

CHAPTER 2

LITERATURE REVIEW

2.1 Introduction

This chapter discusses the Islamic legacy planning from a macro perspective regarding its importance, current practices and the components involved as opposed to the conventional legacy planning. Then, it is followed by a discussion on the competency related to the Islamic legacy planners. Thorough selected literature reviews were conducted using multiple sources including books, industry's certification handbooks, regulators' webpages, peer-reviewed journals and dissertations.

2.2 The Worldview of Islamic Legacy Planning

Allah SWT grants wealth as a test to man, to see whether they will be thankful or not, as Allah SWT has affirmed in the Al-Qur'an;

“O ye who believe! Let not your riches or your children divert you from the remembrance of God. If any act thus, the loss is their own...” (Al-Qur'an. Surah Munaafiqun 63:9)

According to Yahya *et al.* (2013), perceiving wealth in the correct standpoint would help one to obtain happiness in this world and the next through his worldly possession if managed wisely. As stated by Islamic sources, Allah SWT has bestowed

wealth upon man and man is the trustee of it (Saleem, 2013). The importance of having a plan in life is stated in the Al-Qur'an which is as follows:

“(Joseph) said: “For seven years shall ye diligently sow as is your wont: And the harvests that ye reap, ye shall leave them in the ear, — Except a little, of which ye shall eat. Then will come after that (period) seven dreadful (years), Which will devour what ye shall have laid by in advance for them, — (All) except a little which ye shall have (specially) guarded. Then will come after that (period) a year in which the people will have abundant water, and in which they will press (wine and oil).” (Al-Qur'an. Surah Yusuf 12:47–49)

The verses above explain the certainty of seven years of a good harvest is to be followed by seven years of a dry spell of the land, as said by Prophet Yusuf PBUH within the ancient Egyptian society who has interpreted the dream of the King of Egypt. The King of Egypt trusted Prophet Yusuf's interpretation of his dream and appointed Yusuf to be responsible for the state treasury. Prophet Yusuf PBUH implemented a strategy to prepare for the fourteen years of prosperity and famine. As a result of the clearly defined programme, the people of Egypt survived the drought and were saved from their crisis. The above verses — which are also known as the ‘planning’ verses — can never stress enough on the importance of making a plan when faced with an unavoidable situation, be it at individual or society level (Shafii *et al.*, 2016).

With the average life expectancy in Malaysia increasing, legacy planning is a priority, not only among retirees but also young people. Gomez (2017) said that it is important for people to be mindful of the geographical spread of their assets in avoiding some common legacy planning pitfalls and seeking a wholesome approach of legacy

planning. According to Ismail *et al.* (2013), more than ninety per cent of Malaysians have not made legacy planning, as it is not widely practised due to procrastination and lack of urgency. Another factor that contributes to the above situation is the lack of competent and reliable legacy planners to provide the appropriate advice (Hassan & Yusop, 2006; Ismail *et al.*, 2013; Shafii *et al.*, 2016; ZAR Perunding Pusaka, 2004c).

The meaning of legacy planning based on Investopedia (n.d.) is a financial strategy that prepares a person to bequeath his or her assets to a loved one or next of kin after death. According to Cambridge Dictionary (2000), legacy is the money or property that we receive from someone after someone dies, while Longman Dictionary (2001) describes legacy as something that happens or exists as a result of things that happened at an earlier time.

From the practitioner's perspectives, legacy planning is a multigenerational planning approach that focuses on smoother transitions of wealth, less family discord and the effective change of family values and leadership. It is a crucial plan of action for keeping planner-clients relationship and their assets in the longer run (Davis *et al.*, 2015). Furthermore, Schnaubelt (2019) defines legacy planning an opportunity to assign a meaningful value to the wealth and determine what wealth and success genuinely mean to the beneficiaries. Legacy planning deals with the management and settlement of one's property during one's lifetime and after one's death.

Legacy planning includes making plans for the transfer of estate after death. Barhat (2010) stressed the need for exploring a different way to engage clients, while embarking upon legacy planning. Legacy planning takes the concept of estate planning a pace forward which permits the incorporation of morals, beliefs and ideas into the estate plan. There is almost no limit in the number of opportunities to incorporate the morals, beliefs and philosophies into a legacy plan (Costly, 2016). According to Leslie

et al. (2015), legacy planning is a significant feature of any financial planner's job. For a more explicit comparison, estate planning involves only certain products to clients, while legacy planning includes legacy administration advice and more comprehensive legacy products.

In the Bible⁷, the principle of legacy planning is mentioned a few times;

“Therefore, keep watch, because you do not know on what day your Lord will come. But understand this: If the owner of the house had known at what time of night the thief was coming, he would have kept watch and would not have let his house be broken into. So, you also must be ready, because the Son of Man will come at an hour when you do not expect him.” (Bible. Matthew 21:42)

also,

“But if any provide not for his own, and specifically for those of his own house, he hath denied the faith, and is worse than an infidel.” (Bible. Timothy 5:8)

The element of legacy planning is also practised by the Buddhists and evidenced by,

⁷ All translations in this writing are retrieved from www.biblegateway.com. The Christian Old Testament overlaps with the Hebrew Bible and the Greek Septuagint; the Hebrew Bible is known in Judaism as the Tanakh. The New Testament is a collection of writings by early Christians, believed to be mostly Jewish Disciples of Christ, written in first-century Koine Greek.

“Wherever the Buddha travels, be it country, province, town, or village, there is no place which does not benefit from his virtue.” (The Sutra of [the Buddha of] Immeasurable Life)⁸.

As for the Hindus, the legacy planning is defined as intestate succession as per highlighted in the Hindu Succession Act (1956)⁹. When it comes to legacy planning, the needs of high-net-worth individuals have become more involved with globalisation and changing lifestyles and demographics (Ming, 2017), especially right for young entrepreneurs and second-generation business leaders taking over the family business. Moreover, another complexity of legacy planning is due to the increase in divorce cases, especially among younger couples and when this happens, the preservation of family wealth can be at risk.

Legacy planning is important as it will give protection to the individual and the family in times of need. The family and children will be provided for. The returns from the estate will be used for taxes (Horney, 2009). Legacy planning is an effort and preparation plan that is necessary and desirable to divide and distribute property to the heirs or potential beneficiaries of the property when the property owner dies (Rahman, 2007).

Legacy planning involves accumulating and transferring family traditions and values for both current and future generations (Wilcox, 2019). According to Bieber (2020), individuals must spend time and energy to prepare their legacy planning in the

⁸ All translations in this writing are based on translation by Hisao Inagaki. 2006. The Sūtra of (the Buddha of) Immeasurable Life. Sutra is a type of religious literature present in many Asian traditions such as Hinduism, Jainism and Buddhism. The word sutra is a Sanskrit term that means “discourse” (in the Pali language: sutta). Another meaning suggested for the word sutra is "threads."

⁹ The Hindu Succession Act, 1956 is an Act of the Parliament of India enacted to amend and codify the law relating to intestate or unwilled succession, among Hindus, Buddhists, Jains, and Sikhs.

case of their death or incapacitation. In facing a difficult decision about the distribution of the assets, a will is among the documents involved in legacy planning (Horkey, 2009).

Islamic legacy planning is one of the components in Islamic financial planning processes as mentioned in the previous chapter. Islamic financial planning involves looking into the client's financial status and devising necessary measures to solve the issues and achieve financial goals. Observing one's financial circumstances and then finding ways to solve problem to achieve one's financial objectives are the crux of Islamic financial planning (Shafii *et al.*, 2016). The scope of Islamic financial planning is divided into a few segments: cash flow and liability management; risk management and takaful; Islamic investment planning, *zakat* and tax planning; retirement planning; Islamic legacy planning (Shafii *et al.*, 2016). Islamic financial planning corresponds to the lifecycle of a person; from the time the person begins to earn an income until the day the person dies and involves the process of wealth generation, wealth protection, wealth accumulation, wealth purification and wealth distribution.

