

Factors Influencing Wasiyyah Adoption and Its' Barriers among Malaysian Muslims

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Abstract. There was an increasing trend in the number of unsettled inheritance cases beginning 2005 onwards (Ahmad & Laluddin, 2010). This unclaimed inheritance poses a serious problem to the country. Mujani *et al.* (2012) stated that estimated of RM42 billion of frozen estates that should be distributed to 500,000 beneficiaries in 2011 have not been distributed. The number of the frozen estates is increasing by 3 billion to RM45 billion in 2012 and this statistic are predicted to increase every year (Shahrul, 2012). The accumulation of this unclaimed inheritance and frozen estates is a serious problem and needs to be addressed as majority of Muslims did not understand the implication of division of wealth in accordance to Fara'id and many more are not aware that writing a Wasiyyah is encouraged in Islam (Dahan *et al.*, 2012). This conceptual paper is proposed to explore the factors influencing Wasiyyah practices in order to minimize the issue of unclaimed inheritance and frozen estates. Factors that has been identified are knowledge, organizations, life events and wealth management. This paper will also identify the barriers of Wasiyyah practices. Questionnaire survey will be used as a research instrument to selected respondents in Selangor and Putrajaya area. The results will be analyze using descriptive and regression analysis. This study will help to improve the existing practice of wealth management particularly in Islamic Inheritance System.

Keywords. Will, Islamic Will, Wasiyyah, Bequest.

1. Introduction

In Islamic Law of Inheritance, after the death of the deceased, his or her estates must first be distributed according to *Faraid*. *Faraid* is defined as the Islamic law of succession or the Islamic law of inheritance, which undoubtedly, is the pillar of the Islamic inheritance system. It is meant to protect heirs' rights with prescription of the fixed entitlements of eligible heirs. Even though the distribution of estate for Muslims is confined within its own system of *Faraid*, there is some space for Muslims to plan their estate according to how they see fit through means of *Bequest*, *Hibah* and *Waqf*. Bequest or also known as *Wasiyyah* is an essential means of channelling property to non-heirs who are disqualified from inheritance. In Islam, preparing *Wasiyyah* is Sunnah Mua'kad. There is a big difference between a will and a gift (*Hibah*). *Hibah* (gift) is basically any item that one willingly donated while they were alive and mentally competent. Meanwhile, *Waqf* means holding and preservation of a certain philanthropy or sadaqah (charity) with the intention of prohibiting any use or disposition of the property outside the specific purposes. The property is dedicated in such a way that it cannot be sold. An Islamic Will or *Wasiyyah* consists of items, not exceeding 1/3 of one's net assets which one possesses or is entitled to prior to their demise, but cannot be awarded until after their (testator's) death. Another definition for *Wasiyyah* is the distribution of one's wealth to others in terms of debt, beneficiaries or property upon one's death. There is not much different between an Islamic Will and a normal will. However there is a major difference between the two with regard to how one's wealth is to be distributed and who are regarded as heirs. With regard to an Islamic Wills, one's wealth must be distributed in accordance with the Quran and Sunnah with fixed shares being allocated to one's closest relatives. The will in both Islam and conventional financial planning requires that the property will only be distributed after the demise of the testator.

2. Problem Statements

The problem to be addressed in this study is that there has been an increasing trend in volumes of unclaimed inheritance over the years. The latest report in 2012 showed that the amount is already RM45 billion and this shocking statistic are predicted to increase every year. This alarming statistics trigger the

