saving element and *Sukuk* (Billah, n.d.a; Rasban, 2006:165–173).

The third component in wealth management is wealth protection/preservation. People encounter risks in their daily lives. With respect to wealth protection, such risks may lead to the loss of the ability to generate wealth or may wipe out the value of their accumulated wealth. Wealth preservation is about preserving wealth from being lost under all circumstances. It is related to the protection of the accumulated wealth against every conceivable financial risk and threat by means of insuring it through various types of insurance. It should be noted that in Islam, *takaful* replaces the function of conventional insurance to preserve wealth (Billah, n.d.a; Rasban, 2006:108– 112; Iqbal and Wilson, 2005).

The fourth component is wealth distribution. In Islam, the concept of distribution is different from capitalism's or socialism's concepts. It is based on divine scripture with moral and ethical values addressing humanity, sympathy, forgiveness, generosity and charity (Muhammad *et al.*,2013). There is no restriction on the transfers of wealth during one's life span in Islam, but the planning of estates after the death is rigorously subjected to *Faraid* (Islamic law of inheritance) and bequest rules. The imperative feature of *Faraid* implies that inheritance is subjected to the

pre-determined quantum of shares of the qualified heirs. On the other hand, bequest which is also known as *Wasiyyah* is limited up to one-third of the estates value and only endorsed to be given to the non-heirs (Alma'amun,2010).

Alma'amun (2010) also states that Islamic theory of wealth provides useful guidance in relation to wealth ownership, wealth management and financial planning. The concept of wealth in Islam is based on philosophical fundamentals taken from two primary sources namely 1)Al-Quran, the Islam Holy Book, and 2) *Hadith*, the sayings of the Prophet of Islam. The whole conceptualization of wealth and its use must, therefore, be consistent with *Shari'ah* or the Islamic Jurisprudence. The view on the concept of wealth in Islam begins with the acknowledgment of wealth which it satisfies the Islamic conditions of ownership. In addition, Islam does not allow the idea that wealth is solely owned by individuals. This is opposite than that recommended by conventional capitalism theory. In Islamic teaching unlimited ownership belongs to Allah and the individuals are only trustees of the wealth. Since an individual is not the absolute owner of wealth in this world, he/she has the obligation and responsibility to handle it in the manner which is in line with Islamic teaching.

Wealth management in Islam does not ignore the obligation to ensure that wealth is circulated as widely and fairly as possible in inheritance. The function of wealth distribution, the final component of wealth management, is to ensure proper planning to distribute wealth through estate planning, business succession planning, charitable and *zakah* (alms-giving) planning. There are plenty of mechanisms for this purpose such as *zakah*, Will, *Faraid*, bequest, *Hibah* and *Waqf*, trust, *Sadaqah* (donations),

*Infaq* (gift to Islamic cause), *hadiyyah* (present, gift), *nazar* (vow) and *statutory disposition* (Billah, n.d.a; Rasban, 2006:191–199).



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### 1.3 Financial Planning

Financial planning and wealth management are interrelated as estate planning is also part of financial planning. When Muslims observe both 1)Islamic wealth management and 2)Islamic financial planning, they will see that they are responsible in ensuring proper management on financial matters and allocate their wealth through a manner which covers the following aspects: zakah management, managing consumption and saving, investment, takaful, estate planning, managing of tax and state duty(Alma'amun, 2010).

Financial planning is the process of meeting an individual's financial goals. In order to accomplish one's financial goals, a set of strategies or future plans is structured and tailored in line with the persons abilities and needs. Financial planning involves six steps: 1) it begins with establishing the realistic goals and objectives,2) gathering the data and information needed, 3) compiling and analyzing data 4) developing solution and presenting the plan of action; 5) implementing the plan; and 6) monitoring and reviewing the plan periodically. A comprehensive financial planning encompasses a number of critical personal financial areas such as cash flow planning, tax planning, investment management, risk management, retirement planning, estate planning, special circumstances planning, employee benefits and educational planning (Altfest, 2007)

From the conventional viewpoint, the justifications of establishing estate planning for an individual are actually for the protection and assurance of the continuous benefits of loved ones upon his death as well as in the event of disability for himself. Estate planning from the conventional point of view is defined as the process of establishing

a comprehensive estate or legacy plan for an individual after taking into consideration his financial goals. Such comprehensive estate planning is established efficiently with the aims of achieving the following financial goals: 1) paying as little taxes as possible in order to distribute the maximum possible to the beneficiaries, 2) matching the amount and type of assets to be apportioned to beneficiaries according to the individual's circumstances and wishes, 3) minimizing conflicts between heirs whenever possible and protecting the person himself while he is still alive (Altfest, 2007:411–412).