According to the Islamic perspective, financial planning is a tool to guarantee the comfort and survival of the world. Life on earth must be lived with responsibility and accountability to have peace in the Hereafter. Hence, the critical aspect to consider in Islamic financial planning is to gain blessings (Deraman, 2009). In addition to the needs of the world, the ultimate goal to achieve is indeed the continued success of the Hereafter. Successful Muslims will plan to have happiness in this world and the afterlife as prescribed by Allah SWT;

“And there are men who say: “Our Lord! Give us good in this world and good in the Hereafter and defend us from the torment on the fire!” (Al-Qur’an. Surah Al-Baqarah 2:201)

The verse below states on matters relevant to financial planning as guidance from Allah SWT for Muslims to follow when managing their life;

“O ye who believe! Shall I lead you to a bargain that will save you from a grievous penalty? — That ye believe in God and His Apostle, and that ye strive (your utmost) In the Cause of God, with your property and your persons: That will be best for you, if ye but knew! He will forgive you your sins, and admit you to gardens beneath which rivers flow, and to beautiful mansions in gardens of eternity: that is indeed the supreme achievement. (Al-Qur’an. Surah Saff 61:10–12)

There is Al-Hadith as narrated by Abu Ishaq bin Abi Waqqas, in which the Prophet Muhammad SAW advised Sa’ad bin Abi Waqqas not to bequeath his whole estate but instead, to bequeath only up to 1/3 of the estate and the remaining be left to his legal heirs;

“Messenger of Allah PBUH visited me in my illness which because severe in the year of hajjat-ul-wada”. I said, "O Messenger of Allah, you can see the pain which I am suffering, and I am a man of means, and there is none to inherit from me except one daughter. Should I give two-thirds of my property in charity?" He (PBUH) said, "No". I asked him, "Then half?" He said, "No". Then I asked, "Can

I give away one-third". He said, "Give away one-third, and that is still too much. It is better to leave your heirs well-off than to leave them poor, begging people. You will not expend a thing in charity for the sake of Allah, but you will be rewarded for it; even the morsel of food which you feed your wife". I said, "O Messenger of Allah, would I survive my companions?" He said, "If you survive others and accomplish a thing for the sake of Allah, you would gain higher ranking and standing. You will survive them ... your survival will be beneficial to people (the Muslim) and harmful to others (the enemies of Islam). You will survive others till the people derive benefit from you, and others would be harmed by you." Messenger of Allah (PBUH) further said, "O Allah, complete for my Companions their emigration and do not cause them to retract." Sa'ad bin Khaulah was unfortunate. Messenger of Allah (PBUH) lamented his death as he died in Makkah. (Sahih Al-Bukhari and Sahih Muslim, Book 1, Hadith 6)

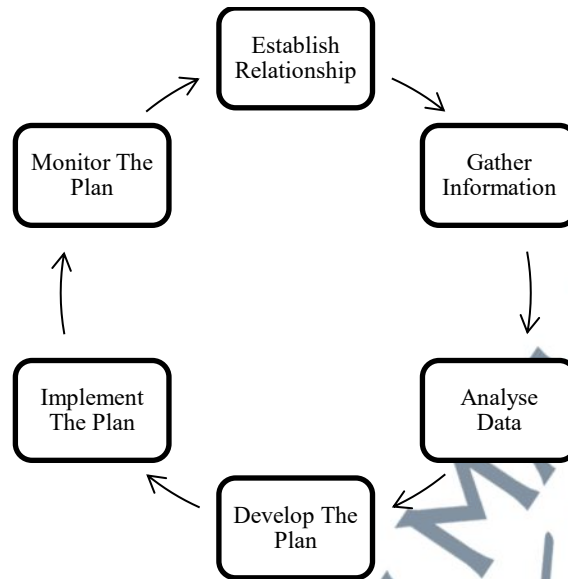
This Al-Hadith shows that it is important to plan for the financial benefit of relatives after one's death. One should think about the future financial prospect of one's legal heirs especially that of one's dependents after one's death. Even though making a bequest is highly recommended in Islam, priority should be given to one's close relatives. The Al-Hadith also shows that legacy planning does not contradict Islamic law. If it is against the Islamic principle of faith (*taqdir*), for example, Prophet Muhammad SAW would not have advised His Companion to consider the latter's relatives after his death, but to leave them to face the fate as determined by Allah SWT.

Islamic legacy planning is regarded as the final stage of planning, where the distribution of wealth upon one's death is planned according to one's objectives and wishes using the Shariah guidelines (Wahab *et al.*, 2019). Wealth accumulated can be

enjoyed while alive, as well as, when one is deceased as the planning horizon for Muslims is extended beyond the worldly life. The principles and instruments of wealth distribution are useful for all Muslims to obtain success both in the worldly life and in the Hereafter (*al-Falah*) (Mehwish & Nida, 2016).

Legacy planning is beneficial in identifying clients' issues and thus, solutions can be identified to facilitate the accomplishment of the goals (Geldenhuis, 2019). The planner will make suggestions on how to solve financial issues and will facilitate the client to attain objectives (Cull & Sloan, 2015). Islamic legacy planning is the ultimate process and requires precision when handling client cases within the ambit of Shariah. Besides, clients should be exposed in detail to each involved process — identifying client objectives, appropriate solutions and disclosure of the importance of legacy planning.

The six-step process or EGADIM in financial planning also applied in addressing financial issues and recommending solutions to achieve financial goals (Shafii *et al.*, 2016). There are measures that need to be considered while carrying the exercise before the financial plan meets the client's requirements, business requirements and Shariah requirements for legacy planning as well. The six-step process in financial planning is described below in Figure 2.1, whereas Table 2.1 explains each step:



Source: Financial Planning Association of Malaysia (FPAM) (n.d.)

Figure 2.1: A 6-Step Process or EGADIM in Financial Planning

Table 2.1: The Applicability of EGADIM in Islamic Legacy Planning

Steps	Explanation
Establish Relationship	The client's trust in the Islamic legacy planner is of utmost importance, and this will determine how much information is revealed. A more accurate legacy plan can be constructed to meet the client's objective if the planner is able to draw more details on the client. This may have an impact on the portfolio financially and so it should be recorded thoroughly.
Gather information	The Islamic legacy planner should identify the problems of the client carefully and address his or her concerns, in particular regarding any issues that may have an impact on the client's status and eventually the legacy plan of the client. Care should be taken by the Islamic legacy planner about the assumptions to be used as they have a significant effect on the final advice.
Analyse data	This part of the process seems very similar to conventional legacy planning, but the client's <i>zakat</i> responsibility is one additional thing to be aware of. To understand the capital movement in the client's portfolio is essential to have a clear picture of their financial obligations and commitments. That way, the clients can be advised about appropriate Islamic legacy plan accordingly.
Develop the Plan	The Islamic legacy planner should offer Islamic legacy planning recommendations that address the client's goals based on the information given while taking into account the issues that trouble the clients and revise the recommendations accordingly.

Table 2.1: The Applicability of EGADIM in Islamic Legacy Planning (continue)

Steps	Explanation
Implement the Plan	The client and the Islamic legacy planner should be on the same page on how the recommendations will be carried out. The Islamic legacy planner may be the one executing the recommendations or serving as the client's "coach," coordinating the whole process alongside them.
Monitor the Financial Plan	Both the client and Islamic legacy planner should agree on who will be the one to oversee the progression approaching the goals. If the Islamic legacy planner is the one responsible for the process, he or she has the obligations to review the situation and adjust the recommendations, if needed, for example, updating the assets and liability of the clients.

Source: Financial Planning Association of Malaysia (FPAM) (n.d.), Financial Planning Standards Board (FPSB) (n.d.)

The above aspects mentioned in Figure 2.1 and Table 2.1 are the six-step process of the financial planning which is applicable in Islamic legacy planning as one of the activities which is by no means exhaustive and should be practised in the market within a high level of professionalism.

2.3 Islamic Legacy Planning in Malaysia

Muslims need legacy planning as much as, if not more than, non-Muslims. Most of the processes in legacy planning for Muslims or non-Muslims are almost similar as the differences are minimal (Alma'amun, 2010). It was also stated that leaving a *wasiyyah* is important in the current world and thus, legacy planning that goes beyond the provision of *faraid* is significant. The stress created due to unanticipated life occurrences may be alleviated and better managed if a proper legacy planning is in place (Palmer *et al.*, 2006).

The main aim of Islamic legacy planning is to accelerate property entitlements and thus, prevent frozen assets problems, protect property from the dispute which will then reduce its potential value and protect the beneficiaries (Alma'amun, 2010). Muslims should not take their legacy planning casually, the matter should be discussed with the competent Islamic legacy planners (Chuan, 2016). There are many methods in

Islamic legacy planning that can help to personalise the legacy plan. More solutions are now available in the market to enable Malaysian Muslims to manage their legacy planning matters. These include *wasiyyah*, *hibah*, *amanah*, *isti'man* and *harta sepencarian*. However, some issues and challenges have put forward some significant concerns in the Islamic legacy planning industry.

