

UNIVERSITI TEKNOLOGI MARA

**A LEGAL STUDY ON THE
APPOINTMENT, POWERS AND
DUTIES OF WASI: WITH SPECIAL
REFERENCE TO ADMINISTRATION
OF MUSLIMS' ESTATE IN
MALAYSIA**

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ABSTRACT

“When there is a will there is a way”, this proverb connotes that if someone has the determination to do something, he will find a way to achieve it regardless of barriers or obstructions. This phrase can also be construed impliedly on the importance of making a will with the condition that it should be supported with the appointment of a *wasi* or an executor. In Islamic estate management, the appointment of a *wasi* could be considered as significant because he is responsible for distributing the estate according to the testator’s wishes and *faraid* laws. In addition, the appointment of a *wasi* may expedite the process of administration of property and could avoid disputes among the family members of the deceased. In Malaysia, the Rules of Court 2012 does not include the estate of a Muslim dying leaving a will because it does not come within the scope of the Wills Act 1959. However, the existence of a will with the appointment of a *wasi* is valid for the application of a grant of Probate although it is in fact a Muslim will. In addition, there are no express provisions governing common law duties and the obligations of a *wasi*, and meanwhile the court still refers to duties laid down in the English law in deciding any disputes brought before them. This research is based on a qualitative study and the approach to be applied is a content analysis methodology which is based on the analysis of the governing statutes, reported cases, interviews conducted with selected individuals and administrative bodies. In pursuant thereto, the research analyses legal issues on the appointment, powers and duties of the *wasi* under Malaysian law and the problems of *wasi* in managing Muslims’ estates in Malaysia. This research finds that there is a need for improvements on the existing laws and practices due to certain legal constraints, deficiency of laws and administrative issues. The research suggests that there should be certain amendments to the statutory provisions under both federal and state laws. Moreover, the research provides some avenues for improvement, including court, institutional and individual level. It is hoped that the study can contribute to the improvement of the appointment, powers and duties of a *wasi*, particularly in the administration of Muslims’ estates.

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