## 1.4 Islamic Estate Planning

According to Omar (2006), a process where an individual's personal and financial goals are achieved through the development and execution of a comprehensive estate plan which is based on Islamic principles is referred to as Islamic estate planning. Alma'amun (2012) states that Islamic estate planning is a process in which the property and estate left behind by the deceased are distributed to achieve certain goals. The process of distributing the estate for Muslims seems to be more complicated compared to its conventional counterpart. This is due to the differences that lie in the fact that Muslims' estates distribution must follow the Islamic inheritance laws whereas non-Muslims' are guided by conventional laws of estate distribution.

Altfest (2007) states that estate planning steps begin with the understanding of what estate planning is all about. An individual should understand that estate planning is "a process of analyzing and deciding on how his assets are to be managed and apportioned to others in the event of his death". Such arrangement is planned to manage assets left to the beneficiaries in a well-organized way. It begins with identifying objectives and assets of an individual. During these two stages, an individual should make clear 1) the types of assets to be left behind, 2) to whom, and 3) when he wants the beneficiaries to receive the assets. Preparing a will is the simplest structure of estate planning that a person can do. It can be extended to include other mechanisms or tools which can benefit the person in terms of minimizing taxes and strengthening his ability in the mission of achieving his objectives. Among other estate planning tools a person should consider are trusts, gifts, titling or transferring assets and life insurance (Altfest, 2007:412, 415–421).

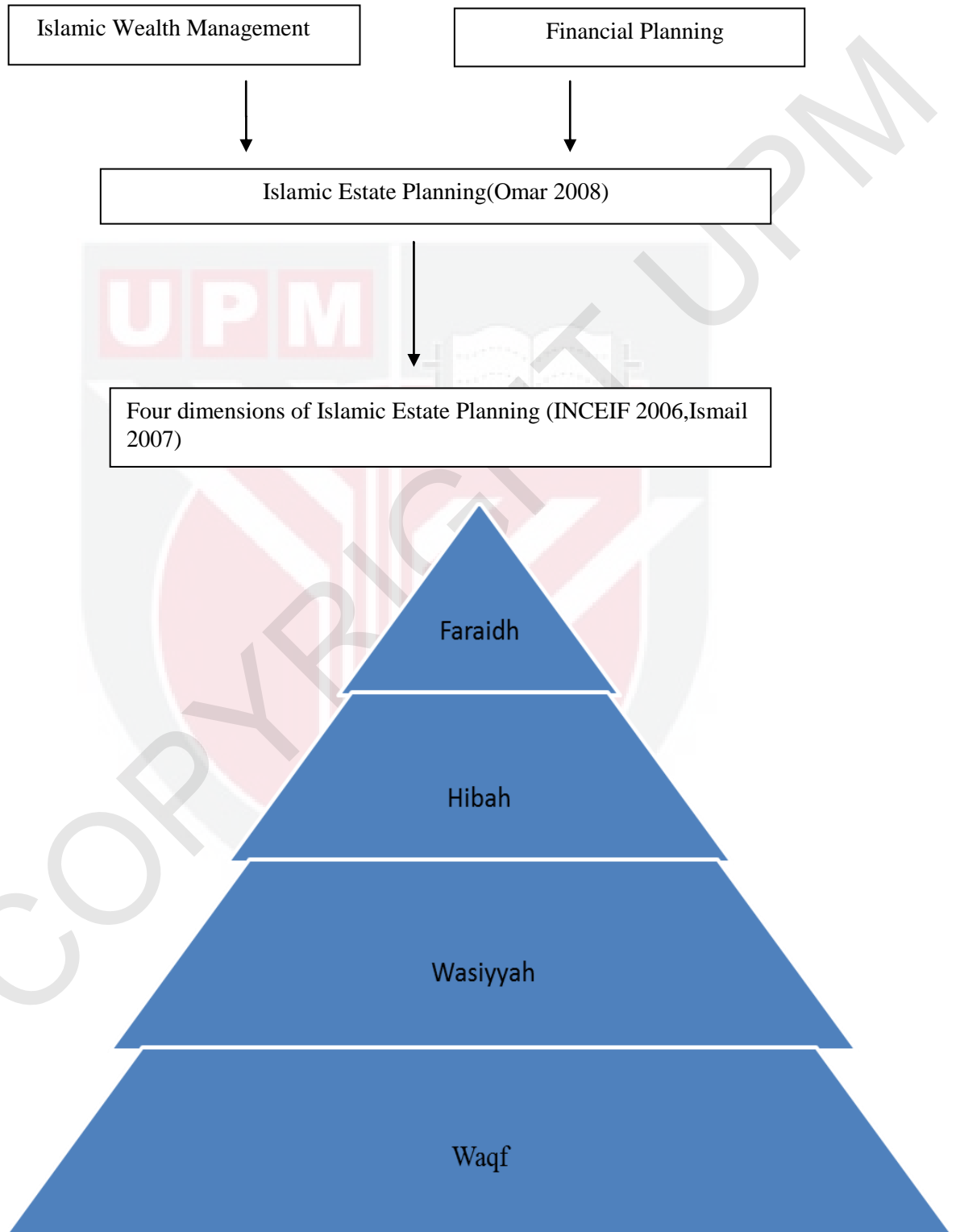
The importance of planning the estate prior to death is not intended to evade *Faraid* (Mujani *et al.*, 2011). According to Kamaruddin (2013), *Faraid* is known as the Islamic law of inheritance. It is the Islamic law of succession that is meant to protect heirs' family's rights. According to Mujani *et al.*,(2011) ,the importance of making an estate planning prior to death is to help the family in dealing with the administration and settlement because the process of estate settlement is costly and without a will, the process is lengthier. In another point a view, (Muda *et al.*, 2006; Omar, 2006; INCEIF, 2006), state that estate planning should cover planning during the lifetime and planning prior to death. *Wasiyyah* seems to be the most important tool among other estate planning tools in Malaysian Islamic estate planning prior to death (Alma'amun, 2010).