In Malaysia, legacy planning can be viewed from the legal perspective, institutional and behavioural norms. During the colonial periods, the administration and distribution of Malaysian Muslims' estates were influenced by the English law with some guidance from Shariah law. Over time, after the independence of Malaya, many Islamic religious bodies were formed to address matters relating to Muslim's estates (Shafie *et al.*, 2014). As issues relating to Malaysian Muslims, especially those relating to family matters and estate distribution, gained importance, various institutions were established, and legislation was enacted. The aim of these institutions and legislations, among others, is to guide Muslims in addressing family issues including estate administration and distribution. The legislation and development of legacy planning industry in Malaysia is illustrated below:

Table 2.2: The Legislations and Development of Legacy Planning in Malaysia

Year	Establishment of Act & Related Developments
1921	Establishment of Department of Public Trustee and Official Administrator
1949	Trustee Act 1949 (Act 36)
1952	Trustees (Incorporation) Act 1952 (Act 73)
1955	Small Estates (Distribution) Act 1955 (Ordinance No. 34)
1958	Distribution Act 1958 (Ordinance No. 1)
1959	Probate and Administration Act 1959 (Ordinance No. 35)

Table 2.2: The Legislations and Development of Legacy Planning in Malaysia
(continue)

Year	Establishment of Act & Related Developments
1972	Small Estates (Distribution) Act 1955 (Revised) (Act 98) Probate and Administration Act 1959 (Revised) (Act 97)
1978	Trustee Act 1949 (Revised) (Act 208)
1981	Trustees (Incorporation) Act 1952 (Revised) (Act 258)
1983	Kaedah-Kaedah Wakaf Johor 1983
1984	Distribution Act 1958 (Revised) (Act 300)
1995	Public Trust Corporation Act 1995 (Act 532) Corporatisation of Amanah Raya Berhad Establishment of Association of Trust Companies Malaysia (ATCM)
1997	The Distribution (Amendment) Act 1997 (Act A1004)
1999	Muslim Wills (Selangor) Enactment 1999 Wakaf (State of Selangor) Enactment 1999
2003	Selangor Administration of Islamic Law Enactment 2003
2004	Muslim Wills (Negeri Sembilan) Enactment 2004 Muslim Family Enactment (Perak) 2004 Shariah Court Enactment (Sabah) 2004 Establishment of <i>as-Salihin</i> Trustee Berhad Establishment of Wasiyyah Shoppe Berhad
2005	Muslim Wills (Malacca) Enactment 2005 Wakaf Enactment (Negeri Sembilan) 2005
2007	Manual Pengurusan Model Perundangan Wakaf by JAWHAR
2009	Small Estates (Distribution) (Amendment) Act 1955 (Act A1331) Muslim Wills (Kelantan) Enactment 2009
2014	Establishment of MyAngkasa Amanah Berhad
2015	Wakaf (State of Selangor) (Amendment) Enactment 2015 Wakaf Enactment (Perak) 2015
2016	Wakaf Enactment (Terengganu) 2016
2017	Muslim Wills (Pahang) Enactment 2017
2018	Wakaf Enactment (Sabah) 2018

Source: Pusat Wakaf dan Endowmen UTHM (n.d.), Attorney General's Chambers of Malaysia (n.d.), Association of Trust Companies Malaysia (ATCM) (n.d.)

In Malaysia, various identified distinct legislations governing the estate administration are the Probate and Administration Act 1959; Muslim Will Enactments; State Islamic Administration Enactments; Small Estates (Distribution) Act 1955; Public Trust Corporation Act 1995. The Probate and Administration Act 1959 govern the process of securing the Grant of Probate (GOP) or a Letter of Administration (LOA). The Probate and Administration Act 1959 sets out the procedures for the administration of non-small estate matter such as where the estate consists of wholly or partly immovable property whose total value is more than RM 2 million, where the total value

of the estate is more than RM 600,000 and comprise of only movable property and where the estates are not covered by ARB and Department of Director General of Lands and Mines.

Muslim's Will and *Waqf* Enactments are the laws to provide guidance on matters relating to *wasiyyah* and *waqf*. To date, only few states in Malaysia have special enactment related to *wasiyyah* and *waqf*, which are Selangor, Negeri Sembilan, Melaka, Sabah, Perak and Kelantan. In other states, the State Islamic Administration Enactments (SIAE) provides certain jurisdiction power for the Shariah Court to deal with the Islamic legacy management matters. The SIAE governs the application and issuance of *Sijil Faraid* for Muslim estate from the Shariah Court or the Shariah Subordinate Court. *Sijil Faraid* certifies the heirs' eligibility and the portions to which such persons are respectively entitled. However, the State Islamic Administration Enactments does not give power for the distribution of the deceased's estates to take place, the authority of which is in the hands of the person who obtains the GOP or LOA.

The Small Estates (Distribution) Act 1955 was enacted to govern the administration of the small intestate estate. This Act applies to both Muslim and non-Muslim estates, but does not cover customary and native lands, such as those in Negeri Sembilan and Sabah. According to the Small Estates (Distribution) Act 1955, a small estate is defined as an estate of a deceased person consisting wholly or partly of immovable property situated in any state and not exceeding two million ringgits in total value.

The Public Trust Corporation Act 1995 was established to govern the operations and administration of public trust companies in Malaysia. According to this Act, a public trust company is empowered to administer the movable estate of a deceased person, where the value of his estate is not more than RM 600,000. The public trust

company is allowed to act in a situation where a person dies testate as well as dies unrepresented or intestate.

In regards to the estate administration, the act empowers ARB to administer the movable estate, where the value of not more than RM 600,000 from a person dies testate or intestate. Such an estate has to go through different procedures depending on the value of the estate. If the value does not exceed RM 50,000 in cash, ARB will issue an order and deliver it to the heirs. On the other hand, if the value exceeds RM50,000 but is less than RM 600,000, a Declaration will be issued, and afterwards, the assets will be pooled together. After the net estates of the deceased have been determined, ARB will proceed with the distribution, according to the *faraid*.

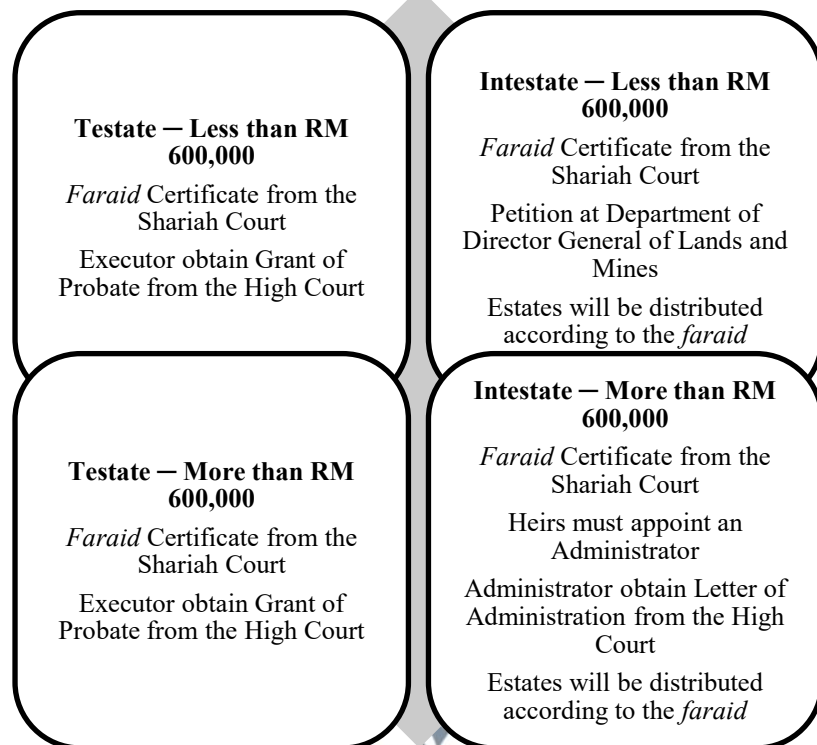
The provision of sound advice requires relevant knowledge, skills, abilities and other characteristics. The increase in the awareness for Islamic legacy planning solutions encourages the need for having competent Islamic legacy planners in a particular area to professionally advise and offer solutions to the prospective clients. As the Islamic legacy planning is the subset of the various subcomponents under Islamic financial planning industry in Malaysia, a competent Islamic legacy planner must ensure the profession is at par with other professions in the similar industry.

In addition to the issues of awareness and misunderstanding on the Islamic legacy planning in Malaysia, it is vital to incorporate the competency of the Islamic legacy planners who serve the industry in Malaysia. With the existence of competent Islamic legacy planners, awareness and misunderstanding issues will be addressed and the solution to legacy planning for Muslims will be further preserved. As discussed in the previous chapter, there is no formal or dedicated competency framework to monitor the competency of the Islamic legacy planners in Malaysia.

Every Islamic legacy planner needs to have a comprehensive knowledge not only on the product, but also the relevant legislation that exists in this field (Shafie *et al.*, 2014). Hence, without the necessary skills, the information and knowledge of this legacy planning cannot be conveyed entirely. Without ethical values and other attributes, it will also contribute to the issues of incompetent Islamic legacy planners. As such, it will affect the dissemination of information on the administration and distribution process and procedures of the Muslim legacy in Malaysia.

2.4 Administration and the Distribution of a Muslim Deceased's Legacies in Malaysia

Islamic legacy management process started with the valuation of the asset to determine the procedure applicable to the legacy. The process starts with the determination of whether the deceased died intestate or testate. The difference between both processes is that an executor is required to obtain a GOP, while an administrator is required to obtain a LOA. The main institutions that deal with Muslim estates are the High Court, Department of Director General of Lands and Mines and Amanah Raya Berhad. Figure 2.2 summarises the administration and the distribution of an intestate or testate Muslim deceased's legacy in Malaysia.



Sources: Alma'amun (2010)

Figure 2.2: Administration and the Distribution of a Muslim Deceased's Legacies in Malaysia

The High Court in Malaya has a significant role in matters relating to the legacy planning of Muslims and non-Muslims. It is guided by the Probate and Administration Act 1955 on matters relating to estate administration and applying and granting the GOP and LOA. With regards to the Muslim estate matters, the jurisdiction power of the High Court is greater than the Shariah Court because the procedural aspects of the administration of Muslim estates, either testate or intestate, and the authority to issue probate and letters of administration, regardless of the types and the values of the estates, come within the jurisdiction of the High Court.

