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**The Execution of Muslim Wills (*Wasiyyah*) in Malaysia:
A Way to Evade Islamic Inheritance (*Farā'id*)**

**Pelaksanaan Wasiat di Malaysia: Satu Cara Pembahagian
Harta Pusaka (Faraid)**

Akmal Hidayah Halim^{*}, Nor Azlina Mohd Noor^{**}, and
Wan Noraini Mohd Salim^{***}

Abstract

In cases where a Muslim dies and leaves a will (*wasiyyah*), the jurisdiction to deal with the deceased's estate lies with the Civil High Court and Shariah Court as far as the procedural and substantive laws are concerned respectively. The existence of the dual jurisdiction has given rise to the conflict of jurisdiction between the High Court and the Shariah Court particularly when an application for the grant of probate from the High Court is required in order to formalise the appointment of the *wasi* which must be made via a valid will (*wasiyyah*). In this context, the law is silent as to the requirement for such a will to be firstly validated by the Shariah Court before probate could be granted to the *wasi*. This paper seeks to analyse the jurisdiction of the High Court and Shariah Court to examine the law and procedure relating to the execution of Muslim wills in Malaysia. The study adopts a content analysis by examining the existing primary and secondary materials including the statutory provisions provided in the Probate and Administration Act 1959, Wills Act 1959, Rules of Court 2012, Muslim Will Enactments and case law. The findings show that the absence of a legal provision relating to the requirement for the reference of a Muslim's will to the Shariah Court before the issuance of the grant of probate would open up room for the execution of a *wasiyyah* which does not comply with the Islamic law on wills, thus avoiding the distribution of the estate to be made according to Islamic inheritance.

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Keywords: Muslim wills, Islamic inheritance, High Court, Syariah Court, estate administration, Malaysia.

Abstrak

Dalam kes wasiat seseorang Islam yang telah meninggal dunia, bidang kuasa untuk mentadbir harta si mati dari sudut prosedurnya terletak di bawah Mahkamah Tinggi Sivil manakala Mahkamah Syariah pula berbidangkuasa untuk menentukan keabsahan wasiat tersebut dari sudut substantifnya. Kewujudan kedua-dua bidangkuasa ini telah menimbulkan konflik di antara Mahkamah Tinggi dan Mahkamah Syariah terutamanya apabila suatu permohonan untuk pemberian probet dari Mahkamah Tinggi perlu dibuat untuk mengesahkan perlantikan wasi. Dalam konteks ini, tiada undang-undang yang memperuntukkan bahawa wasiat tersebut perlu disahkan dahulu oleh Mahkamah Syariah sebelum probet boleh diberikan kepada wasi. Oleh itu, penulisan ini bertujuan untuk menganalisa bidang kuasa Mahkamah Tinggi dan Mahkamah Syariah bagi mengkaji undang-undang dan prosedur yang berkaitan dengan pelaksanaan wasiat Islam di Malaysia. Penulisan ini menggunakan kaedah analisis data utama dan sekunder termasuklah peruntukan undang-undang dalam Akta Probet dan Pentadbiran 1959, Akta Wasiat 1959, Kaedah-Kaedah Mahkamah 2012, Enakmen Wasiat Islam dan kes-kes yang telah diputuskan. Penulisan ini mendapati bahawa ketiadaan peruntukan undang-undang berkaitan dengan rujukan wasiat Islam kepada Mahkamah Syariah sebelum pemberian probet akan membuka ruang kepada pelaksanaan wasiat yang tidak selari dengan hukum wasiat Islam dan seterusnya mengelakkan berlakunya pembahagian harta pusaka mengikut pewarisan harta dalam Islam.

Kata kunci: Wasiat orang Islam, Pewarisan harta Islam, Mahkamah Tinggi, Mahkamah Syariah, Pentadbiran pusaka, Malaysia.

Introduction

“When there is a will, there is a way” – an idiom commonly used to describe that when a person has the desire and determination to achieve a goal, he or she will always find methods to achieve it. This idiom is interestingly relevant to the cases of estate administration with regards to the importance of executing a will as a way to administer a deceased’s estate and to facilitate the process for the estate beneficiaries.