Hassan & Yusop (2006) state that a combination of three main components: 1) *Shari'ah* laws relating to the inheritance, 2) civil law and 3) financial planning, will contribute towards complete understanding among Malaysian muslims on Islamic estate planning. The civil law that is being practiced in Malaysia is a legacy of the British Administration (Hassan, 2005; Muhamad,2007). In the Islamic estate planning process, *Faraid* is the pillar while other estate planning tools are just used in accommodating the estate planning process (Hassan, 2005). In Malaysia, civil law has the most influence on estate planning as it regulates the procedures of estate administration and settlement. In Islamic estate management, there is a difference in the process of settlement for a person who dies either 1) intestate or 2) testate. To deal with the consequences, Malaysian muslims need to be familiar with the processes and authorized bodies that they should engage with for estate management resolutions.



The Figure 1.1 below shows the flow of Islamic Estate Planning:-

Figure 1.1 Flow of Islamic Estate Planning



### 1.4.1 Instruments of Islamic Estate Planning

Estate planning should be prepared for two elements of time, 1) planning during the lifetime (wealth transfer during lifetime) and 2) planning upon death (estate distribution upon death) (Muda *et al.*, 2006; Omar, 2006; INCEIF, 2006). Table 1.1 below shows the instruments of estate planning in Islam during lifetime and upon death:

Table 1.1 Instruments of Wealth/Estate Transfers for Muslim (Rasban ,2006)

Estate Distribution Upon Death	
<ul style="list-style-type: none"> <li>• Instruments:</li> <li>1) <i>Hibah</i> (gift)</li> <li>2) <i>Sadaqah</i> (donations)</li> <li>3) <i>Waqf</i> (charity)</li> <li>4) Trust</li> <li>5) <i>Nazar</i> (vow)</li> <li>6) <i>Iqrar</i> (pledge)</li> <li>7) Jointly acquired property</li> </ul>	<ul style="list-style-type: none"> <li>• Instruments which are subjected to bequest rules:</li> <li>1) <i>Hibah</i> (gift)</li> <li>2) <i>Sadaqah</i> (donations)</li> <li>3) <i>Waqf</i> (gift/charity)</li> <li>4) Trust</li> <li>5) <i>Nazar</i> (vow)</li> <li>6) Bequest(legacy/inheritance)</li> <li>7) Obligatory bequest (<i>Wasiyyah wajibah</i>)</li> </ul>
<ul style="list-style-type: none"> <li>• There is no limit on shares imposed on any of the instruments above.</li> </ul>	<ul style="list-style-type: none"> <li>• Instruments which are not subjected to <i>Wasiyyah</i> (bequest) rules:</li> <li>1) Statutory disposition</li> <li>2) <i>Faraid</i></li> <li>3) <i>Iqrar</i></li> <li>4) Jointly acquired property</li> </ul>

According to INCEIF (2006) and Ismail (2007), the distinguishing feature of estate planning for Muslims can be observed through the four dimensions of Islamic estate planning;

- a) *Faraid* (Islamic law of inheritance)
- b) *Wasiyyah*(bequest)

c) *Hibah* (gift)

d) *Waqf* (charity)

*Faraid* protects heirs' rights with predetermined fixed entitlements of eligible heirs, whereas bequest/*Wasiyyah* allows Muslims to bequeath up to one-third of the estate to non-heirs and they may opt for *Hibah* if unlimited devolution is their main concern. *Waqf*, is an act of giving to charity and is a mean for Muslims to devote their faith to Allah to gain rewards in the hereafter. Therefore, *Wasiyyah*(bequest), *Hibah*(gift) and *Waqf*(charity) are estate planning tools which Muslim can use to accommodate the laws of inheritance (Alma'amun, 2010).

In Islamic law of inheritance, after the death of the deceased, his or her estates must first be distributed according to *Faraid* (Islamic law of inheritance). There are four successive duties, which need to be performed prior to the distribution of the estate according to *Faraid* (Islamic law of inheritance). The first step is the payment of funeral expenses for the burial of the deceased paid from the estate of the deceased, followed by the payment of debts. The next step is the settlement payment of legacies pursuant to the deceased's wishes under a Will. Finally, the distribution of the remaining estate left by the deceased in accordance to the law of inheritance (Rumsey, 1971; Ismail, 2007). Even though the distribution of estate for Muslims is confined within its own system of *Faraid* (Islamic law of inheritance), there is some space for Muslims to plan their estate according to how they see fit through means of *Wasiyyah*, *Hibah* and *Waqf*.

*Wasiyyah* (bequest) is an essential mean of channelling property to non-heirs who are disqualified from inheritance due, for example, to some impediments such as being of a different religion to the deceased or being barred from inheritance for some

reasons. *Hibah*, the bequest of up to one-third could be another option to ensure they receive some of the estate left by the deceased (Coulson, 1971). Nowadays, leaving *Wasiyyah* is an easy task since we are living in a technologically advanced era. Many people do not know that leaving a *Wasiyyah* assists in smooth processing and settlement of the estate administration. Thus, it shows that beyond the provision of *Faraid* and bequest, Islamic estate planning for Muslims demands a proper planning. Moreover, it is important and recommended for each Muslim to write a will prior to death because the will allow them to decide what happens to their money, property and possessions after death (Harbi, 2013).

With reference to a *Hadith*, narrated by ‘Amr bin Al-Harith, the brother of Prophet Muhammad’s (*pbuh*) wife, Juwairiya bint Al-Harith : “*When Allah’s Messenger died, he did not leave any Dirham or Dinar(i.e Money), or a slave or a slave-woman or anything else except his white mule , his arms and a piece of land which he had given in charity.*”

As the third dimension in estate planning, *Hibah* is another useful instrument in estate planning. Whereas bequest is limited to one-third, *Hibah* is an alternative to Muslims who want to provide more of their property to their heirs or non-heirs. It has to be completed during their lifetime so that the property is not subjected to *Faraid* (Ismail, 2007) In spite of this advantage, sometimes *Hibah* is insufficient in solving inheritance matters as the receiver of the *Hibah* may misuse or mismanage the property (Ismail, 2007). For example, a son might evict his parents once the property is transferred to him by his parents.

With reference to *Hadith*, narrated by Abu-Huraira: A man asked the Prophet “*O Allah’s Messenger! What kind of charity is the best?*” He replied, “*To give in charity when you are healthy and greedy, hoping to be wealthy and afraid of becoming poor. Don’t delay giving in charity till the time comes when you are on the deathbed when you say, ‘Give so much to so-and-so and so much to so-and-so,’ and at that time the property is not yours but it belongs to so-and-so(i.e your inheritors).*”

*Waqf* is a permanent dedication by a Muslim of any property for any purpose that is allowed by *Shari’ah*. Abu Yusuf defines *Waqf* as “taking the corpus of any property out of the ownership of one self, transferring it permanently to the ownership of God and dedicating its usufruct to others” (Tanzil-ur-Rahman, 1980:103). *Waqf* could be for charity, religious motive or for the benefit of the founder’s descendants (Carroll, 2001; Rasban and Mohd., 2006).

#### **1.4.2 The Administration and Distribution Of Estates of Muslims In Malaysia**

Laws pertaining to muslim wills in Malaysia in particular only exist in three states: 1) Selangor (Hassan, 2005; Disa, 2007, Hassan and Yusop, 2006, Mohd. Awal, 2007), 2) Melaka and 3) Negeri Sembilan (Disa, 2007). However, State Islamic Administration Enactments have generally provided a certain jurisdiction power for the *Shari’ah* Court to deal with Muslim wills (Disa, 2007; Hassan and Yusop, 2006).

*Wasiyyah* has to be managed by a qualified person such as lawyer or any other organizations that are involved in making *Wasiyyah* such as Amanah Raya Berhad(ARB, a trustee entity), Majlis Agama Islam Selangor (MAIS, state religious

agency), and many others. Nowadays, many insurance companies participate in making *Wasiyyah* parallel with insurance protection.

ARB, a public sector institution, acts as an executor, administrator, trustee or guardian (either alone or jointly with any person or body of persons) as provided in the Public Trust Corporation Act 1995. Small Estates (Distribution) Act 1955 states that ARB can act on behalf of the person claiming the estate and ARB is required to attend the hearing in front of the Collector (Abdul Rahman, 2007:83; Marican, 2008:12; Public Trust Corporation Act 1995 (Act 532), 2008). With regard to the estate administration, the Public Trust Corporation Act 1995 empowers ARB to administer the movable estate (where the value of which is not more than RM600,000) whether a person dies testate or intestate. Such estate has to go through different procedures depending on the value of the estate.

In Malaysia, the administration and distribution of a deceased Muslim's estate begin with the determination of whether the deceased dies intestate or testate. Testate basically means that the property left behind by the deceased is provided for in a Will and an Executor has been appointed by the deceased before his death to implement his wishes relating to the distribution of the property to the chosen beneficiaries who may or may not be his family members which in the English Law is also called heirs. Executor or also known as '*Wasi*' in Islam is the person that is responsible for managing the affairs of the child, the return of the loan, or the payment of the debt as a representative of the deceased with the responsibility given by the deceased. (Al-Bugha *et.al.*, 2006). All properties movable and immovable must be stated in the Will otherwise they will become intestate properties. Meanwhile, intestate refers to the properties of the deceased person who has not left a Will *i.e* he has not appointed an

executor prior to his death nor has he planned his estate *i.e* he has not provided who is supposed to get what upon his death. His family members will, by consensus, appoint an Administrator who will apply for the Grant of Letters of Administration. Consequently, small intestate matters (<RM600,000) are handled by the Department of Director General of Lands and Mines after a petition is lodged by any person claiming to have an interest in the estate. Once there is a *Wasiyyah*, the administration and distribution of an estate less than RM600,000 goes to the High Court. However, estates where the value is more than RM600,000 regardless of whether the deceased died intestate or testate have to go through the High Court.(Alma'amun, 2010)

The difference between both processes is that an executor is required to obtain a Grant of Probate for testate death, while an administrator is required to obtain a Letter of Administration for intestate death. In the absence of a *Wasiyyah*, heirs must provide two sureties for estates where the value is more than RM600,000. In this matter, the *Shari'ah* court has rights to determine the eligible heirs and certify their shares by issuing the inheritance certificate (Abdul Rahman, 2007; Marican, 2008; Yaacob, 2006; INCEIF, 2006; Administration of Islamic Law (Federal Territories) Act 1993 (Act 505) & Rules, 2006:22-23; Small Estates (Distribution) Act 1955 (Act 98) & Regulations, 2007)

In the case when a person dies testate or intestate, ARB has an authority to administer the movable estate where the value is less than RM600,000. However, such estate has to go through different procedures depending on the value of the estate. If the value does not exceed RM50,000 in cash, ARB will issue the Order and deliver it to the heirs. Meanwhile, if the value is between RM50,000 and

RM600,000, a Declaration will be issued and the assets will be pooled together. After the net estates of the deceased have been determined, ARB will proceed with the distribution according to *Faraid* (ARB, 2006:41; Abdul Rahman, 2007:21; Public Trust Corporation Act 1995 (Act 532), 2008:82-83; Yaacob, 2006:173-174).

The administration of *Shari'ah* courts is governed by Islamic Laws that are placed in the State List of the Federal Constitution (Noordin, Shuib, Zainol, Azam, & Adil, 2012a). The legal system of Malaysia is modeled after the British legal systems. As a result, Malaysian Muslims face constitutional issues when it comes to Islamic inheritance distribution. In order to consolidate with the affected legal system and the needs of the multi-racial clients in Malaysia, four institutions are initially authorized to manage Islamic inheritance. They are 1) Amanah Raya Berhad (ARB), 2) Civil High Courts, 3) *Shari'ah* Courts and 4) Office of Land and Mines (Land Office) (Mahamood, 2006). However, British colonization has reduced the jurisdiction of the *Shari'ah* courts, rendering the *Shari'ah* courts not much authority in the distribution of Islamic inheritance (Ahmad Bustami, 2007; Buang, 2006).



## 1.5 Problem statement

In 2005, out of 6.2 million acres of land, 900,000 acres were still recorded under the name of the landlords who are dead. From the government's perspective, it loses a fraction of income in the form of the land tax estimated at RM200 million (Ahmad & Laluddin, 2010). Almost one million land title deeds still belongs to the deceased (Salam, 2006). On top of that, the number of unclaimed inheritance is increasing over the years (BERNAMA, 2010; Dewan Rakyat Parlimen Kedua Belas Penggal Ketiga Mesyuarat Pertama Bil. 11, 2010; Rakyat Guides 3, 2010; Salam, 2006). The accumulation of unclaimed inheritance is a serious problem and needs to be addressed (Noordin *et al.*, 2012).

It was reported by News Straits Times 2007(January 22) and 2009 (September 28), that there is a total of assets worth about RM40 billion which has not been claimed by the deceased heirs. This resulted from a high number of deceased who died without leaving a Will. These unclaimed assets are in the form of cash and non-cash assets. The unclaimed assets are land and property which accounted for about RM 38 billion; RM1.5 billion is with the Registrar of Unclaimed Monies; and more than RM 70 million in the Employees Provident Funds (EPF).Nevertheless, only about 10 % out of a total population of 28,306,700 million people in Malaysia have their wills registered(Star, February 21, 2010).

A study done in 2011 showed that about RM42 billion of the frozen estates have not been distributed to the beneficiaries. The number of entitled beneficiaries who are entitled to receive the estate is about 500,000 (Mujani *et al.*, 2012). These statistics do not divide the amount of frozen estates between Muslims and non-Muslims in

Malaysia. In 2012, the amount of frozen estates is already RM45 billion and this statistic are predicted to increase every year (Shahrul, 2012). This statistics is alarming and there is an urgent need to solve the problem of unclaimed inheritance among Muslim society. It is vital to teach Muslims the right tools in doing estate planning. There is also about a million land titles that are still in the name of deceased. An interview conducted in early 2011 with the management of Amanah Raya Berhad confirmed that this scenario has not changed (Dahan, Mara, & Ahmad, 2012).

From another point of view, Muhamad (2007) states that about 90 percent applications for estates administration and settlement comes from Malaysian Muslim's. This might be due to fact that the length of the period extracting a Grant of Probate for a person who dies with a will is shorter *i.e.* less than six months. This can be compared to the period for extracting a letter of administration for a person who dies without a will that is much longer (Hassan and Yusop, 2006:154; Hassan, 2005b). On the other hand, Yaakob(2006) states that for the intestate cases, it may take about three to ten years to be settled and sometimes it can reach to more than twenty years. It is very clear that leaving a *Wasiyyah* prevents heirs from experiencing extensive estate administration procedures and hassle.

Majority of Muslims in Malaysia do not look at estate planning seriously. Previous research prove that some of them are sceptical about making a *Wasiyyah*. (Alma'amun,2012) The evidence can be seen by having large number of Malaysian Muslim's not having *Wasiyyah*. Information from available resources indicates that, in general, awareness of *Wasiyyah* practice is not very encouraging, specifically, among Malaysian muslims(ARB, n.d.a; Jin, n.d.; Omar, 2006:17; Omar, 2009:3).

Further, findings from a study conducted by Rosman & Abdul Razak (2008) show that Malaysians' level of awareness and understanding on the importance of will writing are relatively low. Hence there is still no answer to the question of what makes the Muslim community hesitate to adopt *Wasiyyah*.

To add to this, there is a lack of studies done on Will adoption in Malaysia. In addition, the law of Islamic Will regulations is only endorsed by the states of Selangor, Malacca and Negeri Sembilan. However there are still problems that occur with regards to the inconsistencies of wealth distribution upon death. This can be seen from a total of assets worth about RM40 billion left by Malaysians that are still not claimed by their heirs as most of them passed away without leaving a Will (News Straits Times 2007,2009). The total unclaimed assets that belongs to Malaysian Muslims is now about RM 38 billion out of RM 40 billion.(Dahan *et al.*, 2012)

Previous research has identified several factors that contribute to the current scenario. It ranges from sociodemographic, economic, health-related factors, knowledge, cultural values, religiosity, institutional factors to inheritance law(Alma'amun, 2010). A study done by Goetting & Martin(2001); Lee, (2000);O'Connor,(1996) come with a conclusion that net worth ,education and income are significantly related to having a Will.On top of that, the occurrence of stressful life events (*i.e.*, retiring, becoming a widow, being diagnosed with critical health problem such as cancer, tumor), or the anticipation of such events, are also found to be one of the reasons that may motivate the individual to adopt a will (Palmer, Ph, Bhargava, & Hong,2006). Nevertheless, intergenerational transfers of income, saving, and money is determined from bequest motive and this makes bequest m otive important (Tin, 2009). However, there are not many studies that

examine the relation of this variable with *Wasiyyah* practices. Indeed, the only study (Tin, 2009) pertaining to the relationship between transfers of income, saving and money with bequest were done for conventional estate management. Therefore this study extends the previous study by adding related variable with wealth management focusing on Islamic point of view which is *Wasiyyah* practices.

Not many people understand the implication of division of wealth in accordance to *Faraid*. Majority believe that will is against Islamic teaching. Majority of Muslims are not aware that having a will is encouraged in Islam. Previous study done by Dahan *et al.*, 2012, state that even with the advancement in technology the level of awareness and understanding amongst Muslim community worldwide pertaining to Will is very low. This is also argued by Noordin *et al.*, 2012. They state that IT advancements also reduce the problems of delay in the management of inheritance, such as e- *Shari'ah* portal ("E-*Shari'ah* making courts efficient," 2007; N. Zakaria, 2004), USM's e-*Faraid* software (Abd Majid & Mt Piah, 2005; S. Hamzah, 2002) and e-Tapp system. Even with these advancements, the number of unclaimed inheritance is still not decreasing. The intention of e-government in Malaysia is to transform the operations as well as to improve their services to the public but the number of unclaimed estates still increases. (Noordin, Shuib, Zainol, Azam, & Adil, 2012).

Futhermore, it has been observed that Muslims are also handicapped with no clear guidelines regarding the processes to be followed on claim rights under Islamic inheritance law. Due to this, they have, over the years, endured spending lots of time and money before realizing their rights to the estates (Abd Ralip, 2011; S. G. Abdul Rahman, 2006; Mahamood, 2006; W. A. H. Wan Harun, 2009; Yaacob, 2006). A

previous study done by Afiqah, Azmi, Tahir, & Mohammad(2011) state that the law and the process of claiming estate is complex resulting from the existence of various regulations and involvement of several bodies in the distribution of the estates. Moreover, this has led to overlapping of powers and responsibilities of these entities. To add to this, the complexity of the law might affect the heir of the deceased decision to claim the estate as the heir may be confused by the complexity of law and procedures that are involved.

A number of studies have examined bequest motives. Although there are studies that have included bequest motives as an explanatory variable to explain bequest action (*e.g.*: Alma'amun, 2010;Shahnaz & Mahdzan, 2010;J.Tin,2010), not many have explored factors to influence bequest motive or *Wasiyyah* practice from Islamic point of view. Moreover, a small number of studies have been specifically concerned with barriers of bequest practice and too little studies have focused on barriers of *Wasiyyah* in Islamic point of view. According to Sargeant & Hilton, (2006), the potential barriers for will adoption are time, cost, inconvenience, “insensitive marketing,” and “insufficient funds to make a difference”.

Previous studies are more focused on the rulings of *Wasiyyah* and the operational framework of *Wasiyyah* as a tool of estate planning, but empirical studies on factors influencing *Wasiyyah* writings and barriers of making *Wasiyyah* is scarce.

In summary, the problem statement for this study would be as below:

“*Wasiyyah* adoption has not been accepted widely in Malaysia. This would lead to problems after the deceased has died. It is vital that the factors leading to the *Wasiyyah* adoption and its barriers are studied.”

## 1.6 Research Objective

The objectives of this research are:

1. To examine the relationship between the elements that influencing the adoption of *Wasiyyah* among Muslims in Malaysia.
2. To identify the barriers in Islamic inheritance distribution.



## 1.7 Research Question

This research will seek to answer the following questions:

1. What are the factors which can influence *Wasiyyah* adoption?
2. What are the barriers in Islamic inheritance distribution?



## 1.8 Significance of the study

This study extends the existing literature in several dimensions. Firstly, this study fills the gap in the literature by studying the intention and barriers in adopting *Wasiyyah* among Muslims in Malaysia. A review of literature shows that many studies widely covers the conventional perspectives (Sargeant & Hilton, 2006; Palmer *et al.*, 2006; Wiepking, Scaife, & McDonald, 2012). Only few studies have focused on the same issue from Islamic perspectives, Alma'amun (2010), and Dahan *et al.* (2012). Therefore this study hopes to contribute in the area of Islamic estate planning which has not been widely covered on *Wasiyyah* practices.

Secondly, this study extends the model developed by previous studies on *Wasiyyah* practices (Alma'amun, 2010) by adding a new variable, which is, factors that inhibit *Wasiyyah* practices. No studies have focused on barriers of *Wasiyyah* practices except from conventional point of view (Sargeant & Hilton, 2006). Therefore, this variable helps in investigating factors that make Muslims avoid leaving *Wasiyyah*. This contributes to the relevant literature that can help to affect the policies of various stakeholders and Muslims' perceptions towards *Wasiyyah*.

Thirdly, previous research have justified that the level of awareness and understanding among Malaysians on *Wasiyyah* writing is relatively low. Therefore it is hoped that this study can help the existing efforts to improve the perception, awareness, and knowledge of Malaysian muslims towards Islamic wealth management, financial planning and estate planning, as well as *Wasiyyah* adoptions. Fourthly, this study extends the independent variable from the existing literature by investigating the relationship between life events (widow, disability, health status)



and *Wasiyyah* adoptions. This study will also gauge the level of knowledge among Muslims societies about Islamic inheritance system especially *Faraid*, especially among youngsters. On top of that, this study will be a source of reference on *Wasiyyah* adoptions for policy makers and academicians. It is hoped that this study will be able to give new ideas on *Wasiyyah* ruling organizations in developing new tools to make *Wasiyyah* writing more convenient to the public.



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In 2012, she commenced her Master of Science in Islamic Finance at Graduate Business School, Universiti Putra Malaysia. During her academic career, together with her supervisors, Dr. Mohd Hisham Yahya and Dr. Amalina Abdullah, she presented "*Wasiyyah* Adoption and Its Barriers in Islamic Inheritance Distribution, A review:"(conceptual paper) at the 2014, International Conference on World Islamic Studies ,Penang. She also made another presentation, "*Wasiyyah* Adoption and Its Barriers in Islamic Inheritance Distribution" at the ICEAI Bandung 2014 Conference on International Conference on Emerging Accounting Issues.