Another institution that is granted the authority to deal with matters relating to the administration and distribution of small estates is the Department of Director General of Lands and Mines. This department is under the Ministry of Water, Land and Natural

Resources Malaysia. For estate related matters, this department only deals with small estates with property located within the district in which the office has jurisdiction. Generally, dealing with the department expedites the estate administration process as it avoids having to deal with the High Court.

ARB is a trust company established under the Public Trust Corporation Act 1995. It is the only institution in Malaysia governed by the Act. Under the Act, ARB is empowered to act as an executor, administrator, trustee or guardian either alone or jointly with any person or body of a person. ARB is also permitted to act on behalf of the person claiming small estates as provided under the Small Estates (Distribution) Act 1955. The legacy or estate based are categorised based on the value and the administration can be summarised as below:

Small Estate

- Estate of the deceased consisting wholly or partially of immovable property (land / building) not exceeding RM 2 million in total value.
- Management of a Small Estate is subject to the Small Estates (Distribution) Act 1955.

Large Estate

- Estate of the deceased exceeding RM 2 million in total value and also apply for a Non-Muslims' deceased, who leave a will under the Wills Act 1959.
- Management of a Large Estate is subject to the Probate and Administration Act 1959.

Sources: The Malaysian Administrative Modernisation and Management Planning Unit (n.d.)

Figure 2.3: Estate Classification in Malaysia

The administration and distribution process of the small estate only begins when a petition is lodged by any person claiming to have an interest in the estate. Small estates

are distributed according to the types of assets; movable assets or immovable assets. Applications are to be made at the Estate Distribution Unit of the Department of the Director-General of Lands and Mines (JKPTG) or the Land Office where the deceased's immovable property is located. For movables assets and the value is not more than RM 600,000, ARB has an authority to administer as stipulated in the Public Trust Corporation Act 1995. In contrast, the District Land Administrator is responsible for wholly or partly immovable assets under the Small Estate (Distribution) Act 1955.

For the value of assets over RM 2,000,000, the heirs will have to apply for the Letter of Administration or Grant of Probate at the High Court. Applications are to be submitted to the Civil High Court through a lawyer or authorised body such as ARB or a Trust Company. The obtaining of Letter of Administration or Grant of Probate from the High Court is the first requirement for such estates to be administered. The person who inherits the estate is usually appointed to serve as the administrator of the estate, to collect the assets and settle the estate. In the absence of a *wasiyyah*, heirs must provide two sureties, and the Shariah Court in this matter only has rights to determine the eligible heirs and certify their shares by issuing inheritance certificate (Administration of Islamic Law (Federal Territories) Act 1993 (Act 505) & Rules, 2006: 22–23).

The SIAE have jurisdiction over the application for *Sijil Faraid* from the *Shariah* Court. The *Sijil Faraid* certifies the eligibility and the shares of the heirs to which such persons are respectively entitled. Laws pertaining to the Muslim wills only exist in few states such as Selangor, Melaka and Negeri Sembilan. The SIAE have generally provided a certain jurisdiction power for the Shariah Court to deal with the Muslim wills. As mentioned earlier, the holistic knowledge of administration and the

distribution of a Muslim deceased's legacies in Malaysia is essential for Islamic legacy planners to have full comprehension of the Islamic legacy planning.

2.5 Islamic Legacy Law of Selected Countries in Southeast Asia

In general, the Islamic inheritance law in Southeast Asia has not been fully implemented and it has not been completely accepted even though Muslims are the majority in countries such as Brunei, Indonesia and Malaysia. In the countries where Muslims are the minority, like Singapore and Thailand, Islamic inheritance law has been recognised and applied under personal law. However, problems still persist in implementing the law because the mainstream law of these countries is still civil law. This chapter provides legacy planning and inheritance approaches in other countries compared to Malaysia's practices, as discussed earlier.

In Singapore, the Administration of Muslim Law Act (AMLA) states that the jurisdiction of Shariah Court in terms of inheritance is only limited to issuing the Inheritance Certificate for the beneficiaries who apply for it (Sect. 115, Administration of Muslim Law Act in Caption 3) (Rasban *et al.*, 2020) and for any claims to the estate will only be heard in the High Court or Subordinate Court (Abbas, 2012). Although the Shariah Court has the jurisdiction to issue the Inheritance Certificate, it might not come into effect in certain cases.

In Thailand, there is some process of implementation and cancellation to it by the local government, whereby the first Islamic law was being enacted in the year 1901 and removed from the legislation in the year 1943 (Intajalle *et al.*, 2012). Therefore, the application of Islamic Law in Pattani, Narathiwat, Yala and Satun Act 1946 was re-enacted and Islamic inheritance law was included in the act, and it is applicable until today (Shinya, 2017). Islamic law in matters related to family and inheritance was

divided into two sections. The first section is about family, and another section is about inheritance. However, in Thailand legal system, unlike Malaysia and Singapore, there is no Shariah Court in hearing the case, and it can only be done in District Court. Muslim law is clearly applied in marriage and inheritance cases involving Muslims as stipulated in statutes (Shinya, 2017).

In Indonesia, inheritance legal systems, particularly the system of *adat* inheritance law and the system of Islamic inheritance law, influenced by the understanding of society type of indigenous for the system of *adat* inheritance law. In addition to *adat* and Islamic inheritance law, there is a system of western inheritance law based on the Civil Code or *Kitab Undang-Undang Hukum Perdata* (Andayani *et al.*, 2019). These three systems of inheritance law are prevailing for Indonesian people, but differ significantly from others. *Adat* law has been applicable for the local community or indigenous prior to entering Islam and Dutch colonisation in Indonesia. Inheritance law also provided in *adat* law (Warman *et al.*, 2018). There are three schools of Islamic inheritance law, that is, the Shafii (patrilineal) system of inheritance law, Hazairin (bilateral) system of inheritance law and Compilation of Islamic Law system of inheritance law written by Indonesian ulama and Islamic experts (Barlinti, 2013). The three systems of inheritance law in Indonesia, *adat*, Islam and Western, remained in force and implemented to date. Western law is applied for particular groups, and *adat* law is applied for indigenous. For Chinese non-Muslims, they refer to the Civil Code to implement inheritance. But, for Indonesian non-Muslims, they commonly choose *adat* law of the Civil Code.

As for Brunei, the Shariah law takes precedence in areas pertaining to Muslims, such as matrimonial cases, probate and administration of estates and partly in Islamic banking and finance. The Emergency (Islamic Family Law) Order 1999 makes

provisions relating to Islamic family law in respect of marriage, divorce, maintenance, guardianship and other matters connected to family law issues of Muslims (Intajalle *et al.*, 2012). Similar to Malaysia, where there is a valid will, upon probate, the executor will distribute the estate according to the will. Where there is no will, the court appoints an administrator to administer the estate. For Muslims, Shariah law applies, and the *Kadi* Court issues an inheritance certificate or *faraid* to indicate, which members of the family are eligible to be appointed as administrators (Intajalle *et al.*, 2012). For non-Muslims, however, members of the family may be appointed in accordance to the provisions state. Based on the above discussions, it is noted that every country has its own law and regulatory framework in legacy management, especially for Muslim and it involves, both civil and Shariah law.

2.6 The Instruments in Islamic Legacy Planning

Islam has provided various approaches in managing and administering the legacy wisely as discussed in the previous sections above, but the opportunity is not fully utilised. Muslims should view problems in legacy planning seriously. It is essential that legacy planning is managed while the benefactor is still alive to avoid issues among the beneficiaries (Rahmat, 2009). Hence, Islam has organised various systems and methods that are best for Muslims to manage their legacy through many instruments that will be discussed in this section.

2.6.1 *Wasiyyah* (Muslim Will/Bequest)

A will or bequest in Islam is called *wasiyyah* (Isa *et al.*, 2017; Rasban & Hassan, 2006) or the Islamic will (Coulson, 2008). On the surface, a *wasiyyah* has an equal meaning to conventional bequest, whereby the transfer of the share is only after the

death of the benefactor (Coulson, 2008; Marican, 2008; Rumsey, 1971; Tanzil-Ur-Rahman, 1980).

The practice of *wasiyyah* in Malaysia is still vague as there are limited references available. Ahmad and Pyeman (2008) conducted a study on the practice of making *wasiyyah* among Malaysian Muslims. People who have knowledge on *wasiyyah* will be aware of its existence. Generally, Malaysian Muslims are accustomed to the term “*wasiyyah*”, but whether they have detailed knowledge can only be tested on whether they know the companies that provide the service and whether they are aware of the proportion of the shares for the estate distribution.

The *wasiyyah* can be categorised into few categories; namely, general *wasiyyah*, specific *wasiyyah* and joint *wasiyyah*. The main difference between the types of *wasiyyah* is that the general *wasiyyah* consists of a share of the testator’s property, but is not explicitly distinguished. On the other hand, a specific *wasiyyah* is characterised by its distinction stated by the testator to distinguish it from another testator’s property within the same kind. Joint *wasiyyah* is when the testator makes a *wasiyyah* of a certain sum for two or more than one beneficiary and not mentioning the amount for each of the beneficiaries.