In a case a person dies and leaves behind a will, the deceased is said to have died testate. At this point, it is important to note that while the non-Muslims have an unfettered right to dispose of their property by a will, the Muslims’ testamentary disposition is subject to limitations. The Wills Act 1959 (Act 346) which governs the making of a will in Malaysia, does not apply to the wills of persons professing the religion of Islam whose testamentary powers shall remain unaffected by the Act (Section 2, Wills Act 1959). For the Muslims, the distribution of an estate is dependent on and governed by Islamic inheritance (*farā'id*). The

execution of a Muslim's will (*waṣiyyah*) is subject to the testamentary limitations of the one-third rule and that no *waṣiyyah* is to be made to the legal heirs unless the other legal heirs give consent to such a disposition after the deceased's death. If any dispute arises relating to the validity or other substantive issues of such a *waṣiyyah*, the jurisdiction to deal with the matter lies with the Shariah Court. The jurisdiction is in line with Item I, List II- State List of the Federal Constitution with respect to the Islamic law relating to succession, testate and intestate.

On the other hand, the jurisdiction to deal with the procedural aspects of all testate estates exclusively lies with the Civil High Court. The High Court has an inherent jurisdiction to administer matters relating to probate and administration of estate which fall under the Federal list which has been incorporated in Ninth Schedule of Federal Constitution (Para 4(e) of Ninth Schedule, Federal Constitution). The list provides that the federal government has jurisdiction towards the civil law matters and procedure and the administration of justice of succession, testate and intestate; probate and letters of administration in Malaysia not including matters falling under Islamic personal law. The inherent jurisdiction given to the High court pertaining to the procedural law can be traced back to the early days during British colonialization where the justice administration in those days introduced English law after concluding that the local law does not provide adequate resources and guidelines in the process of administering inheritance (Jasni Sulon 2013).

Eventually, the existence of the dual jurisdiction has given rise to the conflict of jurisdiction between the High Court and the Shariah Court, particularly when a *waṣiyyah* is executed in a form of *wiṣayah* which contains the appointment of a *waṣi*/executor. In such a case, an application for a grant of probate from the High Court is required in order to formalise the appointment of a *waṣi* to deal with the execution of the *waṣiyyah*. In this context, the law is silent as to the requirement for such a will to be firstly validated by the Shariah Court before probate could be granted to the *waṣi*. This situation could result in the execution of a *waṣiyyah* which is inconsistent with the Islamic law on will and inheritance (*farā'id*).

This paper looks into the jurisdictions of the High Court and Shariah Court in order to analyse the law and procedure relating to the execution of a Muslim's will in Malaysia. The analysis is made in the context of relevant legal provisions relating to the making of the *waṣiyyah* and the administration of testate estate in Malaysia. The study adopts the doctrinal analysis by examining the existing primary and secondary ma-

materials including the statutory provisions provided in the Probate and Administration Act 1959, Wills Act 1959, Rules of Court 2012, Muslims Will Enactments and case law. The discussions are divided into six sections, namely the introduction which is followed by an explanation on the nature of Muslim wills. The subsequent section focusses on the jurisdiction of the High Court in the procedural aspects of Muslim wills. The jurisdiction of the Shariah Court in the substantive aspects of Muslim wills is discussed in the following section and the last section before conclusion analyses the procedures for the application for grant of probate at the High Court.

Nature of Muslim Wills (*Wasiyyah*)

According to Section 2(1) of the Muslim Wills (Selangor) Enactment 1999, a *wasiyyah* is defined as an *iqrar* of a person made during his lifetime with respect to his property or benefit thereof to be carried out for the purposes of charity or for any other purposes permissible under the Islamic law, after the testator's death. A *wasiyyah* involves an offer from the testator to make a *wasiyyah* and is completed with the acceptance of the beneficiary after the death of the testator. The law on *wasiyyah* has its original source from the Holy Quran. Allah (s.w.t) says in the Quran (translated):

'It is prescribed for you when death approaches any of you, if he leaves wealth, that he makes a bequest to parents and next of kin, according to reasonable manners. (This is) a duty upon the pious' (Al-Quran, 2:180).

Allah (s.w.t) also says in another verse:

'Those of you who die and leave widows should bequeath for their widows a year's maintenance and residence' (Al-Quran, 2:240).

