

ISLAMIC WEALTH MANAGEMENT: ANALYSIS OF
ESTATE DISTRIBUTION PRACTICES AND
MECHANISMS IN SINGAPORE

BY

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ABSTRACT

This research covers various estate distribution mechanisms and processes. The estate accumulated can be categorised as a non-estate asset or an estate asset. The purpose of this research is to understand the challenges faced by Muslims domiciled in Singapore on the distribution of those estate accumulated or created upon death within state laws of Singapore. These state laws comprise of Common law, Civil law and Muslim law. This research will assist in defining those estates as a non-estate asset or an estate asset. Categorising those estates as a non-estate asset or an estate asset is of prime importance, as it will define the estate distribution mechanisms and its processes that will be applicable. Singapore is a secular state with multi religions, races and cultures. Malays are the indigenous people of Singapore as stated in the Constitution of The Republic of Singapore (Singapore Parliament, 1965, a152.2) and a minority in Singapore. They are a dominant race among the *Sunni* Muslims of the *Shafi'i madhhab*. Though Singapore adopted English law (Common law and Civil law) after its independence on 9th August 1965, through the statute, Administration of Muslim Law Act (AMLA, cap 3), Muslim law is still practised as a personal law. AMLA limits the application of Muslim law in estate matter; for example, the ambit of MUIS and Syariah Court is to give an opinion on estate matters. Definition and application of Muslim law and its relevant terms, like estate, will be with the civil courts. There is also a lack of contemporary Muslim law experts and academic material in English that can be engageable as a reference by relevant authorities to understand the application of Muslim law on estate distribution in the Singapore context. This research adopts a qualitative approach, involving library research and content analysis of academic materials, court cases and case studies. It seeks to expose those challenges, discovers their root cause and offers practical *Shari'ah* compliant solutions for estate distribution within state laws. The outcome is to propose an innovative application of the estate distribution mechanisms and practices that are in harmony with state laws for equitable and just estate distribution. Finally, we recommend a proposal for the authorities to adopt the findings of this research, including the creation of a new profession to serve the community in matters about estate planning, estate distribution mechanisms and the distribution process to achieve the *Shari'ah* Objectives.

ملخص البحث

تناول هذا البحث عدة آليات توزيع العقارات وعملياته، ويمكن تصنيف الممتلكات المتراكمة إلى أصول غير عقارية وأصول عقارية، والغرض الأساسي من هذا البحث يتمثل في فهم التحديات التي يواجهها المسلمون المقيمون في سنغافورة، حول توزيع تلك الممتلكات المتراكمة، أو التي تم إنشاؤها عند الوفاة ضوء قوانين دولة سنغافورة. والتي تتمثل في القانون الأنغلو سكسوني، والقانون اللاتيني، والشريعة الإسلامية. ويسلط هذا البحث الضوء على تعريف هذه الممتلكات كأصول غير عقارية أو أصول عقارية، وتصنيف العقارات على هذا النحو له أهمية أولية، كما سيحدد البحث آليات توزيع العقارات وعملياته التي ستكون قابلة للتطبيق. سنغافورة دولة علمانية ذات أديان وأجناس وثقافات متعددة، والملايو هم السكان الأصليون لسنغافورة، كما هو منصوص عليه في دستور جمهورية سنغافورة (برلمان سنغافورة، 1965، 152a) وهم الأقلية في سنغافورة، وهم العرق السائد بين المسلمين من أهل السنة على المذهب الشافعي، وعلى الرغم من اعتماد سنغافورة على القانون الإنجليزي (القانون العام والقانون المدني) بعد استقلالها في 9 أغسطس 1965م، فإنه، تمثيلاً لإدارة قانون المسلمين (AMLA، الفصل 3)، لا تزال الشريعة الإسلامية تُمارس كقانون أحوال شخصية. وإدارة قانون المسلمين تحدد تطبيق الشريعة في المسائل العقارية، فمثلاً صلاحية ونطاق المجلس الإسلامي السنغافوري (MUIS) والمحكمة الشرعية في سنغافورة هو إبداء الرأي حول المسائل العقارية؛ أما تعريف القانون الإسلامي وتطبيقه، والمصطلحات المتعلقة به، مثل العقارات، فإن ذلك يُحوّل إلى المحاكم المدنية. وهناك أيضاً نقصٌ في خبراء الشريعة الإسلامية المعاصرين، والمادة الأكاديمية باللغة الإنجليزية التي يمكن استخدامها كمرجع من قبل السلطات ذات الصلة بفهم تطبيق الشريعة على توزيع العقارات في سياق سنغافورة. يعتمد هذا البحث على المنهج النوعي، والذي يتمثل في البحث المكتبي، وتحليل المحتوى للمواد الأكاديمية، وقضايا المحكمة، ودراسات الحالة، كما يستعرض التحديات وأسبابها الأساسية، ويقدم حلولاً عملية متوافقة مع الشريعة للتوزيع العقاري ضمن قوانين الدولة. وخلص البحث إلى اقتراح تطبيق مبتكر لآليات التوزيع العقاري وممارساته التي تنسجم مع قوانين الدولة للتوزيع العادل والمنصف. وفي الختام، ويوصي الباحث السلطات المختصة بتبني نتائج هذا البحث، بما في ذلك إنشاء مهنة جديدة لخدمة المجتمع في الشؤون المرتبطة التخطيط العقاري، وآليات التوزيع وعملياته لتحقيق مقاصد الشريعة.