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importance of delivering the Muslim society with the right tools to solve the problems immediately. There is also about a million land titles are still in the name of deceased. An interview conducted in early 2011 with the management of Amanah Raya Berhad (a trustee entity) confirmed that this scenario has not changed. A possible reason of this has been identified that most Muslims in Malaysia do not view estate planning seriously hence previous research proved that some of them are sceptical about making a *Wasiyyah*. The evidenced can be seen by having large number of Malaysian Muslims not having *Wasiyyah*. Information from available resources indicates that in general, awareness of *Wasiyyah* practice among Malaysian Muslims is not very encouraging (Ahmad & Peyman, 2008). It has been identified that the occurrence of stressful life events (i.e., becoming a widow, being diagnosed with cancer, and retiring), or the anticipation of such events, were also found to be one of the reason that may motivate the individual to adopt a will. (Palmer, Ph, Bhargava, & Hong, 2006). Over the years, claim processes were very costly and time-consuming. There exists a low awareness among clients of processes and procedures to follow in order to complete a claim submission process, and identifies lack of guidelines to be the main cause of the problem (Noordin, Shuib, Zainol, Azam, & Adil, 2012). This explain that organization involves with will writing must take an action in order to increase *Wasiyyah* practices. Wealth Management is also found to influence *Wasiyyah* practices. Tin(2009), proved that the long-run elasticity of permanent income is in the vicinity of unity when money demand is broadly defined but also indicate that householders with bequest motives transfer a greater proportion of their permanent incomes to monetary assets than those without bequest motive. Monetary assets are defined as cash, accounts receivable, or a note receivable where the amount is a fixed, stated amount. Therefore this study will extend the previous study by investigating the relationship on how individuals' wealth such as saving, insurance, property, and investment influence *Wasiyyah* practices.

3. Objectives of the study

The objectives of this study is to examine the factors that influencing *Wasiyyah* Practices and its' barriers among Malaysian Muslims in Malaysia. The specific objectives are;

- To determine level of knowledge and awareness concerning *Wasiyyah* practices among Muslims in Malaysia.
- 2. To examine the relationship between life events and *Wasiyyah* practices.
- 3. To examine the relationship between organizations and *Wasiyyah* practices.
- 4. To examine the relationship between wealth management and *Wasiyyah* practices.
- 5. To identify the barriers in leaving *Wasiyyah*.

4. Factors Influencing *Wasiyyah* Practices

This paper suggests that there are four main possible factors that could influence *Wasiyyah* Practices. The factors are knowledge, life events, organizations and wealth management.

4.1. Knowledge

From a conventional point of view, a study done by Rowlingson & McKay, 2005, showed that only a tiny response is given to cost matters and lack of knowledge about making a will. The reason is "because of the expense or "because they do not how to do it", cited by no more than 2 per cent in England, Wales and Scotland. Rowlingson and McKay (2005) reveal that there is a similar lack of knowledge of how inheritance tax is calculated as most people do not know the exact amount of inheritance tax to be paid. Meanwhile from Islamic point of view, majority of Malaysian Muslims do not really want to write *Wasiyyah* for three reasons: they are not really knowledgeable about *Wasiyyah* and its significances; they are reluctant to write *Wasiyyah* even though they are well informed about it; or they cannot afford to draw up a *Wasiyyah* even though they are well informed about it (Omar,2009). In relation to the first reason, it might be more precise to claim that the insufficient knowledge is reflected by their misunderstanding of the concepts of Islamic estate planning, Faraid and *Wasiyyah* (Ahmad & Pyeman, 2008). Another point of view state that many still perceive Will as less important relative to other financial planning documents. The lack of understanding and importance of Will is reflected in the proportion of the population who possessed Will in Malaysia. The Malaysian population total 28.31 million in July 2009 (Department of Statistics and Economic Planning Unit,2009), but

only 10% of the eligible population (those above 18 years old) have prepared their Wills, as reported by Amanah Raya Berhad ,Shahanaaz (2010), Dahan *et al.* (2012). Nevertheless, Malaysian Muslims will do their estate planning when there is an intention to make a *Wasiyyah* for the purpose of charity or for non-heirs (Ahmad & Pyeman, 2008).The latest research from Dahan *et al.*, (2012) also confirmed that the level of awareness and understanding amongst Muslim community worldwide pertaining to Will is very low even with advancement in technology. This issue also argued by Noordin *et al.*, 2012 stated that IT advancements are made to ease the problems of delay in the management of inheritance, such as e- Shariah portal (E-Syariah making courts efficient," 2007; Zakaria, 2004), USM's e-Faraid software (Abd Majid & Mt Piah, 2005; Hamzah, 2002) and e-Tapp system. However these advancements do not have much effect on minimizing the number of unclaimed inheritance.