However, the two verses above had been said to be abrogated by the Quranic texts on inheritance as contained in Surah al-Nisa' verses 11, 12 and 176. Nevertheless, the abrogation does not involve the abrogation of the *hukum* or ruling of *wasiyyah* or its permissibility in general but the ruling as to *wasiyyah* to parents and other legal heirs who are already entitled under *farā'id*.

Several traditions of the Prophet (ﷺ) encourage a Muslim to make a *waṣiyyah*. Ibnu Umar reported that the Prophet (ﷺ) said:

It is not permissible for any Muslim who has something to will to stay for two nights without having his last will and testament written and kept ready with him (Al-Bukhari, *Sahih al-Bukhari*, Vol. 4, Book 51, Hadith 1).

In another hadith, it is reported by Jabir that the Prophet (ﷺ) said:

Whoever dies leaving a will, he dies on the right path and Sunnah, and he dies with piety and witness, and he dies forgiven (Ibn Majah, *Sunan Ibn Majah*, Vol. 3, Book 22, Hadith 7).

In executing a *waṣiyyah*, the testamentary dispositions may not surpass one-third of the estate of the deceased. This rule is based on the hadith narrated from Sa'ad ibn Abi Waqqas who said:

I fell sick and the Prophet (ﷺ) paid me a visit. I said to him, "O Allah's Messenger (ﷺ)! I invoke Allah that He may not let me expire in the land whence I migrated (i.e. Mecca)." He said, "May Allah give you health and let the people benefit by you." I said, "I want to will my property, and I have only one daughter and I want to will half of my property (to be given in charity)." He said, "Half is too much." I said, "Then I will one third." He said, "One-third, yet even one-third is too much." (Al-Bukhari, *Sahih al-Bukhari*, vol. 4, Book 51, Hadith 7).

Such a limitation had also been recognised in *Shaik Abdul Latif v. Shaik Elias Bux* (1915) 1 FMSLR 204 where it was held that that under the Islamic law, a testator has an authority to dispose of not more than one-third of the property belonging to him at the time of his death; the remaining two-thirds of such property must descend in fixed proportions to those affirmed by the Islamic law to be his heirs (See *Re Will of M. Mohamed Haniffa, deceased*, [1950] MLJ 286).

Another limitation for a Muslim's will is that it must not attempt to favour one heir by giving him/her a larger share of the estate than he/she is entitled to under the *farā'id* and this will also be completely in-

valid without the permission of the other heirs. This is based on a *hadith* narrated from Abu Umamah:

I heard the Prophet said: Allah has already given to each entitled relative his proper entitlement. Therefore, no bequest in favour of a legal heir' (Al-Tirmidhi, *Sunan al-Tirmidhi*, Vol. 4, Book 4, Hadith 2120).

In the case of *Re Man bin Mihat* [1965] MLJ 1, it was clearly stated that the Islamic law rigidly prescribes the share of every heir and that no alteration of these shares may be made by a will unless the consents of all heirs are obtained (*Siti bt Yatim v. Mohd Norbin Bujal* (1928) 6 FMSLR 135, and *Amanullah bin Haji Hassan v. Hajjah Jamilah binte Shaik Madar* [1975] 1 MLJ 30).

Based on the above authorities, it is to be emphasised that the *wasiyyah*, would not, in any way, affect the scheme of distribution to the legal heirs. The property that becomes the subject of a valid *wasiyyah* would not be part of the deceased's estate and shall be excluded from the estate prior to the distribution of the residue which shall be made according to the rule of *farā'id* or according to the family agreement, as the case may be.

Jurisdiction of the High Court in the Procedural Aspects of Muslim Wills

The administration of estates by the High Court is governed by Orders 71 and 72 of the Rules of Court 2012, which regulate the law for non-contentious and contentious probate proceedings respectively (Raman, 2012).

The High Court has the jurisdiction to deal with a testate estate by virtue of Section 24(f) of the Courts of Judicature Act 1964 (Act 91). The section provides for the jurisdiction of the High Court to grant probates of wills and testaments of the estates of deceased persons leaving property within the territorial jurisdiction of the Court. The administration of testate estates by the High Court is governed by the Probate and Administration Act 1959 (Act 97) and the Rules of the Court 2012 [PU(A) 205;226; 232; 286/2012]. The former provides for the law relating to the grant of probate and letters of administration. The latter, on the other hand, regulates the procedures for the application of such grants. Probate formalises the authority of an executor to carry on the affairs of the deceased (Raman, 2012) because the object of applying for the grant of

