

1 Towards Managing the Beneficiaries Rights Via Writing a Will

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7 **Abstract**

8 Wasiyyah or will is a legal document that outlines on how one's estate is to be distributed in
9 the event of affairs after the death of the testator according to Islamic law. Recently, the
10 abundance of wasiyyah property is getting increase year by year resulting the accumulation of
11 these properties without proper distribution among the testator's beneficiary. Consequently,
12 this wasiyyah caused detrimental to the testators' beneficiaries and indirectly indicates the
13 failure to fully understand the whole concept of Islamic property management via wasiyyah.
14 On top of that, the confusion between wasiyyah, hibah, waqf and other Islamic property
15 management might also lead to the above situation. This study therefore will further examine
16 the concept and the conditions of wasiyyah and provide the procedure involved in the
17 documentation of wasiyyah with special reference to As-Salihin Trustee, one of renowned wills
18 Management Company in Malaysia.

19

20 **Index terms**— wasiyyah, as-salihin trustee, beneficiaries, islamic property management.

21 **1 Introduction**

22 Islamic inheritance system is comprised of a number of micro institutions: faraid (law of inheritance), wasiyyah
23 (will) and hibah (gift). Therefore, this section presents a discussion on faraid, wasiyyah and hibah in detail.
24 Briefly, faraid is defined as the Islamic law of succession or the Islamic law of inheritance, which is one of the
25 most important branches of Islamic jurisprudence. Hibah according to Islamic law is an aqd (contract) that entails
26 granting ownership of a property to someone else during his lifetime without any reprisal (iwad). ??Zamro, n.d).
27 Meanwhile, wasiyyah is defined as a gift from a person to another for example; wealth, property or benefit after
28 the death of the testator. However, the transfer of ownership will only be effective after the death of the testator
29 to the beneficiaries. Wasiyyah and hibah are the two most common supplementary mechanisms available within
30 the comprehensive Islamic inheritance system for the devolution of property.

31 Wide range of literature point out that wasiyyah is a declaration in the prescribed form of the intention of
32 the person making it (testator) of the matter which he wishes to take effect on or after his death, until which
33 time is revocable (Zulkifli n.d). This denotes that it is a legal document which enables us to determine how our
34 property to be distributed upon our death. Furthermore, it is neither a contract nor an agreement, which will
35 only take effect upon the death of the testator. Some scholars further stress that wasiyyah is the granting of a
36 right by the testator which could be done verbally or otherwise. Even so, all of the four Sunni schools of law
37 are unanimously agreed that the execution of wasiyyah of the deceased should be only be permissible after the
38 fulfilment of the payment for the funeral expenses and upon the settlement of the deceased debts. To further
39 strengthen this point, there is evidence from Quran and Hadith that shows Islam permits and encourages Muslim
40 to do their wasiyyah. Prophet Muhammad PBUH says, "It is not befitting for a Muslim to abide for three nights
41 without having his (her) 'Will' with him (her)." Abdullah bin Umar RA said, "Since I heard this from Allah's
42 Messenger PBUH, I have always had my 'Will' with me." (Hadith No. 3648, Book of Wills, Sunan An-Nasa'i,
43 Vol. 4).

4 A) AUTHORITIES OF WASIYYAH FROM QURANIC VERSE AND HADITH

44 In spite of the recognition of making wasiyyah, this permissible of writing wasiyyah is limited to only certain
45 situation. It denotes that according to general Islamic principle wasiyyah will not be applicable to beneficiaries
46 since these beneficiaries have their own portion as have already stated in the Quran, which will be distributed
47 accordingly according to faraid. Faraid could be considered as one of the asset redistribution mechanism in
48 Islamic law. This article will provide an overview of wasiyyah and its authorities according to al-Quran and
49 hadith (prophetic tradition) as well as wasiyyah practice in Malaysia. It will then analyse the documentation of
50 wasiyyah with special reference at As-Salihin Trustee and subsequently discuss the implication for non-practicing
51 documentation of wasiyyah in Malaysia. This article then presents recommendations on how the aforementioned
52 issues may be addressed by suggesting a proper wasiyyah documentation process that complies with both Shariah
53 and Malaysian law. Finally, the outcome of this paper signifies the documentation of wasiyyah is among the vital
54 part that need to be taken into consideration within Muslim's life as this practice could uphold and maintain the
55 established principle in Islam in ensuring the family's welfare are protected.

56 2 II.