Writing a *wasiyyah* is encouraged as it is a noble act to reveal the testimonies’ wishes for the distribution of property that has been accumulated throughout one’s life. The Islamic legacy planner needs to clarify all the important information to be able to achieve the clients’ objectives. Also, the process of preparing the *wasiyyah* and the fees involved need to be disclosed professionally by the Islamic legacy planners. Therefore, it is the responsibility of Islamic legacy planners to understand all the rules and conditions in implementing *wasiyyah*.

2.6.2 Amanah (Trust)

Trust is considered to have many aspects and has also been studied by other disciplines: sociology; social psychology; marketing; management (Kirchmajer & Patterson, 2003; Svensson, 2004). According to Kohn (2008), trust is one's anticipation of the response of another, which is founded on the knowledge that a mental model of a possible plan of actions can be created by the other, which would then assess them within a setting that can incorporate interests besides the other's own interest.

In Islam, trust is called *amanah* and defined as something that is handed over to be retained, it embodies property, self-respect, human rights and religion. *Amanah* is an Arabic term. In our language, it can be said to be loyalty, straight and so on. In other words, it is something that is handed over to someone to be kept, guarded and preserved, whether in the form of property, secret or otherwise. The following Al-Qur'an verse emphasises the importance of *amanah*;

"Allah doth command you to render back your trusts to those to whom they are due; and when ye judge between man and man that ye judge with justice: verily how excellent is the teaching which He giveth you! for God is He who heareth and seeth all things." (Al-Qur'an. Surah Nisāa 4:58)

An *amanah* can exist in any one of the three forms, namely Testamentary *Amanah*, which is created in a *wasiyyah*. It comes into play upon the death of the testator. Statutory *Amanah* is created by operation of law, such as under Section 26 (2) of the Muslim Wills (Selangor Enactment) 1999, whereby a trust is automatically established to protect the interest of a minor under a *wasiyyah* or intestacy. The third form is Living *Amanah*, which is created during the lifetime of the settlor and takes

effect immediately when he signs the trust deed, and the property is passed to the trustees.

A trustee is a person, or a party designated by a person during his or her lifetime and will come into effect immediately upon his or her appointment as a trustee. The trustee may also be appointed to manage and hold the trust on behalf of the person, who has the proprietary interest, due to legal constraints or other related matters, the right of ownership cannot be registered in the grant. What needs to be explained by Islamic legacy planners is the difference and similarity between the administrator, the power of attorney and the trustee. For example, just like the administrator, the trustee also has no right and full authority over the property. It means that the trustee may not arbitrarily sell or transfer the property to any other parties except with the consent of the trustee himself.

2.6.3 *Hibah* (Gift) and *Amanah Hibah* (Contract of Gift of Asset)

Hibah is a gift from a person to a beneficiary made based on love (Najjar *et al.*, 1996). *Hibah* is defined as an agreement made to voluntarily handover ownership of an existing property to the recipient without compensation. The intention of the person to give the property as a gift must be clearly mentioned in the agreement (Al-Zuhayli, 2003; Jantan, 2001; Tanzil-Ur-Rahman, 1980).

Hibah is the handover of property (gift) to a person who has been identified and agreed upon by the person who is bestowing the gift, and there must be acceptance from the person receiving the gift. Tanzil-Ur-Rahman (1980) stated that *hibah* is a gift in the form of property from a giver to a recipient. As a matter of fact, and by putting it simply, *hibah* is a contract between a donor and a donee, whereby upon the death of the donor,

he or she promises to give the gift to the donee. If the donee dies before the donor; thus, the gift will be returned to the donor (Rasban & Hassan 2006).

Amanah hibah is a contract or agreement to give one's property during his or her lifetime for the benefit of the beneficiaries without any expectation of repayment. The asset is entrusted to the appointed trustee to be held for a certain period under a *hibah* deed carried out by the donor and the beneficiaries and a Trust Deed performed by the beneficiaries and the trustee. *Amanah Hibah* is an agreement made by a donor to give a certain number of assets, as a gift, to a beneficiary. This agreement will be observed by a trustee. *Hibah* is encouraged based on the words of Allah SWT;

“And give the women (on marriage) their dower as a free gift; but if they of their own good pleasure remit any part of it to you take it and enjoy it with right good cheer.” (Al-Qur'an. Surah Nisāa 4:4),

and,

“It is not righteousness that ye turn your faces toward east or west; but it is righteousness to believe in God and the Last Day and the Angels and the Book and the Messengers; to spend of your substance out of love for Him for your kin for orphans for the needy for the wayfarer for those who ask and for the ransom of slaves; to be steadfast in prayer and practice regular charity; to fulfil the contracts which ye have made; and to be firm and patient in pain (or suffering) and adversity and throughout all periods of panic. Such are the people of truth the God-fearing.” (Al-Qur'an. Surah Al-Baqarah 2:177)

In the above verses, Allah SWT explains about things that are considered as a virtue (*al-Birr*), and among them is to spend wealth in Allah SWT's way. According to Khan (1994), this verse explains about giving property in our state of stinginess. This verse is a clear argument for those who say that in the property, there is a right to be paid other than *zakat*.

Hibah cannot be annulled except, if the gift of the asset is between parents to children or grandparents to grandchildren. However, an annulment is possible and sometimes encouraged if, it is agreed by both parties. Annulment of the *hibah* is only possible if the asset or gift is still owned by the children or grandchildren, if the asset has been sold or given as *hibah* to another individual, then it is irrevocable. If the trustee holds the assets for the benefit of the children or the grandchildren, the children or the grandchildren cannot sell, donate or bequeath the assets until the pre-designated time when the assets are transferred to the children or grandchildren's name. In the condition that the asset is being held by a trustee, nothing can be done to the asset until the agreed time of transfer to the beneficiary. In the exception of conditions under Shariah law, which in the event of the death of the beneficiary, the asset will be part of the beneficiary asset and would not be returned to the donor.

Hibah is a unique instrument for Muslim's legacy planning. However, the tendency of Muslims in finding an alternative method of distributing property through the *hibah* instrument has caused confusion in the distribution of Islamic legacy (Alias, 2016). Notably, this problem arises due to several factors and the incompetence of existing Islamic legacy planners in explaining and advising accurately about *hibah* and resulting in problems after the death of a donor (Noh *et al.*, 2019). The problem has also not been considered when Islamic legacy planners arbitrarily use their legal terms to convince the clients.

2.6.4 *Harta Sepencarian* (Matrimonial Assets)

Scholars do not explicitly discuss the concept of *harta sepencarian* (matrimonial assets). There are also various views when discussing this instrument and describing it as home appliances (*Mata' Al-Bayt*) and the property of a husband and wife (*Mal Al-Zawjayn*). *Harta sepencarian* is also known as *Carian Laki Bini*, *Gono-gina*, *Hareuta Sihreukat*, *Harta Suarang* and others. According to Awaludin (2018), *harta sepencarian* is based on Malay customary law, and the principle of *harta sepencarian* is not contrary to the *Shariah* requirement, and the provision of *harta sepencarian* is accepted as a form of Islamic law in Malaysia (Sitiris & Halim, 2010).

Harta sepencarian, as defined in the Islamic legacy planning practices in Malaysia, is the property that is acquired together by a husband and wife during their marriage (Islamic Family Law [State of Selangor] Enactment 1990). In the case of death, the spouse who outlives can claim his or her portion of the *harta sepencarian* before the asset is distributed by *faraid* rules. Among the advantages of having a *harta sepencarian*, the married couple will be able to decide on the amount to be distributed and their rights will be observed and cannot be contested. *Harta sepencarian* declaration can be the solution to avoiding the hostilities that may be present between the beneficiaries upon the death of the husband or wife.

Islamic legacy planners need to be sensitive to the requirements of the relevant law in advising clients on this instrument. Negligence of Islamic legacy planners with the required processes will result in deferred claims or claims cannot be resolved (Alma'amun *et al.*, 2018). Hence, intensive knowledge is required by legacy planners to ensure that proper advice is provided to clients.

2.6.5 Guardianship

In Islam, there is a significant difference between guardianship and custody. Both guardians and custodians have their own rights and responsibilities. A male family member usually has the priority of being a guardian, but it is the woman of the family who is usually given the custody. Guardianship can fall into two categories: (1) a guardian who manages the child's property; (2) a guardian who looks after the child's health, education and everything that is related to the child's personal life.

With reference to the Islamic Family Law (Federal Territories) Act (Section 88), which is in accordance with the *Shafii* School, the priority of guardianship is in the following descending order; father, paternal grandfather, executor appointed by the father's *wasiyyah*, father's executor's executor and paternal grandfather executor's executor. Similar to *harta sepencarian*, guardianship practices in Islamic legacy planning in Malaysia are also subject to the required procedures. Guardianship is an occasional service in Malaysia. As mentioned earlier, Islamic legacy planning involves the advisory role and is beyond the selling of legacy planning solutions. Hence, Islamic legacy planners are required to understand the requirements to stay competent before advising their clients.