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DECLARATION

I hereby declare that this thesis is the result of my investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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A handwritten signature in black ink, appearing to read 'Sadali', with a large, sweeping flourish extending to the right.

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In the name of *Allah*, the *Entirely Merciful*, the *Epecially Merciful*. Firstly, it is my utmost pleasure to dedicate this work to my beloved late parents, who guided me what I am till this day. *Al Fateha*.

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- 2) Salmah Binti Osman lwn CIMB Islamic Trustee [Wilayah Persekutuan, Kes Mal Bil 14700-044-0150-2013]
- 3) TM Feroze Khan & Ors v Meera Hussain TM Mohamed Mydin [2006] 3 CLJ 616 [CA]

Singapore Cases

- 1) Haja Maideen s / o Mohd Ali Maricar v Roshan Begum Md Ali M [2017] SGHC 164
- 2) Intergraph Systems South East Asia Pte Ltd v Zhang Yiguang [2005] 1SLR 255; [2004] SGCA 52
- 3) Low Heng Leon v Low Kian Beng [2013] SGHC 101
- 4) Koh Cheong Heng v Ho Yee Fong [2011] SGHC 48
- 5) Mohamed Ismail bin Ibrahim and another v Mohammad Taha bin Ibrahim [2004] SGHC 210
- 6) MUIS vs Saeed Salman and another [2006] SGHC 04
- 7) Salleh bin Awang and Another vs Zakiah bte Arsad [2003] SGHC 90
- 8) Shafeeg bin Salim Talib and another v Fatimah bte Abud bin Talib and others [2010] SGCA 11
- 9) Saniah bte Ali v Abdullah bin Ali [1990] SLR 584

LIST OF STATUTES

Indonesia

Kompilasi Hukum Islam

Malaysia

Enactment No. 4 of 1999 Muslim Wills (Selangor) Enactment 1999

Singapore

A) Constitution of the Republic of Singapore

B) Statutes

- 1) Interpretation Act, Cap 1
- 2) Administration of Muslim Law Act, Cap 3
- 3) Central Provident Fund Act, Cap 36
- 4) Civil Law Acts, Cap 43
- 5) Conveyancing and Law of Property Act, Cap 61
- 6) Co-Operatives Societies Act, Cap 62
- 7) Guardianship of Infants Act, Cap 122
- 8) Housing and Development Act, Cap 129
- 9) Family Inheritance Provision Act, Cap 138
- 10) Insurance Act, Cap 142
- 11) Land Title Act, Cap 157
- 12) Oaths and Declarations Act, Cap 211
- 13) Probate and Administration Act, Cap 251
- 14) Trust Companies Act, Cap 336
- 15) Trustee Act, Cap 337
- 16) Will Acts, Cap 352