probate or letters of administration is to enable the applicant to deal with the deceased's estate. In *Meyappa Chetty v Subramaniam Chetty* [1916] 1 AC 603, it was held that the court may only give judgement in the executor's favour once the latter extract the probate. The executor cannot be sued before the grant of representation was extracted, unless the defaulted party can produce an evidence that the executor in his conduct has intermeddled with the deceased's estate before the extraction of the probate (*Chia Teck Liang V. Tan Soo Khiang* [1936] 1 LNS 8 followed *Mohimadu Mohideen Hadjar v. Pitchay* [1894] App Case at p. 443). However, the obtaining of the grant of probate was only to prove the title; it did not affect the capacity because it was derived from the will.

Therefore, if a person dies leaving behind a valid will and having appointed an executor who is willing to act as such, the executor has to obtain a grant of probate. The grant of probate to an executor is governed by Section 3, Probate and Administration Act 1959. According to Section 2, Probate and Administration Act 1959, 'probate' means a grant under the seal of the Court authorizing the executor or executors therein named to administer the testator's estate. Although an executor derives his title and authority from the will of his testator and not from any grant of probate, the obtaining of the probate will ensure the validation of his actions.

Jurisdiction of the Shariah Court in the Substantive Aspects of Muslim Wills

A Muslim in Malaysia is not subject only to the general laws enacted by the Parliament but also to the personal law enacted by the State Legislature. Taking the Constitution as a whole, it is clear that it is the intention of the founders of our Constitution to allow Muslims in this country to be also governed by Islamic personal law. Thus, a Muslim is subject to both the general laws enacted by the Parliament and also state laws enacted by the legislature of a state. In the case of *Majlis Ugama Islam Pulau Pinang dan Seberang Perai v. Shaik Zolkaffly Shaik Natar & Ors* [2003] 3 MLJ 705, it was held that if the case falls within the jurisdiction of the Shariah Court's Enactment of the particular state, the case shall be heard in the Shariah Court. Conversely, if the case is not listed in the jurisdiction of the Shariah Court, it should be tried in civil courts. In this case, the Federal Court ruled that the jurisdiction to hear the issue of inheritance in Islam is given to the Shariah Court and not to the Civil High Court.

In the context of estates administration, the role of the Shariah Court differs from the role of the High Court in that the Shariah Court is

not empowered to directly distribute a deceased's estate. The Shariah Court will be resorted to, only if, in the course of any proceedings relating to the administration or distribution of the estate of a deceased Muslim, an order from the Shariah Court is required for the purpose of determining any issue arising in the process of administration or distribution of the estate (Pawancheek Marican 2008; Raman 2012). In its civil jurisdiction, the Shariah Court has the jurisdiction to determine *inter alia*, issues relating to the wills of a deceased Muslim and the division and inheritance of testate or intestate property of a Muslim (eg. Section 61(3)(b)(v) and (viii), Administration of the Religion of Islam (State of Selangor) Enactment 2003). However, its jurisdiction is limited to the determination of the disputes relating to substantive law on *wasiyyah* only.

The Shariah Court has no jurisdiction to grant probate or letters of administration with a will annexed although it involves the administration of a Muslim's testate estate (*Jumaaton@Zaiton & Anor. v. Raja Hizaruddin bin Raja Nong Chik* [1998] 6 MLJ 556). For the purposes of probate and administration an applicant would still have to resort to the jurisdiction of a civil court (*Re Ridzwan bin Ibrahim* [2002] 4 AMR 4318).

The above position, however, is rather different from the position of the Shariah Court in Sabah. Section 11 (b) (viii) of the Shariah Court Enactment 2004 of Sabah provides that the Shariah Court has the jurisdiction to hear and decide all actions relating to the division and inheritance of a testate or intestate property or to the appointment of a *wasi* and for matters relating thereto.

The jurisdiction mentioned has been legally recognised by the High Court of Tawau in the case of *Noh bin Abdul Aziz & Anor, Director of Lands and Surveys, Kota Kinabalu & Anor* [1999] 6 MLJ 772. One of the issues before the court was whether the applicants had the *locus standi* to commence the application. In this case, the respondent challenged the distribution order issued by the Shariah Subordinate Court in Sandakan. The respondent argued that the appellant in this case did not have a *locus standi* to file a case at the High Court as no letters of administration had been granted by the High Court to the applicant. It was held that the Shariah Subordinate Court had the jurisdiction to hear and decide matters relating to the division and inheritance of a testate or intestate property. There was nothing wrong for the applicants to go before the Syariah

court for such orders, even if they are also within the jurisdiction of the civil courts.

