



**THE APPLICATION OF PRIVILEGED WILLS
IN MALAYSIA AND OTHER SELECTED COUNTRIES:
A COMPARATIVE ANALYSIS**

BY

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ABSTRACT

A right to make a privileged will is granted to soldiers and airmen in actual military service and sailors (which includes mariners, seamen and members of the naval forces of Malaysia) while being at sea. They are given the right to make a will in the best way they can without observing the formalities because of the imminent dangers, diseases, disasters, and sudden deaths, which may befall them during actual military service and while being at sea. In Malaysia, the provisions of the law on privileged wills necessitate a legal reform. The analysis of the qualitative data reveals that the zero incidence of making privileged wills among Muslim and non-Muslim soldiers and airmen in actual military service and mariners and seamen (including members of the Naval Forces of Malaysia) being at sea is due to the absence of legal and procedural framework about the making of privileged wills in the respective departments. As such, the law relating to privileged wills in Malaysia is in need of reconsideration under modern conditions. The study examines provisions of law governing privileged wills in the United Kingdom, Indonesia and India, which could be followed in Malaysia. The significance of this research lies in the identification of the possibility and the relevancy to extend the provision of law on privileged wills to Muslims soldiers and airmen in actual military service and Muslims mariners and seamen (including members of the naval forces of Malaysia) being at sea. There are similarities between the making of a privileged will under the civil law and the making of a will under the Islamic law. As such, there is a need for the extension of the provision of law on the privileged will to them. The inadequacy of law relating to the legal and procedural framework for privileged wills may lead to the possibility of fraud in the application for probate, application for a letter of administration with privileged will annexed, and a letter of administration with nuncupative privileged wills. Therefore, a new legal framework on privileged wills is important in Malaysia.

ملخص البحث

يمنح حق إجراء الوصية الامتيازية (privileged will) للجنود والملاحين والبحارة وأعضاء القوات البحرية في ماليزيا أثناء الخدمة العسكرية وأثناء تادية مهامهم في عرض البحر. ويتم منحهم الحق في عمل الوصية بأفضل الطرق المتاحة لهم بشكل واسع دون التقيّد بالشكليات، وذلك لأنّهم معرضون لمواجهة الأخطار المحتملة والأمراض والكوارث والوفيات المفاجئة التي قد تصيبهم أثناء الخدمة وخلال تواجدهم في عرض البحر. إنّ أحكام القانون الماليزي المتعلقة بالوصايا الامتيازية يتطلب إصلاحات وتحسينات شرعية. حيث إنّ البيانات التحليلية لم تشمل حالة واحدة استخدم فيها حق الوصية الامتيازية بين الجنود المسلمين وغير المسلمين والملاحين في الخدمة العسكرية والبحارة، ويشمل ذلك القوات البحرية الماليزية المتواجدين في الخدمة بعرض البحر، وسبب ذلك غياب الإطار الإجرائي القانوني لإنشاء الوصية الامتيازية في مقر الجهات المعنية. وعليه فإنّ قانون الوصايا الامتيازية الماليزي بحاجة ماسة لإعادة النظر في ظل التطورات الحديثة. لذا تبحث هذه الدراسة في أحكام الوصايا الامتيازية مقارنة بدول أخرى كالمملكة المتحدة، وإندونيسيا، والهند والتي يمكن الاستئناس بما لديهم من أحكام في ماليزيا. وتكمن أهمية هذا البحث في تحديد إمكان إيجاد إطار قانوني يصلح للتطبيق فيما يخص الوصايا الامتيازية للعاملين المسلمين بالخدمة العسكرية من جنود وملاحين وبحارة، بما في ذلك أفراد القوات البحرية الماليزية، حيث إنّ هناك تشابه في قواعد أعمال الإرادة في الوصايا الامتيازية بين القانون المدني والشريعة الإسلامية، وعليه فإنّه توجد حاجة ضرورية لتعزيز قانون الوصايا الامتيازية ما يجعل هذه المسألة هامة وواجبة التقنين في ماليزيا. إنّ عدم ملائمة الأحكام والأنظمة المتعلقة بالإطار القانوني للوصايا الامتيازية قد يقود لاحتمالية وقوع حالات للاحتيال في تطبيقات إثبات صحة الوصية والتي تقتضي الإثبات أحياناً بموجب خطابات رسمية للترخيص بها وخصوصاً في الوصايا الشفهية. وعليه فإنّ إيجاد إطار قانوني حديث ينظم أحكام الوصايا الامتيازية إجراء جوهري أمر مهم لا غنى عنه في ماليزيا.

APPROVAL PAGE

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DECLARATION

I hereby declare that this dissertation is the result of my own investigation, 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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To my beloved late father, Haji Hussain bin Haji Abdul Rahman and to my caring mother,

Hajjah Bidah binti Abd Rashid:

May Allah grant them His Mercy

And the reward in the Hereafter

For the care and affection with which they have nourished me.

Also to my beloved husband Ariffin Haji Halim:

With deep appreciation for his love,

And encouragement

And to my beloved daughter Nur Izzati binti Ariffin

And sons Nur Halim bin Ariffin and Nur Hakim bin Ariffin.

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LIST OF ABBREVIATIONS

A	Atlantic Reporter
AD	Anno Domini
Ariz L. Rev	Arizona Law Review
ABA Sec Real Prop & Tr Proc	American Bar Association. Section of Real Property, Probate, and Trust Law Proceedings
AC	Appeal Cases
AIR	All India Reporter
All ER	All England Reports
All ER Rep	All England Law Reports, Reprint
App Cas	Appeal Cases
A.P	Andhra Pradesh Court (India)
ATM	<i>Angkatan Tentera Malaysia</i>
B & C	Barnewell and Cresswell's Reports
Ch	Chancery Reports
CLJ	Current Law Journal
Conv	Conveyancing Reports
Curt	Curteis' Ecclesiastical Reports
D	Dyer's King's Bench Reports
Diss.	Dissertation
DOI	Digital Object Identifier
Dow & Ry KB	Dowling and Ryland's King's Bench Reports
E	Ecclesiastical court
Edn	Edition
ER	English Reports
ERIC	Education Resources Information Center
Fam	Family
H	Hijrah Lunar Calendar
Hagg Ecc	Haggard's Ecclesiastical Reports
HMS	Her Majesty's Ship
ICAS Press	Islamic College of Advanced Studies Press
IR	Irish Reports
J Islamic L	Journal of Islamic Law
Jur	The Jurist
Jurid Rev	Juridical Review
KB	English Law Reports, King's Bench
KD	<i>Kapal DiRaja</i>
LJP	Law Journal Reports
LR	Law Reports
LR Ir	Law Reports, Ireland
LR P & D	Law Reports, Probate and Divorce
LT	Law Times Reports
LTOS	Law Times Reports Old Series
Mary's LJ	Mary's Law Journal
Me	Maine
Me. LEXIS	Maine Lexis Nexis