4.2. Life Events

Some stressful life events, such as being diagnosed with a terminal disease, may cause the individual to anticipate additional end-of-life stressors. Some of these stressors may result from an uncertainty about how the individual's personal belongings and emotional artifacts will be distributed to others, or how the distribution of his or her belongings may lead to strife and conflict among family members and friends. A *Wasiyyah* could be used to manage the current and anticipated stressors associated with major life events (Stum, 2000). Meanwhile, the finding from Kao *et al.*, (1997) stated that being married is found to be positively and significantly related to the expectation of leaving a bequest. Surprisingly, this variable is negatively significant in Sweden but not significant in the United States (Laitner & Ohlsson, 2001).However, being a divorced woman is associated with higher probabilities of intended unequal bequests but this result is not significant (Light & McGarry ,2004). McGranahan (2000) discovers that having a wife does not influence people to bequeath for charitable purposes. It should be noted that marital status is not found to be significant in Jurges's study (2001).Palmer *et al* (2006), stated that adoption of wills and trusts is associated with four life events (i.e., becoming a widow, being diagnosed with cancer, retiring, and having a positive change in assets).With regard to health factor, disabled people are found to be less likely than the nondisabled to expect to leave bequests (Kao *et al.*, 1997). Another empirical result shows that the probability that a mother intends unequal bequests is significantly higher if she is in poor health (Light and McGarry, 2004)

4.3. Organizations

Claiming an estate requires going to various agencies and institutions. Among them are the Civil High Court, Shariah Court, Department of Director General of Lands and Mines, ARB, estate planning entities and banks (Afiqah, Azmi, Tahir, & Mohammad, 2011). The issues of the organizations exist by the existence of various regulations and involvement of several bodies in the distribution of the estates that make the law and the process of claiming estates complex. This has led to overlapping powers and the responsibilities of these organizations. Therefore, an heir of the deceased may be puzzled by the complexity of law and procedures, which may affect his decision to claim the estate (Afiqah *et al.*, 2011). Afiqah *et al.*, (2011) stated that some of the possible causes of unclaimed or delayed distribution of estates are complexity of law and lack of cooperation between various parties. The consequences from this are individuals refuse to write *Wasiyyah* as they thought that the procedures are too complicated. From conventional point of view, study done Horioka *et al.*, (2000) stated that different cultures, traditions, customs and inheritance laws play an important role in shaping the bequest transfers. One could possibly relate inheritance laws to traditions and customs in the sense that in some countries, these traditions and customs constitute part of the countries inheritance laws (Pestieau, 2000). Equal division and male primogeniture are the inheritance laws that are most commonly cited. It is interesting to explore to what extent such inheritance laws affect the bequests. For instance, the full freedom of bequest making is definitely restricted in a society where the equal division rule applies such as in France and Germany (Pestieau, 2000).

4.4. Wealth management

Previous studies identified money demand as one of the factor to influence *Wasiyyah* practices. Economic definition for money demand is the quantity of money balances that the public wants to hold.

They are three basic motives for holding money: for transactions, as a precaution, and for speculation. In general, money demand can be referred to as wealth management. Muda *et al.*, (2006) divided the forms of wealth management into three groups: (i) Managing wealth for the individual's and family necessities as well as mandatory social obligations. (ii) Managing wealth for other people's necessities (iii) Managing wealth for public and general welfare. Tin (2009) stated that bequest motive is positively related to money demand and interacts with the life-cycle motive during various stages of an individual's life. Moreover, householders with bequest motives are more likely to save in monetary assets than those without observable bequest motives. Rossi and Rossi (1990) found that the most common items transferred through wills were personal possessions. Thirty-seven percent or more of the respondents in Rossi and Rossi's study received as beneficiaries photographs, books or paintings, jewelry, dishes and silverware, furniture, or a family bible or history. In comparison, 19% or fewer of the respondents had been beneficiaries of land or property, stocks or bonds, or vehicles.

Meanwhile, Light and McGarry (2004) determine that an individual's financial status – either income or wealth – has no effect on the probability of intending unequal bequests, while the children's income is positively and significantly associated with the probability of intending unequal transfers. People's expectations of leaving a bequest are found to be positively and significantly related to the household income, liquid assets holdings, value of non-liquid asset holdings, amount of inheritance ever received and self-employment status (Kao *et al.*, 1997:368–369). Brooker (n.d.) uses house ownership as proxy for property while Rowlingson and McKay (2005) use property and saving to represent the property itself. The purpose of this is to see the variation of will ownership among those who have and do not have property. Such a relationship is evidenced by Brooker (n.d.) who finally concludes that those who own their home are more likely to have a will than non-homeowners. McGranahan (2006) proves that a 1 per cent increase in wealth increases the probability of making a will by 7 per cent.