57 3 Definition of Wasiyyah

58 Wasiyyah (will or bequest) is defined as the gift from a person to another; like material wealth, property or
59 benefit to be owned after the death of the giver. Taking from its root word "wassa" it entails to order, advise,
60 promise or give away property after death. Meanwhile, in a legal terminology, wasiyyah is a legal document that
61 outlines how one's estate is to be distributed in the event of affairs after death. Shafii scholars on the other hand
62 conclude that "wassa" as connecting or delivering ??Zamro n.d) where it connects or delivers someone good deeds
63 during his lifetime to be rewarded later after his demise. Similarly, it could be understand as a gratuitous gift of
64 property by its owner to another, contingent on the giver's death (which gift takes effect on the giver's death).

65 Apart from that, a declaration in the prescribed form of the intention of the person making it of the matter
66 which he wishes to take effect on or after his death, until which time it is revocable is another technical meaning
67 of wasiyyah (Zulkifli n.d). As it undertakes as a legal document, it would enables us to determine how does
68 our property shall to be distributed upon our demise. It is neither a contract nor an agreement and will only
69 take effect upon the demise of the testator. According to some Muslim scholars, wasiyyah is the granting of a
70 right that is implemented after the death of the testator, either verbally or otherwise. Based on explanation
71 from Abdul Karim Zaydan (2013), wasiyyah is to grant ownership to someone voluntarily after the death of the
72 testator in terms of possessions or benefits.

73 Islam encourages every Muslim do their wasiyyah before they are pass away. This is evidence based on various
74 hadith Rasulullah SAW encouraging Muslims to make wasiyyah. In one hadith, Rasulullah SAW said, as narrated
75 from Abdullah bin Umar RA that Rasulullah SAW said, "It is not befitting for a Muslim to abide for three nights
76 without having his (her) 'Will' with him (her)." Abdullah bin Umar RA said, "Since I heard this from Allah's
77 Messenger PBUH, I have always had my 'Will' with me." (Hadith No. 3648, Book of Wills, Sunan An-Nasa'i,
78 Vol. 4). This respective hadith signifies that wasiyyah is a gift to another party, either in the form goods, debts
79 or benefits, to be owned by the recipient after the death of the testator dead.

80 4 a) Authorities of Wasiyyah from Quranic verse and Hadith

81 Most of companions including Abu Bakar, Ali Ibn Umar and the four mazhab (schools of thought), including
82 Shafie perceive that the obligatory (wajib) law was repealed by the verses of al-mawarith in al-Quran 4: 176. This
83 respective verse specifically provides the provision of the heirs' portion that should be distributed accordingly
84 upon the distribution of the inheritance. In this effect, Allah SWT already states to the effect that;

85 "Another hadith narrated by Ibn Umar (R.A) reported Rasulullah SAW as saying: "It is the duty of a Muslim
86 who has something which is to be given as a bequest not to have it for two nights without having his will written
87 down regarding it" (Hadith No. 3987, Book of Bequests, Sahih Muslim, Vol. 13). Similarly, analysing to the
88 above authority from Quranic verse and hadith, it implies that the act of documentation of wasiyyah is very
89 encourage and permissible in Islam provided that such recognition be only recognized towards nonbeneficiaries.
90 As mentioned before, no wasiyyah is permissible to beneficiaries. This is the general principle that Muslims
91 should adhered to. However, there is fiqh ruling that give an exception to certain cases. This denotes that in
92 some circumstances only, the documentation of wasiyyah to beneficiaries are allowed but the portion received
93 should not more than 1/3 of the deceased property and asset and should have prior consent from other heirs. This
94 exception to the general ruling is relatively not repugnant form the general principle of Islam under the Islamic
95 law of property but rather to uphold the principle of masalih mursalah (betterment of society) which consider
96 as one of the established principle in Islam. Imperatively, the documentation of wasiyyah for the beneficiaries
97 are permissible in the event where there might be a possibility for the respective beneficiary to only entitled
98 for a small portion of property through the distribution of faraid. As such for he or her maslahah, this act is
99 permissible especially those who are in poor and needy. It is further proven by one hadith narrated from Abu
100 Hurairah that Rasulullah SAW said: "Allah (SWT) has been charitable with you over the disposal of one third
101 of your wealth at the time of your death, so that you may be able to add to the record of your good deeds". This
102 hadith is considered as dhaif (weak) hadith. ??