2.6.6 *Waqf* (Philanthropic/Endowment)

Yayasan Waqaf Malaysia (YWM) describes *waqf* as a means of worship to Allah SWT or *taqarrub ilallah* through wealth (Yayasan Waqaf Malaysia [YWM], n.d.). Thus, the practice of *waqf* in Islam has become a tradition to the rulers and the wealthy Muslims for centuries, which is widely practised in the Gulf and Central Asian countries. Hence, most Arab states have established a particular ministry to manage the property of *waqf* due to the overwhelming and unmanaged *waqf* properties.

Waqf of properties has already been practised by the companions during the time of Prophet Muhammad SAW. The following Al-Hadith narrated by Ibn Umar records the authority for the establishment of *waqf*;

“When ‘Umar got a piece of land in Khaybar, he came to the Prophet saying, “I have got a piece of land, better than which I have ever got. So, what do you advise me regarding it?” The Prophet said, “If you wish you can keep it as an endowment to be used for charitable purposes.” So, ‘Umar gave the land in charity (i.e., as an endowment) on the condition that the land would neither be sold nor given as a present, nor bequeathed, (and its yield) would be used for the poor, the kinsmen, the emancipation of slaves, Jihad, and for guests and travellers; and its administrator could eat in a reasonable manner, and he also could feed his friends without intending to be wealthy by its means.” (Sahih Al-Bukhari, Book 55, Hadith 35)

As stated by Ali (1976), *waqf* is bestowing a property to Allah SWT dedicated to a religious cause that can benefit the community. The Islamic benevolent practice of *waqf* benefits human welfare, which could last for many years and can be used by many generations. Properties that are for *waqf* are usually land, infrastructures or services that can be used for the present generation and beyond, as the spirit of *waqf* is that the contribution should be for the community and long-lasting (Mariz, 2012). According to the current practice in Malaysia, *waqf* is divided into two, namely the general *waqf* and special *waqf*.

General *waqf* is referring to any *waqf* property dedicated for general welfare or public purposes without specifying any particular beneficiaries (whether made up of

individuals or any organisation or institution) or specific purposes (Ab Rahman, 2009). General *waqf* is legislatively defined as permanent sanctification of the capital and property's revenue for religious or charitable purposes recognised by Islamic law. The special *waqf* is specific when the *waqif* determines the *waqf* made for specific purposes or particular beneficiaries. In a special *waqf*, a *waqif* will set from the beginning to which the *waqf* is made or for which purpose the *waqf* must be applied. Special *waqf* is defined as a property which is offered permanently for a religious or charitable reason and the income of the property is paid to persons as described in the *waqf* agreement (Rafien *et al.*, 2017).

Waqf can take place during the life of the donor or upon his or her death, which is done through *wasiyyah*. State Islamic Religious Councils (SIRC) have been given the mandate to administer *waqf* other than trustees. SIRC has the power over the *waqf* administrator who handles the issues pertaining to *waqf* property in the interest of the beneficiary.

Most of the Muslim societies consider *waqf* only from the aspect of religious and educational purposes because the community does not understand the dynamics of *waqf* (Mohamad *et al.*, 2012). According to Puad (2014), the constraints faced are due to the lack of expertise in technical and professional aspects. Azha *et al.* (2013) mentioned the constraint faced in managing *waqf* is due to the weakness in the planning of *waqf*. Management of *waqf* will be challenged, if there is a lack of skilled professional in the Islamic legacy planning.

Based on observation, the *waqf*-related problems are still stemming from the incompetence of Islamic legacy planners as well as the level of understanding of the community towards *waqf*. If Islamic legacy planners cannot understand the *waqf* intention in legacy planning, then the misunderstanding within the society will continue

(Noh *et al.*, 2019). In addition to understanding *waqf* procedures practised in Malaysia, competent Islamic legacy planners should be able to differentiate *waqf* with other legacy planning instruments.

2.6.7 Faraid (Islamic Inheritance Law)

Several instruments have been described to explain the dynamics of legacy planning industry in Malaysia. However, it should be understood; most of the instruments described earlier are carried out during a person's life. Also, Muslims should know, Allah SWT has provided detailed *faraid* in the Al-Qur'an. Thus, each listed Islamic legacy planning instrument is not to oppose the law of distribution of inheritance, but to provide planning facilities during a person's life and to facilitate the distribution process to be executed in accordance to the Islamic solutions. This view is highly supported as *faraid* is regarded as among the essential limbs of Islamic jurisprudence (Samori *et al.*, 2016).

According to the Kelantan Syariah Judiciary Department, the meaning of *faraid* includes determining, ensuring, legalising and obliging. Based on the Islamic term, *faraid* is the distribution of assets of Muslims after they die regardless of whether there is a will or not prior to their death. Then their inheritance will then be divided among the family such as children, wives, husbands and mothers in accordance to the Islamic law (Jabatan Kehakiman Syariah Negeri Kelantan, n.d.). Mohd and Awang (2008) said, although *faraid* has been pre-ordained by Allah SWT, there are many Muslims that find it challenging to practise accordingly. *Faraid* knowledge is beneficial to every Muslim, and the existence of this knowledge is aimed at providing practical guidance based on religious teachings regarding the distribution of inheritance (Kamarudin & Muhammad, 2018).

Faraid is based on the commandments of Allah SWT based on the verses of *Surah An-Nisāa*. The *surah* states the persons who may be the beneficiaries as well as the portion they are entitled, and this becomes the guideline for the practice of *faraid*;

“Allah (thus) directs you as regards your children’s (inheritance): to the male a portion equal to that of two females: if only daughters two or more their share is two-thirds of the inheritance; if only one her share is a half. For parents a sixth share of the inheritance to each if the deceased left children; if no children and the parents are the (only) heirs the mother has a third; if the deceased left brothers (or sisters) the mother has a sixth. (The distribution in all cases is) after the payment of legacies and debts. Ye know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by God and God is All-Knowing All-Wise...” (Al-Qur’an. Surah Nisāa 4:11),

“In what your wives leave your share is a half if they leave no child; but if they leave a child ye get a fourth; after payment of legacies and debts. In what ye leave their share is a fourth if ye leave no child; but if ye leave a child they get an eighth; after payment of legacies and debts. If the man or woman whose inheritance is in question has left neither ascendants nor descendants but has left a brother or a sister each one of the two gets a sixth; but if more than two they share in a third; after payment of legacies and debts; so that no loss is caused (to anyone). Thus, is it ordained by God and God is All-Knowing Most Forbearing.”

(Al-Qur’an. Surah Nisāa 4:12)

“They ask thee for a legal decision. Say: God directs (thus) about those who leave no descendants or ascendants as heirs. If it is a man that dies leaving a sister but no child, she shall have half the inheritance: if (such a deceased was) a woman who left no child her brother takes her inheritance: if there are two sisters, they shall have two-thirds of the inheritance (between them): if there are brothers and sisters (they share) the male having twice the share of the female. Thus, doth God make clear to you (His law) lest ye err. And God hath knowledge of all things.”
(Al-Qur’an. Surah Nisāa 4:176)

Verse 11 of *Surah Nisāa* as recited above explains the rights and entitlement of the sons, daughters, mother and father; verse 12 explains about the rights and entitlement of the husbands, wife and in the absence of children, uterine heirs (from the same mother but different father) and verse 176 explains on the rights and entitlements of the following legal heirs such as brothers and sisters of the deceased. The claim can only be given out when the legacies and debts are cleared.

Faraid can be defined as a system which is complete in terms of inheritance distribution. The completeness can be observed in the following aspects such as grounds for an inheritance, the determination of rightful beneficiaries, the portions of the inheritance that they should receive, the filtering of the beneficiaries using the *al-Hajb* doctrine and the allocation of inheritance to a *foetus*, *khunta* and *maqfud*, and also *takharuj* doctrine (Razimi, 2016).

The determination of authentic beneficiaries and their rightful portion and non-rightful beneficiaries is based on the *al-Hajb* doctrine, making *faraid* a complete system. The Islamic *fiqh* sets the entitled heirs and can be divided into two groups, which are inner and outer family as summarised by Coulson (2008). There was a reform

in the Islamic inheritance law after the descent of the verses from the Al-Qur'an, whereby women are legally recognised as beneficiaries and their shares are also determined.

The rulings and methods of distribution in *faraid* as determined by Allah SWT are to ensure the distribution is just and to avoid inconsistencies. Nevertheless, the Malay Muslims in Naning, Malacca and Negeri Sembilan are in conflict with the rulings of *faraid* as they still uphold *Adat Papatih*. *Adat Papatih* is a domestic law that states women will inherit the ancestral property. However, currently, the implementation of Shariah with reference to the *faraid* is prevalent in all states in Malaysia.

Al-Qur'an has given the guideline on how *faraid* is to be administered, whereby the beneficiaries and the portion entitled are described. The beneficiaries are divided into three namely *ashabul furud*, *asabah* and *dhawi al arham*. For each of these beneficiaries, the entitlement is based on their legitimate relationship with the deceased, which is usually in accordance with specific criteria as prescribed by the Islamic law (Abdullah, 2012).