Hence, it can be inferred that the Shariah Court in Sabah may issue letters of representation to a deceased Muslim's estate based on Section 11 (b) (viii) of the Shariah Court Enactment 2004 which provides for the appointment of a *wasi* and the matters connected therewith. This provision differs from the provision relating to the jurisdiction of Shariah Court in West Malaysia (Akmal Hidayah 2018, 23).

Procedures for the application for grant of probate at the High Court

The procedures for the application for a grant of probate as provided by the Rules of Court 2012 were largely adopted from the Non-Contentious Rules 1954 of England, which have now been superseded by the Non-Contentious Rules 1987. The disposal by a will is a concept borrowed from the Roman law. The Roman conquest of England left behind the principles of law which were accepted and adapted to suit local requirements (Mahinder Singh Sidhu 2005, p.1). Consequently, some of the provisions of the Rules of Court 2012, particularly in relation to the existence of a will that determines the type of grant of representation, are not applicable to the wills of Muslims although the Rules are meant to be a statute of general application (Akmal Hidayah 2012, 6). This is because the Rules refer to the will executed according to the Wills Act 1959 which is not applicable to the person professing the religion of Islam. The relevant provisions of the rules under Order 71 are as follows:

Rules of Court 2012	Heading	Provisions
(O. 71, r. 11)	Evidence as to terms, and date of exercise of will conditions	(1) Where there appears in a will any obliteration, interlineation, or other alteration which is not authenticated in the manner prescribed by section 15 of the Wills Act 1959 [Act 346] or by the re-execution of the will or by the execution of a codicil, the Registrar shall require evidence to show whether the alteration was present

		<p>at the time the will was executed and shall give directions as to the form in which the will is to be proved:</p> <p>Provided that this paragraph shall not apply to any alteration which appears to the Registrar to be of no practical importance.</p> <p>(2) If from any mark on the will it appears to the Registrar that some other document has been attached to the will, or if a will contains any reference to another document in such terms as to suggest that it ought to be incorporated in the will, the Registrar may require the document to be produced and may call for such evidence in regard to the attaching or incorporation of the document as he may think fit.</p> <p>(3) Where there is a doubt as to the date on which a will was executed, the Registrar may require such evidence as he thinks necessary to establish the date.</p>
(O. 71, r. 14)	Wills not proved under section 5 of Wills Act	Nothing in rule 9, 10, 11 or 12 shall apply to any will which it is sought to establish otherwise than by reference to section 5 of the Wills Act 1959 but the terms and validity of any such will shall be established to the Registrar's satisfaction.
(O. 71, r. 15)	Wills of persons on military service and seamen	If it appears to the Registrar that there is prima facie evidence that a will is one to which section 26 of the Wills Act 1959 applies the will may be admitted to proof if the Registrar is satisfied that it was signed by the testator or, if un-

		signed, that it is in the testator's handwriting.
(O. 71, r. 18)	Grants to attesting witnesses	Where a gift to any person fails by reason of section 9 of the Wills Act 1959 (which provides that gifts to attesting witnesses or their spouses shall be void), such person shall not have any right to a grant as a beneficiary named in the will, without prejudice to his right to a grant in any other capacity.

Based on the above rules, it can be said that the reference to testate estates in the Rules of the Court 2012 does not include the estate of a Muslim dying leaving a will. Even if a Muslim's will is to be considered as a privilege will as it can be made orally, still the will is not governed by the provisions of the Rules. An oral will is considered as a privilege will under the Rules of Court 2012 (Order 71 rule 15) and refers only to the privileged wills of soldiers, airmen and sailors as provided by section 26 of the Wills Act 1959.