103 **5 Wasiyyah Practice in Malaysia**

104 In general, Muslims in Malaysia are aware and familiar with the term wasiyyah and its functions as mechanism
105 in managing the inheritance in Islam. However, the issues on abundance of wasiyyah property that are increasing
106 year by year without proper distribution among the testator's beneficiary prove that the wasiyyah issues in
107 Malaysia is not a straightforward assignment. The first hurdle lies in the rules and regulations that are
108 related to estate administration and settlement. Interestingly, in Malaysia, dying intestate and testate is dealt
109 under different legislations and authorized bodies. Even with the involvement of various authorized bodies and
110 compliance with the provisions of legislations, it still does not assure that the process of estate administration
111 and settlement will be smooth (Z. ?? Ghul et.al, 2015). Previous studies show that it is easier to administer
112 and settle testate estate. It may take years to settle the case of dying intestate as it could lead to frozen estate
113 problems and delays in the settlement period. Study conducted by Ahmad and Pyeman (2008) on the practice of
114 making a wasiyyah among Malaysian Muslim found out that the respondent are aware and familiar with the term
115 wasiyyah but they do not have a clear understanding about it. Most of the respondents agreed that wasiyyah is
116 made to protect the welfare of those whom one wishes to give one's assets to but are not eligible under the faraid
117 law such as adopted children. This is in line with the finding by Yaacob (2006) that the main reasons Malaysian
118 Muslim community practises Wasiyyah is to protect adopted children, and to get rewards for good deeds in the
119 hereafter ??Yaacob, 2006).

120 Other main influential factors that motivate a Muslim to make a wasiyyah are namely to ensure the transfer of
121 the property as the testator intends, health factors, to rapidly carry out the process of property distribution, and to
122 help the needy (Ahmad and Pyeman, 2008). Furthermore, a regression analysis which has been conducted shows
123 that wasiyyah making among Muslims was influenced by three factors: knowledge about wasiyyah, objective
124 of wasiyyah, and benefits of wasiyyah. The results revealed that these factors had a positive relationship with
125 wasiyyah making. Muda et al. (2008) suggest four influential factors for wasiyyah writing practice in Malaysia
126 namely demographic, religious, self-interest and awareness, and institutional factors. According to (Afifah et al.,
127 2011), the law and the process of claiming estates is viewed by many people as a complex procedure because
128 of the numerous regulations and involvements of several bodies in the distribution process. On top of this, the
129 complexity has led to the overlapping powers and responsibilities of these entities. As a result of the complex
130 law and procedures, heirs of the deceased may possibly be confused. This may affect their decision to claim the
131 estate. (Afifah et al., 2011).

132 IV.

133 **6 Documentation of Wasiyyah: An Overview at As-Salihin 134 Trustee**

135 Drawing up a properly designed wasiyyah and appointing an executor could be seen as the essential product of
136 Islamic estate planning as it is the main procedure a Muslims should prepare before proceeding with other means
137 of estate planning. As-Salihin Trustee (As-Salihin) is a trust company incorporated under the Companies Act
138 1965 and registered under Trust Companies Act 1949. As-Salihin was established in 2005 to meet the needs of
139 Muslims to preserve protect distribute their assets for the benefit of their heirs once they depart for the hereafter.
140 As-Salihin aims to provide all its services relatives to estate planning in a manner based strictly on the shariah.
141 It has its own mission and vision in strengthening their establishment; provide all its services, relative to estate
142 planning, in a manner based strictly on the shariah. This indicates the principle of shariah is strictly adhered
143 to in it operation, management and services. It is pertinent to further notes that few services provided by As-
144 Salihin which include among others; wasiyyah writing services, declaration of hibah, golden age trust, business
145 continuation plan and waqf documentation. In ensuring their operation are well manage, they also cooperate
146 with some respective corporate alliance for example RHB Islamic Bank, Al-Rajhi Bank, Kuwait Finance House,
147 United Overseas Bank and CIMB Wealth Advisor.

148 It is interesting to further points out that mutual confidence is the main element that should be greater
149 emphasized by a Trustee company. In order to achieve this, As-Salihin has further developed their plan and
150 laid down certain essential criteria, which could generate people's mutual trust and confidence in the process
151 of documenting wasiyyah. The most important part is that this respective company guarantied its perpetual
152 existence and continuity, which means it, has a perpetual succession. With its team of full time legal staff,
153 it will ensure continuity in the administration process until the final distribution. Apart from that, unlike
154 individuals acting as trustee's accountability and impartiality is another crucial element is given greater care by
155 this company. Since the company has been recognised as a regulated body, they are legally obliged to ensure that
156 the moneys bequeathed are properly managed, accounted for and distributed to. On top of that, as a corporate
157 body, As-Salihin will be independent and impartial towards all beneficiaries compared to individual trustees who
158 may have emotional ties or other personal relationship with the beneficiaries. Professionalism and competence
159 are also pertinent in order to gauge customer's perception and expectation. It provides reasonable cost for the
160 overall administration and in this company has been supported and supervised by a respective Shariah Advisory
161 Board. Meanwhile it is a norms practice that an executor will be appointed to carry out the testator's wishes
162 and wasiyyah where in this situation, an administration bond is required in which case an administrator will
163 be appointed and granted a letter of administration with wasiyyah annexed. In fact, this administration bond

