



اَللّٰهُمَّ سَيِّدِيْ تَبَاكَ اَلُوْجِيْ وَمَا اَرَا
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IMU 601 FIQH MUQARAN

STUDY CASE: GIVING WASIAT MORE THAN 1/3 TO THE WEALTH

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APPRECIATION

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TABLE OF CONTENT

NUMBER	ITEM	PAGE
1	APPRECIATION	2
2	INTRODUCTION	4-5
3	FINDING AND DISCUSSION	
	3.1 The concept of will	6-7
	3.2 Types of will	7-9
	3.3 Law of will	9-10
	3.4 Commandments and conditions of will	10-12
	3.5 Important of will	13-16
	3.6 Bequeathable property rate	17-18
	3.7 Revocation of will	19-20
	3.8 Will execution issues – experience in court Perak shariah	21
4	CONCLUSION AND SUGGESTION	22-23
5	REFERENCES	24

2.0 INTRODUCTION

According to Imam al-Ghazali and al-Shatibi, wealth and property are one of the de facto needs for the management and conservation of social life. They list life, religion (din), and other things as additional requirements. lineage/progeny (nasab/nasl), soul (nafs), intelligence ('aql), and life (hayyat). Since it is human nature to crave riches, even if just for survival on the one hand and for comfort on the other, the desire to acquire property predates Islam. Islam, however, aims to control that urge. For instance, it is in man's nature to satiate this yearning, and Islam serves us a model for doing so. Islam does not merely value material possessions and riches. as belonging to Allah, but that man is a trustee and they are a trust (Amanah). Adetona claims that it is "a source of test for man like other ephemeral gifts" In this sense, Ibn Ahmed writes succinctly: *"If we fully understand that wealth is a trust (Amanah) given to us by Allah SWT and Allah is testing us to see how we will discharge the wealth, this would be the stepping stone to us using our wealth in accordance with the commandments of Allah SWT and thereby gaining the everlasting pleasure of Allah and attaining felicity (al-Jannah)."*

Thus, the right to hold property should only be used within the parameters established by Allah. In other words, according to ibn Rahim, man's claim to property is not personal but rather constrained and qualified. There are numerous methods for a man to obtain wealth and property according to Islamic law. Inheritance or succession (mirth), bridal gift, zakat, gift (hibah), trading/exchanging of goods and services (tijrah/bay'ah), trading/exchange of goods and services (tijrah/bay'ah), endowment (waqf), voluntary charity (adaqah), and bequest (wasiyat) are some examples.

Basis of provisions of wills

A will is one of the important instruments for Islamic property planning where it is a gift of property that occurs after the death of the testator. The instrument of property planning through the will method is highly encouraged for Muslims to facilitate property management and also to avoid property disputes between families, relatives and future heirs.

The provisions of the will are based on the text of the Quran, As-sunnah and Ijma'. At the beginning of Islam, making a will was mandatory for parents and close relatives for those who have a lot of property based on the words of Allah s.w.t: - *"Prescribed for you when death approaches [any] one 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 "{Al-Baqarah 180}*.

The majority of the companions, including Saidina Abu Bakar, Saidina Ali Bin Abi Talib, Ibnu Umar, and Imam Syafie, believe that this mandatory law has been repealed with the revelation of verse al-mawarith, which are verses 11, 12, and 176 of Surah Al-Nisa' that specifically address the provisions of the section -the share that has been set for the heirs in the division of the inheritance. The practice of writing a will is now recommended (circumcised) to the nearest family members who do not receive an inheritance and who are not heirs as a result of the revelation of those passages. The provisions of the will are also taken from Surah Al-Nisa' verse 11 where Allah s.w.t says: - *"Allah commands you regarding your children: the share of the male will be twice that of the female. If you leave only two 'or more' females, their share is two-thirds of the estate. But if there is only one female, her share will be one-half. Each parent is entitled to one-sixth if you leave offspring. But if you are childless and your parents are the only heirs, then your mother will receive one-third. But if you leave siblings, then your mother will receive one-sixth—after the fulfilment of bequests and debts. 'Be fair to' your parents and children, as you do not 'fully' know who is more beneficial to you. 'This is` an obligation from Allah. Surely Allah is All-Knowing, All-Wise."*

There are many hadiths of the Prophet saw that explain the evidence of wills, among them are: *"The meaning: Sa'ad Bin Abi Waqas r.a said: "Rasulullah s.a.w came to visit me in the year of Hajj Wada' when I was very sick, then I asked: O Messenger of Allah, my illness is very serious, what do you think? I am a wealthy person but no one can inherit my wealth except my daughter alone. Should I bequeath 2/3 of my property?". "No", replied the Prophet. "Half, O Messenger of Allah?" I continued again. The Messenger of Allah answered: "No, a third, because a third is many and large, because if you leave your heirs in a sufficient condition it is better than you leaving them in a poor condition who begs from the people". (Hadith Narrated by Bukhari and Muslim)*