The application for a grant of probate, however, may be required if a *wasīyyah* contains a provision for the appointment of an executor to carry out a deceased's affairs upon his/her death. Such a *wasīyyah* is termed as *wiṣayah* under the Islamic law. Considering the nature of a *wiṣayah*, it is submitted that it is a kind of instrument that requires an application for a grant of probate from the High Court and not an instrument recognisable as a *wasīyyah* or a will in Islam. At this point, it is to be highlighted that the High Court, in exercising its inherent jurisdiction over the procedural law relating to the deceased Muslim testate estate may not have regards to the execution of *wiṣayah* under Islamic law as this is under the purview of the Shariah Court. In such a case, it is very unfortunate that the law is silent as far as the validity of *wiṣayah* is concerned. While the High Court is so much concerned with the validity of the will executed under the Wills Act 1959 before a probate could be granted to a non-Muslim's estate, the same emphasis is not given when it comes to a *wiṣayah*. In many instances, a probate is granted to a Muslim's testate estate without reference to the Shariah Court to validate such a will. The appointed *wasī* could just proceed with the execution of such a will and eventually distribute the estate according to what has

been instructed by the testator (*muṣi*) in his will without the need to recourse to the limitation of a *wasiyyah* and Islamic inheritance (*farā'id*). In other words, the distribution of a deceased's estate could be made just based on the testator's last wishes. If this is practiced, it will definitely become a tactic of avoiding the Islamic law of succession in order to confer a person with a right to choose his or her own successor of an estate after the person's death. This is worrying as it might be the reason for the ignorance of the Islamic law on succession as narrated from Abu Hurairah that the Prophet (ﷺ) said:

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 *ummah* (Ibn Majah, *Sunan Ibn Majah*, Vol. 4, Book 23, Hadith 2719).

Constitutionally, the procedural and substantive jurisdictions of both High Court and Shariah Court in matters relating to testate estate of a deceased Muslim respectively have been clearly spelled out. Nevertheless, as far as the application of the procedural law relating to the administration of testate estate is concerned, amendments to the Rules of Court 2012 and Probate and Administration Act 1959 should be made to include the wills executed by the Muslims and reference to the Shariah Court be made before probate is granted particularly if the will contains the appointment of an executor or a *wasi*.

Alternatively, similar provisions as in Order 71 and Order 72 of Rules of Court 2012 must be inserted in Shariah Court statutes to give jurisdiction to Shariah Court to grant probate for Muslim's testate estate in order to ensure that the validity of a Muslim's will is determined accordingly. This however, would require an amendment to the State List of the Federal Constitution in order to confer similar jurisdiction to the Shariah Court. In this context, reference could be made to the practice of Sabah Shariah High Court whereby Section 11 of Syariah Court Enactment (Sabah) 2004 provides for the original jurisdiction of Sabah Shariah High Court to appoint a *wasi* or an executor. As of now, no similar provision can be found in other State Enactments relating to the jurisdiction of Shariah Court to do the same. Nonetheless, it is worth noting here that despite the proposed amendment, the jurisdiction of the Syariah Court in the testate estate of a Muslim deceased could not be made absolute especially when the estates involve foreign estates that requires for the resealing of the grant. In such cases, the application for the grant of probate

must still be made to the High Court since the jurisdiction of Shariah Court is state-based.

Conclusion

The jurisdiction of the High Court in the administration of testate estate or estate with will is exclusive in all cases where the deceased has left a valid will or other testamentary disposition regardless of the religion of the deceased. However, the discussion has established that in cases of execution of wills, the Rules of Court 2012 refers to the law as provided by the Wills Act 1959 which is not applicable to a person professing the religion of Islam. Problems may arise when there is an appointment of an executor in a Muslim's will, which necessitates the application for a grant of probate from the High Court. At this point, it could be said that there is *lacunae* in the Rules of Court 2012 as the provisions make no reference to a Muslim's will. This is an irregularity because the Rules are meant to be a statute of general application; they are supposed to be applicable to both Muslims and non-Muslims in Malaysia. Furthermore, in cases of dispute as to the validity of a Muslim's will, the jurisdiction to deal with the matter lies with the Shariah Court. Eventually, the absence of a legal provision relating to the requirement for the reference of a Muslim's will to the Shariah Court before the grant of probate is issued to the *wasi* would open up room for the execution of a *wasiyyah* which does not comply with the Islamic law on wills, thus avoiding the distribution of the estate to be made according to Islamic inheritance. It is therefore, important that the legal position of such a *wasiyyah* be ascertained so that it would not in any manner infringe the rights of the legal heirs under the Islamic inheritance.

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