8 CONCLUSION & RECOMMENDATION

164 is required where the gross value of the estate exceeds RM50,000 unless a trust corporation is appointed as the
165 administrator. Unlike this well known practice, as a trust company, As-Salihin is statutorily exempt from this
166 requirement. In addition to that, the legal process to administer testator's estate after the demise is appreciably
167 shortened since no contention among the beneficiaries arises on who should administer the estate. Therefore,
168 these positives criteria's clearly indicates the seriousness of As-Salihin to carry out such responsibility and provide
169 the best services for Muslims. As such in order to gain demand from the client, an active promotion is done
170 via their Facebook, website and by organising certain event related to waqf and management of inheritance in
171 Islam. Apart from the strong collaboration had been established with few banks for example RHB Islamic Bank.
172 Flyers and pamphlet had been actively distributed to the customers by the hashtag "Leave your legacy behind
173 for them". This active promotion by RHB Islamic Bank on behalf of As-Salihin could to certain extend generate
174 awareness among Muslims customers.

175 Having established on this respected company managing intestate will once should bearing in mind and fully
176 understands on the reason why do Muslims need to have proper planning to our properties. Are the any differences
177 between intestacy (without will) and the testacy (With will) in the event to liquidate the asset leave behind? The
178 table below indicates the procedure involved in the process of liquidation of Muslims property after his death.

179 7 Global Journal of Management and Business Research

180 Volume XVI Issue III Version I Year () It should be further notes that in terms of typical time frame, in the
181 case of testacy that make a wasiyyah the duration period starting from petition, probate obtained and estate
182 distributed will last for about 18 month which equivalent to 1 year 6 month. Meanwhile, the duration period
183 for the settlement of intestacy (without will) estate up to the estate being distributed will consume for about 5
184 years. This fact shows that unlike the intestacy who did not make a wasiyyah, the period for those who make
185 wasiyyah (testacy) is shorter than those who not. Testacy (With Will) Intestacy (Without Will) Wasiyyah is
186 one of the methods that can be applied to distribute property after the death of giver to non-beneficiaries. Even
187 though the original ruling said wasiyyah will only be effective towards non beneficiaries, this general ruling has
188 still subject to exception where some scholar agreed that wasiyyah will also be applicable towards beneficiaries
189 provided that all of the beneficiaries unanimously agreed to such implementation.

190 Via interview session conducted with Mr. Irwan of As-Salihin, the findings reveals that the failure on the
191 part of Muslims to have proper documentation of wasiyyah would be amounting to the accumulation of frozen
192 asset. He further adds that the beneficiaries would be detrimental causing by non-documented wasiyyah. In this
193 situation, it will lead to conflicting among those beneficiaries and tension will occurs stressing for their rights.
194 Amanah Raya Berhad has given the same view where it was stated that RM 52 million of property had frozen
195 because of lack of awareness on documentation of wasiyyah (Utusan Malaysia, 2013). Noh Gadut, former Mufti
196 of Johor in his press statement also gives the same idea where a lot of problem like fight among beneficiaries,
197 frozen property and non-beneficiaries will not get their right will arise (Harian Metro, 2012). It surprising facts
198 nowadays the amount of frozen asset that unable to distribute increasing year by year and the most surprising,
199 the asset that unable to distribute almost 50 years (Abdul Aziz Peru, 2013).

200 VI.

201 8 Conclusion & Recommendation

202 The abandonment of wasiyyah property seems to increase year by year causing the accumulation of these
203 inheritance properties. Also, the absence of proper distribution among the testator's beneficiary would worsen
204 the situation. Hence, understanding on the concept and the documentation of wasiyyah as well as the procedure
205 involved in the documentation of wasiyyah would provide the best mechanism and option to manage the properties
206 particularly the inheritance via wasiyyah accordingly. Apart from that, this would serve as useful information
207 for the stakeholders particularly Muslim community on the importance of documentation of wasiyyah for the
208 protection of their beneficiaries. Future studies could embrace on quantitative study based on a larger sample and
209 over a longer period of time in order to get more respondents who are involved with wasiyyah. By conducting
210 questionnaires and interviews, more in depth information can be gathered to examine the factors that can
211 increase wasiyyah adoption among Malaysian Muslims. The analysis would be more accurate in determining the
212 factors that can influence people in writing a wasiyyah. It is also recommended that the government institutions
213 undertake research on these particular topics on a larger scale, since the case study method is relatively restricted
214 due to several and confidentiality constraints. ¹