TRANSLITERATION TABLES

CONSONANTS					
ARABIC	ENGLISH	ARABIC	ENGLISH	ARABIC	ENGLISH
أءؤئ	'	ز	<i>z</i>	ق	<i>q</i>
ب	<i>b</i>	س	<i>s</i>	ك	<i>k</i>
ت	<i>t</i>	ش	<i>sh</i>	ل	<i>l</i>
ث	<i>th</i>	ص	<i>ṣ</i>	م	<i>m</i>
ج	<i>j</i>	ض	<i>ḍ</i>	ن	<i>n</i>
ح	<i>ḥ</i>	ط	<i>ṭ</i>	ه	<i>h</i>
خ	<i>kh</i>	ظ	<i>ẓ</i>	و	<i>w</i>
د	<i>d</i>	ع	'	ي	<i>y</i>
ذ	<i>dh</i>	غ	<i>gh</i>	ة	<i>ah</i>
ر	<i>r</i>	ف	<i>f</i>		
VOWELS					
LONG			SHORT		
ARABIC	ENGLISH	ARABIC	ENGLISH	ARABIC	ENGLISH
ا	<i>ā</i>	اَ	<i>a</i>		
و	<i>ū</i>	وُ	<i>u</i>		
ي	<i>ī</i>	يِ	<i>i</i>		
DIPHTHONGS			DOUBLED		
اَ و	<i>aw</i>	و و	<i>uww</i>		
اَ ي	<i>ay</i>	ي ي	<i>iiy</i>		

GLOSSARY

‘Adl (Ibn Rusyd, 1994, p.579)

A person, that is, one who avoid major sins and does not persist in minor sins. A witness whose testimony is admissible under Muslim law.

Akhlāq (Morality) (Kamali, 2006, p.38)

It covers the individual’s ethics, morals and behaviour: kindness, love, compassion, mercy and all other good qualities of humanity.

‘Aqīdah (Faith) (Kamali, 2006, p.38)

This component is about the faith or belief in *Allāh*, all His Prophets, Angels, His Books, the *Hereafter*, *Taqdīr*.

Al Mīrāth / Farā’id (Bank Negara, n.d)

The knowledge or rules on estate distribution according to Islamic principles. The distribution process of the deceased’s estate after death to the surviving legal heirs

Al-Yamīn (Ibn Rusyd, 1994, p.596)

An oath made in the name of *Allāh*.

Amānah (Trust) (Ibn Rusyd, 1996, p.574) (Ibn Rusyd, 1996)

It is the moral responsibility of fulfilling one's obligations due to *Allāh* and fulfilling one's obligations due to *Allāh*'s (willing) servants (other people). When a person holds an asset in a trust, it is known as *Amānah* (Trust). The asset is called *Al Amānah*.

Asset (Oxford, 2019a)

A useful or valuable thing or person. Example, An item of property owned by a person or company, regarded as having value and available to meet debts, commitments, or legacies. An Islamic asset it must be permissible (*halal*).

Aṣābah (Coulson, 1971, p.30)

They are generally male legal heirs like son, brother, brother's son, uncle, et cetera, except husband who receive the net estate asset after the *Fard* legal heirs have received their share. In some situation, it can be female legal heirs like daughter/s, sister/s, mother or granddaughter/s.

'Awl doctrine (Ibn Rusyd, 1996, p.575)

It is a method of reduction through which fractional shares are not amounting to a whole.

It is when the prescribed shares of the heirs add up to more than 100% of the inheritance.

The original prescribed shares are proportionally reduced according to the shares proportionately to 100% of the inheritance. It is the opposite of *Radd*.

Civil Law (Oxford, 2019a)

The system of law concerned with private relations between members of a community rather than criminal, military, or religious affairs. Example, CPF Act, Insurance Act et cetera.

Common law (Oxford, 2019a)

The part of English law that is derived from custom and judicial precedent rather than statutes. Example, Joint Tenancy

Compensation (Oxford, 2019a)

Something, typically money, awarded to someone in recognition of loss, suffering, or injury.

Dhawū'l Arḥām legal heir (Coulson, 1971, p.30)

All other legal heirs, other than *Fard* (*Qurānic*) or *Aṣābah* (male agnate) legal heir.

Donatio Mortis Causa (Oxford, 2019a)

A gift of personal property made by someone who expects to die in the immediate future, taking full effect only after the donor dies.

Estate (Estate Asset) (Oxford, 2019a)

All the money and property owned by a particular person, especially at death. Known as *al-tarikah* in Arabic, it includes whatever assets that were wholly owned by the deceased during his lifetime and left behind upon death as defined in Muslim law. In Singapore current practice, the civil court has the authority to decide what assets constitute the deceased's estate, not MUIS or Syariah court. An estate as defined by the civil court may not be an estate as defined in Muslim law, for example, *Harta Sepencarian* and Death Gratuity.