5. Evidence on barriers of leaving *Wassiyah*

As according to (Afiqah *et al.*, 2011), the existence of various regulations and the involvement of several bodies in the distribution of the estates make the law and the process of claiming estates complex, which has led to overlapping powers and the responsibilities of these entities. An heir of the deceased may be puzzled by the complexity of law and procedures, which may affect his decision to claim the estate. Even if he makes a claim, the procedures of claiming estates may probably be delayed. This may be true if he made his application before a wrong agency. No matter where the application is made, beneficiaries need to produce the certificate of death by the Department of National Registration. Only a specific group of beneficiaries can apply for such a certificate. In the absence of such a group of beneficiaries a lawyer needs to be appointed. From another point of view, a study done by (Dahan *et al.*, 2012) stated that contentious issues that inhibit will adoption are family misconceptions, family disputes, unhealthy relationship, superstitious, taboo and sensitivity. Superstitious and taboo showed highest mean scores among other issues. This indicates that respondents perceived Will as outright superstitious and taboo as it is linked to premature death and thus lead to the hesitation of Will adoption.

6. Theoretical Framework

This conceptual paper proposed the relationship between variables that influence *Wasiyyah* practices which make it necessary to give a theoretical framework on bequest motives. Three theories namely life-cycle, altruism and dynasty models have been put forth to address the presence of bequest motives from the conventional point of view (Alma'amun, 2010). As far as the religious factor is concerned, the limitation on the definition of bequest from the Islamic point of view was also taken into consideration. In addition, the Islamic theory of wealth could be a theoretical foundation, which explains Muslim behavior towards leaving a bequest out of the one-third portion. This study proposed that knowledge, organizations, life events and wealth management as the independent variables that may influence *Wasiyyah* practices. The variable of knowledge and organization is supported by surah Al-Baqarah (2:180) which reads: "Prescribed for you when death approaches (any) of you if he leaves wealth (is that he should make) a bequest for the parents and near relatives according to what is acceptable—a duty upon the righteous". The particular importance of

the Islamic laws of inheritance is obvious from the verses immediately following those verses giving specific details on inheritance shares, "These are limits (set by) Allah (or ordainments as regards laws of inheritance), and whosoever obeys Allah and His Messenger will be admitted to Gardens under which rivers flow (in Paradise), to abide therein, and that will be the great success. This shows that Muslims must have the knowledge regarding Islamic Inheritance Law and knowing the procedures to claim and distribute their inheritance. Meanwhile, life event was support by the theory of Altruism. The altruism model informs that a parent is altruistic in the sense of caring about the consumption possibilities of his/her children. This is because he/she cares about the well-being of the children and this particular behavior is implied in the form of bequest transferred to the children. Wealth management variable was support by the life cycle theory. The key idea of the life-cycle model posits that people save during their working years and dissave in old age.

7. Hypotheses

The following proposed hypotheses were developed according to the previous studies and theory:

H1: There is a relationship between Knowledge and *Wasiyyah* practices.

This hypothesis supported by the study by Alma'amun (2010) which shows that the relationship between Knowledge and *Wasiyyah* practices is significant.

H2: There is a significant relationship between Life Events and the *Wasiyyah* practice.

This hypothesis supported by the study of Palmer et.al (2006) which stated that among the life event categories in the models, three life events (becoming widowed, being diagnosed with cancer, and experiencing a positive change in assets) were significantly related to adopting a will.

H3: There is a significant relationship between Wealth Management and the *Wasiyyah* practice.

This hypothesis supported by Tin (2009) which proved that householders with bequest motives are therefore far more likely to save in monetary assets than those without observable bequest motives.

H4: There is a significant relationship between Organizational Factors and the *Wasiyyah* practice.

This hypothesis supported by Alma'amun (2010) which proved that ARB appeared to be the most well-known institution involved in the *Wasiyyah* writing services.

