

**LEGAL STUDY ON CONCEPT OF HIBAH (GIFT) OF FARAIID SHARIAH LAW IN
MALAYSIA: PROPERTY MANAGEMENT (HARTA PUSAKA) ON LAND
MATTERS AND MONEY**

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The Student/ authors confirm that the work submitted is their own work and that appropriate credit has been given where references has been made to the work of others.

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ABSTRACT

This research is carried out in order to propose the incorporation of hibah law as an aid to faraid system. There are issues concerning property management among muslim in Malaysia that are left unsettle and unresolved. Hence, to fix these problems it is essential to incorporate hibah law as an aid to faraid system.

The method used in this research is the qualitative method. References are done to Statute, Journal, and Article from the reliable internet materials. Interviewed were also conducted with academicians and officers from well-known institutions that conducted hibah from the social and legal perspective. The academicians and the officers were Encik Indere Sharil bin Mohd Shahid, Encik Mohammad Mahyuddin bin Khalid, Encik Safrul Kamalizam and Zainah bt Md Isa.

The goal for this research is to show that hibah is more effective and encouraged for property management among society and to promote this law. This research will also show that the study of the procedure of hibah is possible and easy to be done. The education of the people is also important to avoid further misinterpretation.

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CHAPTER ONE

INTRODUCTION

1.0 Introduction

Faraid in Shariah are the method to distribute their property for muslim had been laid out in Akta Pusaka Kecil (Pembahagian) 1955 (Akta 98), that means muslim bound by the Faraid law ;¹

Seksyen 12(7):

“Pemungut hendaklah menentukan, dalam apa cara yang paling sesuai, undang-undang yang terpakai kepada penurunan harta pusaka si mati, dan hendaklah memutuskan siapa mengikut undang-undang itu adalah benefisiari-benefisiari dan kadar syer dan kepentingan masing-masing”.

The civil procedure only involved in the early stage of filling the form for the registration and such. This law was governed by Amanah Raya Berhad, Mahkamah Syariah, Mahkamah Tinggi Sivil and Seksyen Pembahagian Pusaka Pejabat Tanah. In dealing with the property management among the muslim, there are few questions on the jurisdiction, absence of statue and procedure to be discussed with.²

Hibah according to Islamic term is a contract that entails granting ownership of a property to someone else during his lifetime without reprisal on a voluntary basis.³ Muslim is governed by the Faraid Shariah Law in dealing with the property if they died without living a will. Recently, asset of muslim personal property total up to RM 40 billion was reported unclaimed by close family members reported by The Star. The property was mainly in real property, EPF, banking saving and insurance benefit. Muslim people confused over the variation of role play by the Agencies State Islamic Council, Syariah Court, Civil High Court and Amanah Raya Berhad.⁴ Each state had their own enactment to deal with the Faraid issues

¹ Tuan Haji Wan Abdul Halim bin Wan Harun. “Isu-Isu Pembahagian Harta Pusaka Orang Islam Dalam Konteks Perundangan Malaysia.” Jabatan Ketua Pengarah Tanah dan Galian Negeri Perak, Perak.

² ibid

³ Mohd Zamro Muda “Instrumen of Hibah and Wills: Analysis of the Regulations and Applications in Malaysia. ” Universiti Kebangsaan Malaysia,2008.

⁴ Rozaid Abd. Rahman and Mohd Al-Qayyum Azizi ‘Rm 40 Billion Assets Stuck’ The Star, Sat July 17,2010.

Accessed November 4, 2012 from

<http://thestar.com.my/news/story.asp?sec=nation&file=/2010/7/17/nation/6686295>