Fard (Ibn Rusyd, 1994, p.583)

An obligation established by definitive evidence

Fard legal heir (*Qurānic* heir) (Coulson, 1971, p.30)

These are the legal heirs linked to the deceased by blood ties or marriage (*nikah*) or contract (slavery). The *Qurān* mentioned who are the *Fard* legal heir; wife, husband, daughter, father, mother, sister, uterine sibling, et cetera. They will receive the net estate asset share as stipulated in the *Qurān*.

Fāsiq (Ibn Rusyd, 1994, p.583)

A disobedient person. One who commits a major sin or repeats small sins.

Fatāwā

Plural for *Fatwā*

Fatwā (Singapore Parliament, 2018, s.32.7)

In Singapore, a *Fatwā* can only be issued by the Muslim Religious Council of Singapore (MUIS) with either the unanimous approval of the Legal Committee or at least the majority view of the Legal Committee if without unanimous approval, as defined in the AMLA, Cap 3, s32.4 and s32.5. The *Mufīī* cannot on his sole authority issue a *Fatwā* (Bakaram, 2009, p.169).

Fiqh (Oxford, 2019b)

Conceptually, the human attempt to understand divine law (*Sharī'ah*). Whereas *Sharī'ah* is immutable and infallible, *Fiqh* is fallible and changeable. *Fiqh* is distinguished from *usul al-fiqh*, the methods of legal interpretation and analysis. *Fiqh* is the product of the application of *usul al-fiqh*, the total product of human efforts at understanding the divine will. A *hukm* is a particular ruling in a given case.

Forced Heirship (IIUM, 2005)

A person is *not* free to dictate who inherits his estate under forced heirship laws, at least not entirely. He is prohibited from disinheriting the legal heirs, most commonly his spouse, his children, and his parent. The assumption by many in Singapore, *Farā'id* law, is one good example. Example, *Waṣiyyah* concept as in Volume 4, Book 51, Number 5 by Shahih Bukhari Book 5

Grant of Probate (Probate and Administration, Cap 251, s2)

It is a grant under the seal of the court issuing the same, authorising the executor or executors expressly or implicitly appointed by a testator's will, or one or more of them, to administer the testator's estate in compliance with the directions contained in his will, and accordance with the law.

Gross Estate

The total estate left behind by the deceased before clearing funeral expenses, liabilities and the *Waṣiyyah*.

Harta Sepencarian (Singapore Parliament, 2009b, s112.3)

Wealth created or enhanced by the deceased, together with the spouse during marriage.

Hibah (Gift) (Ibn Rusyd, 1996, p.580)

A contract for transferring ownership of an asset from a Donor to a Donee without material consideration on free will basis.

Hibah Al-Ruqbā (Bank Negara, n.d)

A gift during the lifetime of the giver or recipient of *hibah* with the condition that the death of a party (either the giver or recipient of *hibah*) is the active condition for ownership of the property by the surviving party.

Hibah Al 'Umrā (Bank Negara, n.d)

A gift during the lifetime of the recipient or giver of *hibah* on the condition that upon death of the recipient the property is returned to the giver.

Hibah Muṭlaq [Hibah] (Gift inter-vivos)

A Donor's gift during his or her lifetime to the donee with immediate transfer of title and payment of all stamp duties. This word is often interchangeably used with *Hibah*.

Ifṭā' (Bakaram, 2009. p.17)

It acts as the medium used by jurists to interpret the legal injunctions as revealed by the texts into a functional language that can be readily comprehended and complied with by the masses. An act of issuing a *Fatwā*.

Ijtihād (Ibn Rusyd, 1994, p.585)

In Muslim law, it is the effort that the jurist exerts to discover the law from the sources. *Ijtihād* is not the source of the law, as is assumed by some; it is merely the effort invested in interpretation according to the prescribed methodology.

Inheritance Certificate (Singapore Parliament, 2018, s.115)

A documented opinion issued only by the Syariah Court that identifies the persons and the prescribed shares each will inherit from the net estate asset of the deceased. The Syariah Court uses the *Farā'id* principle of the deceased's *madhhab* (school of thought).

Iqrār (Ibn Rusyd, 1994, p. 586)

It is an admission or acknowledgement or confession on a specific matter. An *Iqrār* (admission) is a commitment made by a person during his lifetime concerning his

property or benefit thereof, to be carried out for charity or any other purpose permissible by the Islamic Law, after his death as defined in section 3, Muslim Wills (Selangor) Enactment 1999].

Irsyad (MUIS, 2018a)

Irsyad is religious guidance issued by the Office of the Mufti. This irsyad aims to address various issues related to Islamic practices and perspectives on current development.