8. Research Methodology

This study is a quantitative research and the data will be collected by means of self-administered questionnaire to explore the factors that can influence *Wasiyyah* adoption and to identify the barriers that inhibits Muslims from leaving *Wasiyyah*. The main sources of data for this study were obtained from primary and secondary sources. At the initial stage of the study, secondary data is crucial in order to develop primary ideas before it was supported by the primary data. In order to collect primary data for the purposes of this research, a survey method in the form of questionnaire seems to be the most appropriate method to be employed. This study used a convenience sampling method. The respondents are chosen based on the following criteria:

- Respondents who have experienced in writing wills or dealing with will writing providers.
- Respondents are tax-payers.
- Working in private and government sectors.
- Clients or individual who deal with Amanah Raya Berhad.

The location of this study is at Wilayah Persekutuan Putrajaya and Bangi, Selangor. The questionnaire consists of three parts:

Section A: Demographic profile -questions based on nominal scale in order to obtain general information about the respondent's background. Questions like gender, age, marital status, race, education level, occupation and monthly income will be ask in this section.

Section B: Questions based on nominal and likert scales regarding general information regarding *Wasiyyah* practices. Examples of the items in the questionnaire are: "Have you made a *Wasiyyah*?", "Why have you not made a *Wasiyyah*?", "What are the factors that discourage you to write a *Wasiyyah*?", "Why did you decide to write a *Wasiyyah*?", "What are the issues and challenges that u have experienced in dealing

with inheritance?” and the scales are ranging from 1= “Strongly Disagree” to 5= “Strongly Agree”. The question are adopted from the study by Alma’amun (2010), Noordin *et al.*, (2012) and Dahan *et al.*, (2012).

Section C: Questions on factors influencing *Wasiyyah* practices based on four factors that has been identified which is knowledge, wealth management, life events and organizations. Question on knowledge like “Do you know how much Muslims are allowed to bequeath?”, question on life events like “Are you writing a will are caused by your illness”, question on wealth management like “Do you have savings for your heirs?”, question for organizations like “How did you feel about their services?”. There are also questions on barriers of leaving *Wasiyyah* like “Please state the reason of what is the hurdle that avoid you to leave a *Wasiyyah*.” All questions for this section are adopted from Alma’amun(2010), Tin (2009), Afiqah *et al.*, (2011), and Palmer *et al* (2006). A self-rating scale is used to measure the respondent’s awareness towards *Wasiyyah* practices based on scale of 1 to 5, with 1=”Strongly Disagree”, 3=”Neutral” and 5=”Strongly Agree”. The data will be analysed using frequency analysis and inferential analysis (multiple regression analysis and correlation analysis). The data will be analyzed using SPSS.

9. Limitation of the Study

There are few limitations to this study. This includes the actual number of respondents who leave the will or *Wasiyyah* in Malaysia. Therefore the researcher will made contacts with several potential places in getting access to such type of respondents, for instance visiting Amanah Raya Berhad and workers in private and government sector (tax payers). Another vexing problem appears in terms of getting commitment and participation from Islamic estate planning providers. Due to the time and cost constraints in relation to travelling to other parts of the country as well as the number of sample, most of the respondents will be selected from Putrajaya and Bangi, Selangor as this region is closed to the researchers’ residential area.

10. Contribution of the Study

Islamic estate planning is now growing in Malaysia, particularly *Wasiyyah* writing services. It shows that this industry is going to be one of the important branches of the Islamic finance industry in the near future. This study has extended the existing literature in several dimensions. Earlier studies within *Wasiyyah* issue are more focused on the rulings aspect such as (Sargeant & Hilton, 2006; Palmer *et al.*, 2006;Wiepkung, Scaife, & Mcdonald, 2012). Only few studies focused on the same issue but on Islamic perspectives, such as Alma’amun(2010), Dahan *et al.*,(2012).Moreover, previous research has justified that the awareness and understanding level among Malaysians on *Wasiyyah* writing is relatively low. Therefore it is hoped that this study can help the existing efforts made to improve the perception, awareness, and knowledge of Malaysian Muslims towards Islamic wealth management, financial planning and estate planning, as well as *Wasiyyah* practices. This study will also gauge the level of knowledge among Muslims societies about Islamic inheritance system especially Faraid, mostly among youngster and as source of reference in *Wasiyyah* practices to policy makers and academicians. In addition, this study will be able to give new ideas to *Wasiyyah* ruling organizations in developing new tools on making *Wasiyyah* writing more convenient to the public.

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