In Malaysia, the Shariah Court is given the right and authority to determine how to distribute the inheritance to heirs according to the Islamic law. To facilitate the distribution and calculation of the estate to the members, the Comprehensive *Faraid* Compilation and Distribution System has been developed to help facilitate and accelerate the process. This system automatically make calculations and divisions after the beneficiaries are included. Islamic jurisprudence such as Al-Bukhari and Muslim also has several verses that discuss *faraid*.

Abu Huraira narrated Prophet Muhammad SAW as saying:

"I am closer to the believers than their selves, so, whoever dies while being in debt and leaves nothing for its repayment, then we are to pay his debt on his behalf, and whoever dies leaving some property, then, the property is for his heirs". (Sahih Al-Bukhari, Volume 8, Book 80, Number 723);

Ibn Abbas narrated Prophet Muhammad SAW as saying:

"Give the Faraid to those who are entitled to receive it, and then whatever remains, should be given to the closest male relatives of the deceased." (Sahih Al-Bukhari, Volume 8, Book 80, Number 729);

Ibn Abbas reported Prophet Muhammad SAW as saying:

"Give the shares to those who are entitled to them, and what remains over goes to the nearest male heir". (Sahih Muslim, Book 23, Hadith 2),

also,

Narrated 'Amr bin Shu'aib on his father's authority from his grandfather (RA):

Prophet Muhammad SAW said:

"One who kills a man cannot inherit anything from him." (Sunan An-Nasa'i, Book 7, Hadith 218)

Most of the time, the Muslims have difficulty in understanding the Islamic law the way it was intended to and will become confused when dealing with such situations. That is the reason they need to be disclosed about all their respective rights to avoid conflicts in the future. Prophet Muhammad SAW stressed upon the importance of having the knowledge of *faraid* as stated in the *Al-Hadith* narrated from Abu Hurairah that Prophet Muhammad SAW said:

“O Abu Hurairah. Learn about the inheritance and teach it, for it is half of knowledge, but it will be forgotten. This is the first thing that will be taken away from my nation.” (Sunan Ibn Majah, Volume 4, Book 23, Hadith 2719)

Legacy planning for Muslim clients in Malaysia needs to go through various processes and challenges (Alma’amun *et al.*, 2018). *Faraid* knowledge is only the primary basis, but heirs will face many challenges when managing the estate later. This is where the role of Islamic legacy planners to provide exposure and understanding to the community. The failure of Islamic legacy planners in mastering *faraid* knowledge will cause many distribution processes to be unresolved according to the clients’ expectations (Noh *et al.*, 2019). Although this present research does not elaborate *faraid* in detail, however, what is clear, *faraid* has its mechanism and has been stated in Islamic legacy planning stages and entirely in the Al-Qur’an.

2.7 Competency of Islamic Legacy Planners

The oversight of Islamic legacy planners in ensuring their clients to be well versed about the solutions to problems regarding legacy planning has resulted in the confusion among the public (A. S. A. Aziz, personal communication, December 8, 2018). One

aspect in disseminating the right knowledge and information to the community is the need to have competent human capital and competency needs information and skills, which is the result of education, training and related experiences. A comparative review of the competency requirements by similar sectors in Malaysian's Islamic financial planning ecosystem is shown in Table 2.2:

Table 2.3: Comparison of Competency Requirements for Serving-Practitioners to the Islamic Financial Planning Services in Malaysia

Segment	Institution	Guideline on Competency Requirement	Entry Assessment	CPD CPE CE
Islamic Financial Planning	IBFIM and Financial Planning Association of Malaysia (FPAM)	Competence where the financial planner must maintain the abilities, skills and knowledge necessary to provide professional services competently.	Islamic Financial Planner (IFP)	Yes
Islamic Financial Planning	Malaysian Financial Planning Council (MFPC)	Principle of Continuing Professional Development, which requires the Designees to develop themselves professionally and maintain relevancy and competence at a level required to serve his or her client professionally.	Shariah Registered Financial Planner (SRFP)	Yes
Takaful	Malaysian Takaful Association (MTA)	Continuing Professional Development (CPD) Guidelines with the objectives to raise the standard of competency of the Takaful agents and to maintain and enhance their existing technical knowledge and professional skills.	Takaful Basic Exam (TBE)	Yes

Table 2.3: Comparison of Competency Requirements for Serving-Practitioners to the Islamic Financial Planning Services in Malaysia (continue)

Segment	Institution	Guideline on Competency Requirement	Entry Assessment	CPD CPE CE
Islamic Unit Trust	Federation of Investment Managers Malaysia (FIMM)	Continuing Professional Development (CPD) Framework is designed to cultivate Unit Trust Consultants to develop and maintain their technical and professional competencies in providing sound financial advice and services to their clients.	Computerised Unit Trust Examination (CUTE)	Yes
Islamic Legacy Planning	Not Applicable	Not Applicable	Not Applicable	Not Applicable

Source: Financial Planning Association of Malaysia (FPAM) (n.d.), Malaysian Financial Planning Council (n.d.), Malaysian Takaful Association (n.d.), Federation of Investment Managers Malaysia (FIMM) (n.d.)

Based on the above comparison, Islamic legacy planning is still far behind its affiliates in terms of overseeing the competency of its practitioners as well as setting up a competency framework. An in-depth study of the similar aspects of competencies required from an Islamic legacy planner in full-fledged Islamic trust companies in Malaysia has not been performed. Hence, it is timely that this research purports to explore the appropriate competency framework for Islamic legacy planners who are serving the full-fledged Islamic trust companies in Malaysia.

A. S. A. Aziz (personal communication, December 8, 2018) also states the importance of having a certified programme which is structured to produce competent and qualified Islamic legacy planners in Malaysia. His statement is supported by the earlier literature by Boiral and Gendron (2011) which states that the certification is important because it indicates a competent advisory service is on hand for various stakeholders and it also shows high professionalism in the industry. Based on the researcher's knowledge, there is no dedicated industry professional-based certification has been developed for the industry until today.

Currently, training related to the Islamic legacy planning is only provided by few institutions. IBFIM and FPAM have covered Islamic legacy planning topics through a module of Islamic Financial Planner (IFP) certification (FPAM, 2018; IBFIM, 2018) programme as well as MFPC (2018) in its Shariah Registered Financial Planner (Shariah RFP) programme. There are also unstructured in-house programmes for the appointed Islamic legacy planners by the full-fledged Islamic trust companies like as-Salihin Trustee Berhad, MyAngkasa Amanah Berhad, Wasiyyah Shoppe Berhad, and Amanah Warisan Berhad, which will be referred as “The Big Four” or “B4” in the latter part of this research. However, the training is not comprehensive enough as it only concentrates on information concerning the products and marketing strategy on how to make a product sell. The fact that Islamic legacy planners promote only specific money-generating products is a proof for this (Rahmat, 2009).

Nowadays people can acquire and enhance their competency in many ways. Bersin (2015) stated that in the current employment scenario, there seems to be a disconnection between education and people in the profession. Therefore, certifying informal learning will help people who want to enhance their knowledge and competency without leaving their job. The idea of a professional examination is not new. According to Miranda (2016), it is applied by several sectors especially when it is imperative to enhance the staff ability and maintain a seamless talent progression pipeline.

There are many challenges that must be tackled especially when planning the training and education as required by Islamic legacy planners and also rationalising the standards between the academic and industry professional. Academic programmes have more audience of future practitioners, but it lacks industry participation when compared to professional-based and certification programmes. To make the gap smaller, a

collaboration between the academia and industry must materialise in this current situation (A. S. A. Aziz, personal communication, December 8, 2018). The variation mentioned hampers practical training and knowledge transfer.

There is no formal continuous learning structure to monitor the competency of the Islamic legacy planners in the full-fledged Islamic trust companies in Malaysia, unlike similar services like Takaful and unit trust. By acknowledging the importance of certification to strengthen the industry professionalism, the industry must move to another stage that is to propose a competency-based certification as part of the competency framework structure for Islamic legacy planners.

2.8 Gaps in Islamic Legacy Planning Literature

Many literatures have discussed Islamic legacy planning; however, a vacuum of research on the KSAO that lead to competency issues amongst Islamic legacy planners still exist. Ongoing research to find an alternative solution to the issues and problems associated with the competency of the Islamic legacy planners in the full-fledged Islamic trust companies in Malaysia has yet been conducted by the local Malaysian researchers. This serious issue needs to be viewed and should be dealt immediately.

The majority of the researches lead to consumer behaviour towards Islamic legacy planning instruments, issues of law used in the industry and misunderstanding of the products offered by Islamic legacy planning providers. A summary of previous studies by the authors are listed below in which the researchers have been critically discussed the matter of Islamic legacy planning in various perspectives except on the competency issues and the required KSAO needed for the practitioners in the industry.