Legal Heir (Coulson, 1971, p.30)

A natural Muslim person related to the deceased by blood ties or marriage (*nikah*) or contract (slavery). They comprise of *Fard* legal heir or *Aşābah* legal heir or *Dhawū'l Arḥām* legal heir

Letter of Administration ((Singapore Parliament, 2000, s2)

It is a grant under the seal of the court issuing the same, authorising the person or persons therein named to administer an intestate's estate following the law.

Madhhab (Singapore Parliament, 2018, s.33)

School of thought that a Muslim follows in the interpretation of religious material in the three major areas: belief, religious practice and Muslim law.

Mard al Mawt (Coulson, 1971, p.259)

Is a condition when a Muslim is at a terminally ill stage.

Mawhud lahu (Donee) (Ibn Rusyd, 1996, p.397)

The person that receives the gift in the *Hibah* contract

Muftī (Bakaram, 2009, p.17)

A person who takes upon himself the task of providing his people with religious guidance by answering queries (ritualistic or juristic) related to their religion. In Singapore, *Muftī* is appointed by the President of Singapore as quoted in the AMLA cap

3, s30.1. To qualify for this, he is expected to be knowledgeable in his task, relevant sciences, such as knowledge of the universals and the specifics (*al-'ām wa al-khāṣṣ*) of the *Qurān*, background motives of the revelation of its verses (*asbāb al-nuzūl*), et cetera. (Bakaram, 2009, p.26)

Muftūn (Bakaram, 2009)

Juris consults or consultant to law who issues *Fatāwā*

Mustafī (Bakaram, 2009)

The person who requests for the *Fatāwā*

Nadhar (Ibn Rusyd, 1994,p.591)

Nadhar is a vow made to perform specific actions upon the fulfilment of certain conditions.

Non-Estate Asset

These are assets that are accumulated or created upon death but never owned by the deceased in his/her lifetime or given with condition during a lifetime. Such an asset is not an estate asset. Thus, *Farā'id* does not apply to the non-estate asset. For example, death gratuity, the donation from friends given to the deceased's dependents, compensation, assets given through the *Hibah Al-Ruqbā* contract, et cetera.

Nuzriah (MUIS, 1998, p.24-28)

It is a modest vow that is applied to an asset in estate distribution only. *Nuzriah* contextually means a *Nadhar* made by someone to give part or all of his wealth before his death to another party.

Net Estate Asset

Net Estate Asset is equal to Gross Estate less Last Expenses less Purification less *Waṣiyyah*.

Net Estate Asset= Gross Estate - Last Expenses - Purification - *Waṣiyyah*

Nomination (Singapore Parliament, 2013, s.25.1)

Beneficiaries appointed on prescribed forms to receive proceeds of an asset (CPF, Insurance, Cooperative savings/investment) upon the demise of the asset owner.

Person (Oxford, 2019a)

It includes any company or association or body of persons, corporate or unincorporated as defined in the Interpretation Act, Cap 1, s2.

Probate Application (Singapore Parliament, 2000, s.1)

An application for a Grant of Probate or Letters of Administration to be made at the Family Court or High Court (Civil Court).

Qurānic Shares (Coulson, 1971, p.40)

These are shares stipulated in the *Qurān* for the *Farḍ* legal heirs. The shares are 1/6, 1/8, 1/4, 1/3, 1/2, 2/3.

Radd Doctrine (Coulson, 1971, p.49)

It means to return or give back.

It happens when there is an excess share of an estate that is established through the *Farā'id* process of net estate asset distribution after the *Farḍ* legal heirs have received their share and there are no *Aṣābah* legal heirs. In practising *Radd* doctrine, the residue net estate asset is returned to the *Farḍ* legal heirs, if not, *Bayt Al-Māl* (MUIS), as in Singapore will receive the residue net estate asset. It is the opposite of '*Awl*'.

Sharī'ah (Kamali, 2006, p.2) (I Doi & Abdassamad, 2008, p.23)

Sharī'ah in Arabic, means “the way” or “a path to a watering-place”, more precisely, “the way which leads to a source”. Generally, it means the way of life of a Muslim.

Sharī'ah law (Muslim law) (Singapore Parliament, 2018, s.114)

In this research, we focus Muslim law about asset distribution covers a wide range of mechanisms; *Farā'id* (Inheritance law), *Hibah* (Gift), *Waṣiyyah* (Will/Bequest) and