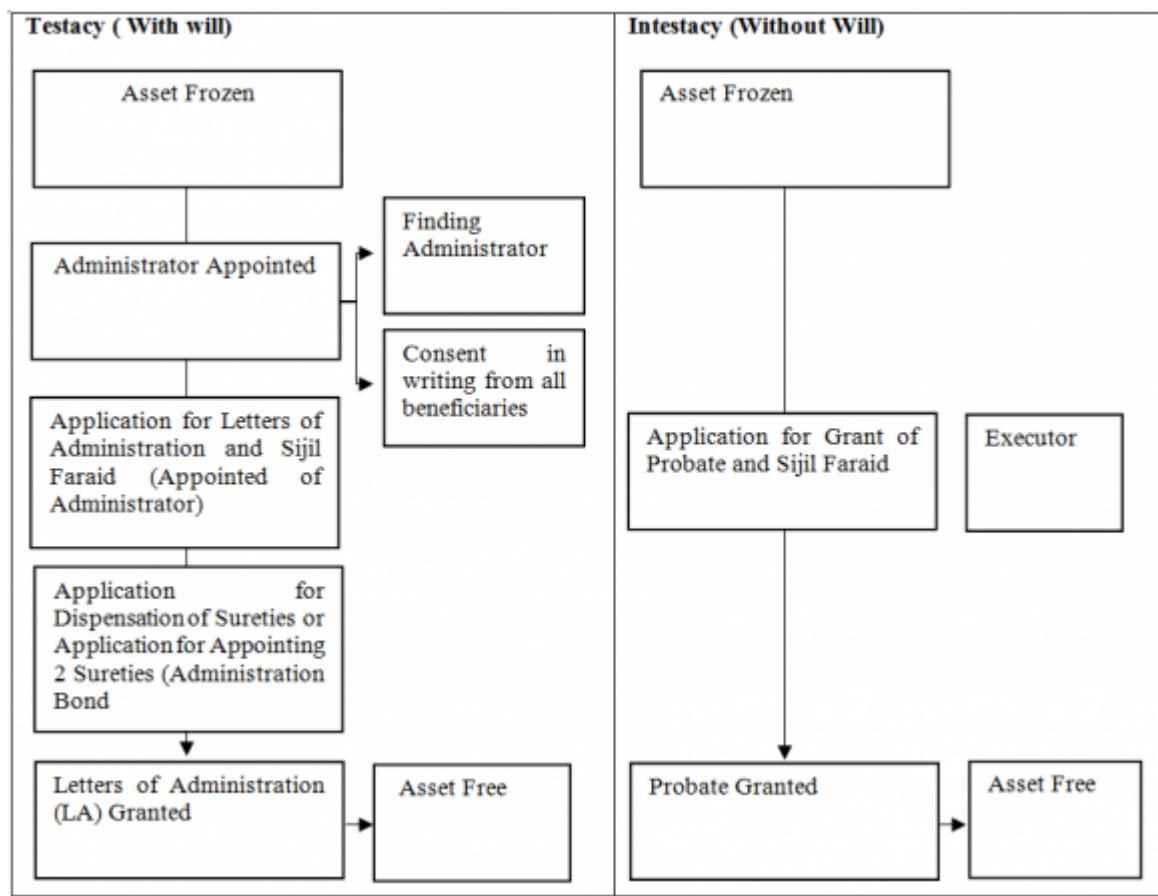


Figure 1:

[Note: "O you believed testimony (should be taken) among you when death approaches one of you at the time of bequest (that of) two just men among you or two others from outside. If you are travelling through the land and the disaster of death should strike you" (Al-Quran 5: 106). The above verse has been supported by one hadith narrated by Ibn Majah where Prophet Muhammad SAW states that: "The worst are those who do not have time to make a will". This hadith in line with another hadith when Prophet SAW further stresses "Anyone who dies leaving a will and he dies on the righteous road and follow the sunnah and he dies as a righteous and in Shahada and with his sin forgiven. (Narrated by Ibn Majah)]

Figure 2:

III.

Figure 3:

1

Figure 4: Table 1 :

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[Note: © 2016 Global Journals Inc. (US)]

Figure 5: Table 2 :

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Figure 6: Table 3 :

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