Table 2.4: Summary of the Previous Literature

No	Title, Author, Year	Discussion
1	Administration of Property in Malaysia: A Civil Law and Shariah Law Perspective, Mohamad (2001)	This research discusses the practice of property management administration in Malaysia from the perspective of law and jurisprudence.
2	<i>Polisi Pentadbiran dan Pengurusan Tanah: Analisis Perbandingan Antara Kanun Tanah Negara dan Hukum Islam</i> , Abdullah (2005)	This research describes and analysis on issues of land administration and management in Malaysia with Islamic law and knitting National Land Code.
3	<i>Bidang Kuasa Mahkamah Syariah dalam Kes Tuntutan Harta Orang Islam di Malaysia</i> , Ahmad & Ibrahim (2008)	This research reviews the jurisdiction of the Syariah Court earmarked in deciding cases inheritance.
4	Appreciation of Syariah Principles in Property Management in Contemporary Malaysia Society, Buang (2008)	This research proposes <i>hibah</i> , in addition to <i>wasiyyah</i> and <i>waqf</i> as a practical model of Islamic property management.
5	<i>Konsep Harta Menurut Perspektif Undang-Undang Islam dan Undang-Undang Sivil: Satu Tinjauan</i> , Ahmad & Ibrahim (2006)	This research discusses the concept of 'property' under Muslim law based on the Al-Qur'an and Islamic scholars view of the famous and what is the difference with the civil law.
6	<i>Faraid: Manifestasi Kesyumulan Pengurusan Harta dalam Islam</i> , Awang (2009)	This research explains the law of inheritance in Islam i.e., <i>faraid</i> in property management system in Malaysia.
7	<i>Isu-Isu Pembahagian Harta Pusaka Orang Islam dalam Konteks Perundangan Malaysia</i> , Harun (2009)	This research discusses about the division of the estate of Islam in Malaysia based on Islamic law which refers to <i>faraid</i> despite laws that apply are the main civil law.
8	<i>Pembangunan Harta Tanah dan Pelestarian Alam</i> , Mohd & Awang (2008)	This research reviews the real estate development towards Islamic perspectives focusing on sustainable issues.
9	Issues of Land Inheritance from FELDA Settlers' Perspectives: A Case Study Among Settlers in Lurah Bilut, Bentong, Pahang, Malaysia, Mohamad et al. (2010)	This research highlights the issues and problems in the transfer of FELDA land ownership to the rightful heirs and the appropriate measures to tackle them.
10	<i>Masalah untuk Menuntut Hak Ke Atas Harta Pusaka Islam - Pendekatan Terbaik Terletak di Luar Sistem Perundangan Malaysia</i> , Noordin et al. (2011)	This research discusses the need for a more practical solution in which they are located outside of the legal system by using the mathematical formula known as "network flow programming model" (NFP).
11	The Causes of Unclaimed, Late Claimed or Distributed Estate of Deceased Muslims in Malaysia, Azmi & Mohammad (2011)	This research explores the causes of unclaimed estate among the deceased of Muslim and found that there are several factors contributed in this problem i.e., complexity of law, lack of knowledge, long process, lack of cooperation between various parties, lack of cohesive mechanism and the attitude.
12	Review on Issues and Challenges in Islamic Inheritance Distributions in Malaysia, Noordin et al. (2012)	This research addresses issues and challenges clients face in claiming rights to Islamic inheritance in Malaysia.
13	Islamic Inheritance Claim Processes -Non-Normality Data Traits and Best Estimator Choice, Noordin et al. (2012)	This research analyses the administrative issues and management in the distribution of the estate to see other alternatives, namely the cost-cutting measures for property claims processing using non-normal variables.

Table 2.4: The Summary of the Previous Literature (continue)

No	Title, Author, Year	Discussion
14	A Need for Legal Framework of Gift Inter Vivos (<i>Hibah</i>) in Malaysian Estate Planning, Rashid (2013)	This research discusses the importance of estate planning and the benefits of the implementation of the <i>hibah</i> .
15	Delay in Islamic Inheritance Claim - An Ignorance Issue, Noordin <i>et al.</i> (2013)	This research emphasises the ability of the NFP model to describe accurately the flow of processes in the administration and distribution Islamic inheritance and find the shortest route through the network.
16	Religious Conversions and the Conflicts Between Civil and Islamic Law in Inheritance in Malaysia, Ying & Siang (2013)	This research examines the differences between the two systems of inheritance law in Malaysia, the conflicts caused by changes of religion and the possible solution that may relieve the hardship face by the affected parties.
17	<i>Pengurusan Harta Melalui Hibah: Kepentingan dan Manfaat dari Pelbagai Aspek untuk Kemajuan Ummah</i> , Rashid & Ahmad (2013)	This research discusses the importance of estate planning and the benefits of the implementation of the <i>hibah</i> .
18	Islamic Real Estate Management: Review on Issues and Challenges in Managing Inheritance Property in Malaysia, Shafie <i>et al.</i> (2014).	This paper addresses on issues and challenges in managing Islamic inheritance from real estate management perspective.
19	<i>Pengurusan Harta Dalam Islam: Perspektif Hibah Di Malaysia</i> , Azhar <i>et al.</i> (2014).	This paper focuses on the <i>hibah</i> instrument in the estate distribution which includes reality of its application in Malaysia.
20	Planning on Wealth Distribution During Lifetime in Islam: Concept and Its Importance, Hasbulah & Daud (2015).	This paper explores the concept of estate planning, its value and importance in the Islamic point of view.
21	<i>Pelaksanaan Hibah Amanah sebagai Suatu Instrumen Pengurusan Harta Islam di Malaysia</i> , Halim & Ahmad Bustani (2017).	This paper examines the implementation of <i>hibah amanah</i> by Muslims in Malaysia and its legality as an instrument of property distribution in Islamic law so that the rights of every entitled person in one's estate may be ascertained and protected.
22	The Application of the Concept of Best Interests of the Child in Participating in the Matrimonial Proceeding in the Shariah Court, Hasbullah <i>et al.</i> (2017).	This paper discusses the application of children's best interests in participating in the matrimonial proceedings of the Malaysian Shariah Court.
23	<i>Maqāsid Al-Shārī'ah Dalam Pelaksanaan Wasiat</i> , Talib <i>et al.</i> (2017).	<i>Kajian mendapati bahawa pensyariatan dan pelaksanaan wasiat dapat merealisasikan Maqāsid al-Sharī'ah dalam penjagaan al-Kulliyāt al-Khams, serta meraikan Maşlahah dan menolak Mafسادah.</i>
24	<i>Faraid Dan Hibah: Persediaan Ke Arah Pencen Hakiki</i> , Wahab <i>et al.</i> (2017).	This research explains Islamic estate planning and management for Muslim particularly in Malaysia.
25	Islamic Estate Planning and Management: Malaysian Experience, Kamarudin & Muhamad (2018).	This research explains Islamic estate planning and management for Muslim particularly in Malaysia.

Table 2.4: The Summary of the Previous Literature (continue)

No	Title, Author, Year	Discussion
25	Islamic Estate Planning and Management: Malaysian Experience, Kamarudin & Muhamad (2018).	This research explains Islamic estate planning and management for Muslim particularly in Malaysia.
26	Money Management for Muslim Family, Alma'amun <i>et al.</i> (2018)	The study discusses on the important of money management within the Muslim family.
27	What Influence Muslims to Make Wills? Insights into its Determinants, Wahab <i>et al.</i> (2019).	This study investigates the factors that influence the practice of making will among Muslims in Malaysia.
28	Islamic Estate Planning: What Malaysian Muslim Women Must Know, Basah & Tahir (2019)	This paper attempts to kindle the interest in Muslim women to have a Will written based on all the challenges associated with intestate deaths.
29	Professionalisation Of Islamic Legacy Planning Industry in Malaysia: Validation on Competency-Based Certification for Islamic Legacy Planners, Noh <i>et al.</i> (2019).	This paper is to explore the industry expectation of the content of certification for practitioners in Islamic legacy planning field in Malaysia.
30	Competency of Islamic Legacy Planners in Malaysia: Issues and Challenges, Noh <i>et al.</i> (2020).	This paper argues for a competency framework for Islamic legacy planners in Malaysia.

According to the summary of the related works, it can be concluded that there are many studies that have been conducted discussing about the Islamic legacy planning from various aspects. The previous researchers have focussed on law and discussed on the detail information about the industry expectation, current practices, act and regulation related to the Islamic legacy planning. Hence, a research focusing on KSAO that relates to the competency of Islamic legacy planners just started by the researcher in 2019 and is a new knowledge for further exploration in the Islamic legacy planning field. This is important since competent Islamic legacy planners are the ones who will impart awareness and provide solutions to the Muslim community on the Islamic legacy planning and guarantee the sustainability of the industry (Mustafa & Che, 2013).

2.9 Conclusion

This chapter provides a review of the previous literature that encompassed the area of Islamic legacy planning. The discussion of the previous literature revealed that most of the Islamic legacy planning studies focused on the product innovation, issues on practicing the Islamic legacy solutions within the community and challenges in the industry. Some of the previous studies mentioned the need for the practitioners in the industry to be competent and to be expert in certain area. However, limited specific empirical studies have been performed on the competency aspect of Islamic legacy planners.

UNIVERSITI SAINS ISLAM MALAYSIA
جامعة العلوم الإسلامية
ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA