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# THE GREY SIDE OF *HIBAH AMANAH* AS INHERITANCE INSTRUMENT IN MALAYSIA

Mohd Yazid Zulkepli  
Tajul Aris Ahmad Bustami

## **Abstract**

*Hibah amanah has become a popular alternative to the Islamic system of inheritance (farā'id) as it enables a donor to have full control during his life over his or her property while the beneficiary can only benefit from it upon the death of the donor. Hibah amanah enables the donor to circumvent the strict limitations provided under farā'id since the endowment of hibah amanah is arguably not subjected to farā'id. This article starts with an analysis of the Sharī'ah perspective of hibah amanah, focusing on the arguments forwarded by scholars that support and oppose hibah amanah, together with their justifications from the Qur'ān, Sunnah and other basis of their views (ijtihād). This qualitative study uses content analysis methodology and reveals that there are many legal complications and obstacles including the issue of Sharī'ah-compliance, and the disputed permissibility of using Hibah amanah to circumvent farā'id, the possibility of unfairness and bias, the denial of the beneficiaries' rights without remedy, the threats from the money laundering perspective and the conflict between Shari'ah court and civil court over jurisdiction. This article stresses the importance of having a clear legal and regulatory mechanism to address all issues related to hibah amanah.*

**Keywords:** *Hibah amanah, Farā'id, Islamic law of inheritance, Trust, Unfairness*

## Introduction

The widespread use of a new hybrid product the *hibah amanah* as an instrument of property management has been increasing with the product being introduced by big players including the Amanah Raya Berhad (ARB), Amanah Saham Nasional Bhd (ASNB), Tabung Haji (TH), Wasiyyah Shoppe Berhad, as-Salihin Trustee Berhad, CIMB and the Prudential BSN Takaful Berhad. The above-mentioned big players are all well known in the financial and economic landscape of Malaysia.

Under Islamic law Muslims are generally given flexibility and are allowed to manage their financial affairs during their lifetime. However, the Islamic inheritance law governs the division of property of a deceased Muslim strictly to ensure the protection of all rightful beneficiaries. This is a clear departure from the practice in Arabia before the advent of Islam known as the *jahiliyyah* period, when people could give away their property after death in the form of a will without considering the interest of the rightful beneficiaries. The Islamic inheritance law provides certain exceptions and flexibility but it is usually limited to only one third (1/3) of the property, and in certain situations *hibah*.

According to the definition provided by the Central Bank of Malaysia in the policy paper on *hibah*, *hibah* refers to ‘a transfer of ownership of an asset from a donor (*wahib*) to a recipient (*mawhublahu*) without any consideration.’<sup>1</sup> Basically *hibah* is a gift and a Muslim can give away his property during his lifetime as he seems fit, but making a complete gift during someone’s lifetime might backfire as noted in the following dissertation:

“In the context of estate planning involving parents and children, the children will acquire the property from their donor parents while their parent is still living. This may make the parents vulnerable to certain risks like giving the children a free rein to dispose of the property, charge it to the bank to start a business or raise capital, while the property is the only place where the parents

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<sup>1</sup> Central Bank of Malaysia, “Hibah”, policy paper no. BNM/RH/PD 028-5, issued on 3 August 2016.

have to live and spend their remaining days.”<sup>2</sup>

*Hibah amanah*, a form of conditional *hibah*, can be defined as an agreement for the gift of a donor’s asset during his or her lifetime for the benefit of the beneficiary without any consideration. The gift however will only be effective upon the death of the donor and the donor is, in most cases, still allowed to benefit from the asset during his lifetime. The donor’s asset will be entrusted to an appointed trustee to be held for the benefit of the beneficiary after the donor’s death.

Many major players are introducing *hibah amanah* into their portfolio: Amanah Raya, a market leader with more than 90 years’ experience, was established in 1921 and is wholly owned by the Government of Malaysia;<sup>3</sup> Amanah Saham Nasional Berhad (ASNB) was established in 1979 with 12 funds with a total value of RM207 billion, is a wholly owned subsidiary of Permodalan Nasional Berhad (PNB);<sup>4</sup> Tabung Haji (TH) with more than 50 years’ experience, is an institution responsible for the welfare and management of the country’s *Hajj* pilgrims as well as a series of Islamic funds.<sup>5</sup> These institutions are considered reliable by Malaysian society and are trusted for their expertise, and their decisions will significantly impact the economy of the country and the interest of the *ummah*.

In March 2017 it was announced that the Amanah Saham Nasional Bhd (ASNB) was offering “a registration fee discount of RM100 (inclusive of goods and services tax) to investors for its unit trust-related estate planning services, *Hibah Amanah* and *Pengisytiharan Amanah* from March 1 to April 30 2017.”<sup>6</sup> The

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<sup>2</sup> Mohd Syukri bin Azaari, “The application of *hibah* to immovable property in West Malaysia.” (Master thesis, International Islamic University Malaysia, 2010, 3.

<sup>3</sup> “Corporate profile: Amanah Raya”, accessed May 30, 2018.

<https://www.amanahraya.my/profile/>

<sup>4</sup> “Company Overview”, accessed May 30, 2018.

[http://www.asnb.com.my/v3/\\_/asnbv2\\_1/about\\_EN.php#maklumat korporat](http://www.asnb.com.my/v3/_/asnbv2_1/about_EN.php#maklumat korporat).

<sup>5</sup> “About Us”, accessed May 30, 2018.

<https://www.tabunghaji.gov.my/index.php/en/corporate/corporate-information/about-us>.

<sup>6</sup> “ASNB offers discounts for *Hibah Amanah* and *Pengisytiharan Amanah*,” *Astro Awani*, last modified 21 March 2017,

subscribers of the services (the unit holders) could bypass the division of property under *farā'id* by naming their preferred beneficiaries directly. In May 2017 it was reported that the Lembaga Tabung Haji (TH) had launched its latest product, *Hibah Amanah* with the aim of attracting 50,000 subscribers nationwide in the same year.<sup>7</sup>

Despite some benefits of *hibah amanah*, there is serious doubt raised by scholars on the permissibility of *hibah amanah* in its current form from the *Shari'ah* perspective, in addition to the legitimate fear that the misuse of *hibah amanah* will lead to injustice. The Islamic law of succession and inheritance is meant to avoid injustice by ensuring that all rightful legal heirs are entitled to their clearly specified portion proportionate to their duties and responsibilities. *Farā'id* is characterized by its emphasis on the compulsory rules of succession as its main purpose is to provide for surviving dependents, relatives and family. The dependents and relatives are arranged into a strict order of rights and priorities and the quantum of their respective shares is thoroughly defined with limited flexibility. The *Shari'ah* allows Muslims on their death to dispose of their property as they wish through the *wassiyah* (will) but this is strictly restricted to one-third of the net assets. This restriction however can be lifted if the legal heirs voluntarily waive their rights to the property. In addition there are various methods for Muslims to plan for the disposal of their estate including *sadaqah* (donation), *waqf* (endowment), *nadhr* and *hibah* (gift inter vivos).

*Hibah amanah* has become a method to circumvent the Islamic law of inheritance (*farā'id*) as it enables a donor to have full control over his/her property during his/her lifetime while the beneficiary can only benefit from it upon the death of the donor without the usual *farā'id* and *wassiyah* limitation. Using *hibah amanah* the portion received by the beneficiary will not be the one fixed under the

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<http://english.astroawani.com/business-news/asnb-offers-discounts-hibah-amanah-and-pengisytiharan-amanah-136271>.

<sup>7</sup> "Lembaga Tabung Haji launches Hibah Amanah," *NST Business*, last modified 11 May 2017,

<https://www.nst.com.my/business/2017/05/238266/lembaga-tabung-haji-launches-hibah-amanah>.



Islamic law of inheritance (*farā'id*) but will be at the absolute discretion of the donor. For example, in the case where a donor with 4 children (2 sons and 2 daughters) dies leaving no property except RM200,000 in his *hibah amanah* account, traditionally the inheritance will be divided based on the proportion fixed by *farā'id* that is, the sons and daughters will get the inheritance based on the percentage fixed for them. Using *hibah amanah* the donor can leave all of his RM200,000 to anyone he prefers.

In addition to the freedom and flexibility that this new instrument of property management has to offer, *hibah amanah* is also said to be positive in nature for two reasons: (1) it would significantly assist in reducing the number of unclaimed deposits; and (2) it would enable a Muslim convert or *muallaf* to bypass the restriction under the Islamic law of inheritance and give his savings to his Muslim beneficiaries on his death.<sup>8</sup>

The total size of unclaimed assets in Malaysia was an estimate of RM38 billions in 2006 and RM42 billions in 2011 which are big amounts which then increased to RM60 billion in 2016.<sup>9</sup> In addition, there are many disputes involving the inheritance of *muallaf* property in Malaysia. It has been suggested by the supporters of *hibah amanah* that it can be used to ensure that the non-Muslim family of a *muallaf* receives the desired inheritance after his or her death.

The writers argue that the alleged benefits of *hibah amanah* must be considered together with the various problems and challenges associated with this new hybrid product from the religious perspective, in addition to the legal, institutional and regulatory challenges.

The article starts with an analysis of the *Shari'ah* perspective of *hibah amanah*, focusing on the arguments forwarded by scholars that support and oppose *hibah amanah* together with their justifications from the *Qur'ān*, *Sunnah* and other basis of their *ijtihad*. The study reveals that the adoption of *hibah amanah* without

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<sup>8</sup> “TH eyes 50,000 depositors for Hibah Amanah,” *Daily Express*, last modified 12 May 2017, <http://www.dailyexpress.com.my/news.cfm?NewsID=117645>.

<sup>9</sup> “Muslims and their inheritance,” *The Star Online*, last modified 16 February 2016, <https://www.thestar.com.my/opinion/columnists/ikim-views/2016/02/16/muslims-and-theirinheritance/#Hd0kmF1uUevrBsSK.99>.

proper legal safeguards may create legal complications and obstacles that may lead to enmity and fighting between family members which will result in an increase of court cases on this matter. The article thus attempts to clarify and describe the general characteristics and legal requirements for *hibah amanah* in order for it to be fair and valid in Malaysia.

The importance of having a clear legal and regulatory mechanism to address all issues related to *hibah amanah* cannot be underestimated. Failure to have a meticulous system in place to cater to the legal complications and obstacles will result in injustice.

### **An Analysis of the Syari'ah Perspective on *Hibah Amanah***

The whole structure of *hibah amanah* in its current form will collapse if the product is not *Shari'ah*-compliant. The term '*Shari'ah*-compliant', '*halāl*' or permissible carries with it a lot of legal, social and economic implications. For example, the Muslim population in Malaysia will generally avoid any restaurant that fails to obtain a *halal* certification. In addition, any franchise that is implicated with the misuse of the *halal* logo will face serious backlash from Muslim consumers ranging from a boycott to the threat of legal action.

According to the Halal Industry Development Corporation (HDC) Chief Executive Officer (CEO) Datuk Seri Jamil Bidin, the *halal* industry of Malaysia has contributed over seven percent to the nation's gross domestic income, exported RM42 billion worth of *halal* products, generated around 250,000 jobs and invited RM12 billion in investment.<sup>10</sup> The Islamic finance industry in Malaysia thrives partly because consumers are confident with the *Shari'ah*-compliant aspect of the industry, and this trust must be maintained. As of August 2017 the total assets of Islamic banks and Development Financial Institutions (DFIs) offering Islamic banking products are estimated to be around RM783 billion.<sup>11</sup>

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<sup>10</sup> Laili Ismail, "Halal' is not just about food," *Straits Times*, last modified 19 November 2017,

<https://www.nst.com.my/news/nation/2017/11/304887/halal-not-just-about-food-hd>.

<sup>11</sup> Mushtak Parker, "Boosting Islamic Finance," *New Straits Times*, last modified 6 November 2017,

It is submitted that observing the fundamental rules of Islamic finance is essential for its success and acceptance in Malaysia. The same can be said of other sectors including inheritance. The fundamental rule of the Islamic law of bequest in which no bequest is to be made in favour of an heir is supported by numerous court decisions in Malaysia.<sup>12</sup> The misuse of *hibah amanah* can bypass the fundamental rule of the Islamic law of bequest and violate the wisdom behind it.

Appendix 1 of the policy paper<sup>13</sup> provided by the Central Bank of Malaysia cites 3 sources to support the legitimacy of *hibah* in general; the *Qur'ān*, the Sunnah and the consensus of the Muslim jurists (*ijma'*). The following verse of the *Qur'ān* is cited in the policy paper to show the general permissibility of *hibah*:

“...but if they choose of their own accord to make over to you a part of it, then you may enjoy it with pleasure and good cheer.”<sup>14</sup>

The following hadith is cited to imply the permissibility of *hibah*:

“Abu Hurayra reported that the Prophet, may Allah bless him and grant him peace, said, ‘Give gifts and you will love one another’.”<sup>15</sup>

The policy paper also states that the Muslim jurists have reached *ijma'* on the permissibility of *hibah*. However, it should be noted that the consensus of the Muslim jurists on *hibah* is on *hibah* in general and is not extended to the *hibah amanah* in its current form. There are numerous objections from scholars on this matter.

Analysis on *hibah amanah* reveals that the permission to use

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<https://www.nst.com.my/opinion/columnists/2017/11/299732/boosting-islamic-finance>.

<sup>12</sup> This can be seen from cases like *Siti binti Yatim v Mohamed Nor bin Bujali* (1928) 6 FMSLR 135, *Amanullah bin Haji Ali Hassan v HajjahJamilah* (1975) 1 MLJ 30, *ZalaniBongsu bin Dato' Hj Othman v Bahrom Dato Othman & Zaitoon Dato Othman*, 2 *Ors(as interveners)* (1993) 4 CLJ 37.

<sup>13</sup> Central Bank of Malaysia, “Hibah”, policy paper no. BNM/RH/PD 028-5, issued on 3 August 2016.

<sup>14</sup> *Al-Qur'an, Surah al-Nisa'* 4:4.

<sup>15</sup> *Al-Adab Al-Mufrad, Book 30, Hadith 594*, <https://sunnah.com/adab/30>.

*hibah amanah* as permissible instrument was originally given to the takaful industry, subject to various requirements being observed. This can be seen from the previous resolution issued by the Shariah Advisory Council:

“(i) Takaful benefit can be used for *hibah* since it is the right of the participants. Therefore, participants should be allowed to exercise their rights according to their choice as long as it does not contradict with *Shari’ah*;

(ii) The status of *hibah* in takaful plan does not change into a will (*wasiah*) since this type of *hibah* is a conditional *hibah*, in which the *hibah* is an offer to the recipient of *hibah* for a specified period. In the context of takaful, the takaful benefit is both associated with the death of the participant as well as the maturity of the certificate. If the participant remains alive on maturity, the takaful benefit is owned by the participant but if he dies within such period, then *hibah* shall be executed;

(iii) A participant has the right to revoke the *hibah* before the maturity date because conditional *hibah* is only deemed to be completed after delivery is made (*qabdh*).”<sup>16</sup>

Due to the special nature of takaful coupled with the method of contract, the permission given to use conditional *hibah* is understandable. The generally accepted view is that *hibah amanah* might be acceptable from the *Shari’ah* perspective if all conditions associated with *hibah* and the Islamic law of inheritance are observed. However even for takaful, some scholars question whether there is compliance with the requirements or not, with one research highlighting the need to be meticulous:

“It is necessary to differentiate between rulings for money withdrawn from the Participant’s Investment Fund and the money generated from the commitment of

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<sup>16</sup> Resolutions of Shariah Advisory Council of Bank Negara Malaysia in its 34th meeting held on 21st April 2003/ 19 Safar 1424, BNM/RH/GL/012-2.

the *Tabarru'* Fund towards the deceased, in which it is his or her right to proceed with the claim. Hence, the first portion of money cannot be made as conditional *hibah* on death because it turns into *waṣiyyah*. However, for the other portion; making a conditional *hibah* of this benefit post-mortem of the insured participant is perhaps allowed because the deceased had not assigned a new owner for his property; it is as if he stipulated upon the takaful fund to pay the benefit to the proposed beneficiary.<sup>17</sup>

Although the contemporary *hibah amanah* in its current form is accorded legal acceptance by the civil law as an instrument to manage property, such instrument should not be followed by Muslims due to various inconsistencies with the Islamic rules on *hibah*, wills, trust and inheritance, and is feared to be used merely as an excuse to avoid the enforcement of the Islamic law of inheritance as if *farā'id* and will are insufficient and incomplete.<sup>18</sup>

The Islamic law of inheritance is a part of the big universe of Islamic law where Islam is known as a complete way of life. The religion of Islam is not merely spiritual in nature as it guides and governs every aspect of its followers' life from birth to death. Islam regulates everything including the commercial and social aspect of life, marriage and even the management of inheritance before and after death. Islam can be defined as complete submission to the will of God and for a Muslim, when God has clearly decided on something such decision is absolute as can be seen in the following verses:

- (i) “It is not for a believing man or a believing woman, when Allah and His Messenger have decided a matter, that they should [thereafter] have any choice about their

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<sup>17</sup> Mohd Kamil Ahmad and Joni Tamkin Borhan, “The Application of Conditional *Hibah* in *Takaful* Benefit Distribution: A Juristic Analysis,” *Shariah Journal*, Vol. 25, No.1 (2017), 51.

<sup>18</sup> Akmal Hidayah Halim and Tajul Aris Ahmad Bustami, ‘Execution of *Hibah Amanah* as an Instrument of Islamic Property Management in Malaysia’ (2017) *KANUN*, Vol. 28, 112.

affair. And whoever disobeys Allah and His Messenger has certainly strayed into clear error.”<sup>19</sup>

(ii) “Then We put you, [O Muhammad], on an ordained way concerning the matter [of religion]; so follow it and do not follow the inclinations of those who do not know.”<sup>20</sup>

That is not to say that Islam is a rigid or an overly strict religion. Islam recognised the concepts of free will and human rights long before the concepts became popular in the West. However, although Islam recognizes concepts such as free will, human rights and freedom such concepts must be consistent with the teachings of Islam. In other words, such concepts are not absolute.

Muslims are given permission to manage their daily life, commercial transactions and affairs but it is always subjected to the guidelines and limitations specified in the *Qur’ān* and Sunnah. In relation to the management of assets after the death of a Muslim, the traditionally recognized method is through *farā’id* and through a will. Muslims believe that God does not intend hardship for the *ummah* as can be seen in the following verse:

“Allah intends for you ease and does not intend for you hardship and [wants] for you to complete the period and to glorify Allah for that [to] which He has guided you; and perhaps you will be grateful.”<sup>21</sup>

The following verses are often used to justify the permissibility of *hibah amanah* from the *Shari’ah* perspective:

(i) “But if they, of their own good pleasure remit any part of the dower to you, take it and enjoy it with right good cheer.”<sup>22</sup>

(ii) “...to spend of your substance, out of love for Him, for your kin, for orphans, for the needy, for wayfarers,

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<sup>19</sup> *Al-Qur’an Surah Al-Ahzab* 33:36.

<sup>20</sup> *Al-Qur’an Surah Al-Jathiyah* 45:18.

<sup>21</sup> *Al-Qur’an, Surah al-Baqarah* 2:185.

<sup>22</sup> *Al-Qur’an, Surah Al-Nisa’* 4: 4.

for those who ask, and for the ransom of slaves.”<sup>23</sup>

It is crucial to look at Quranic verses as a whole and not in isolation from each other. The Quranic verses related to inheritance are clear and comprehensive as seen from the following verses; (2:180), (2:181), (2:182), (4:7), (4:8), (4:9), (4:10), (4:11), (4:12), (4:176). The following verse serves as an important reminder:

“These are the limits [set by] Allah, and whoever obeys Allah and His Messenger will be admitted by Him to gardens [in Paradise] under which rivers flow, abiding eternally therein; and that is the great attainment. And whoever disobeys Allah and His Messenger and transgresses His limits - He will put him into the Fire to abide eternally therein, and he will have a humiliating punishment.”<sup>24</sup>

The above Quranic verses on ways to calculate and divide inheritance is very comprehensive, clear and without doubt. The division of asset under the Islamic law of inheritance resembles the concept of justice in Islam. Contrary to the Western-based definition of justice that focuses on absolute equality as fairness, Islam recognizes justice as allocating or doing something in the right way. The rights and privileges given to someone in Islam are often commensurate with their responsibilities. This is reflected in the *farā'id* Islamic law of inheritance.

For example, the allocation of the share received by a son is double that of a daughter which Western scholars often quote as an example of the so-called ‘gender-bias’ or discrimination against woman perpetuated by Islam. The conclusion derived by these Western scholars fails to take into consideration the bigger picture namely, the rights and responsibilities of the parties.<sup>25</sup>

<sup>23</sup> *Al-Qur'an, Surah Al-Baqarah* 2: 177.

<sup>24</sup> *Al-Qur'an Surah An-Nisa'* 4:13-14.

<sup>25</sup> For example, in Islam, the son is given the responsibility as the new head of the family when the parent dies. If the female siblings of the son are getting married, the son will be the new *wali*, the person in charge. The son, as the new *wali*, is expected to take over the responsibilities of the deceased father and assist with the wedding etc. Proportionate to his heavy duty as the new head of the family, his portion is

Islam recognizes the rights of the parties to equally share the inheritance provided that all beneficiaries agree. Consistent with the fact that many females receive higher education, work and provides for the family, many families nowadays agree to equally share the inheritance. This is not a departure from Islamic teaching as the agreement to share the inheritance equally is made with the mutual consent of all the beneficiaries involved. The son is permitted to give up his original portion of the *farā'id* provided it is voluntarily done and not by coercion or undue influence.

One way to deviate from the original allocation of inheritance determined under *farā'id* is to use a will which Islam strictly limits to a one-third portion of the inheritance. Muslims are not allowed to apportion more than one third of the inheritance using a will. This traditionally accepted view is based on the following hadith:

“Narrated by Sa'd bin Abi Waqqas: I was stricken by an ailment that led me to the verge of death. The Prophet came to pay me a visit. I said, "O Allah's Apostle! I have much property and no heir except my single daughter. Shall I give two-thirds of my property in charity?" He said, "No." I said, "Half of it?" He said, "No." I said, "One-third of it?" He said, "You may do so though one-third is also to a much, for it is better for you to leave your off-spring wealthy than to leave them poor, asking others for help. And whatever you spend (for Allah's sake) you will be rewarded for it, even for a morsel of food which you may put in the mouth of your wife.”<sup>26</sup>

Professor Almaric Rumsey elaborated that “the Mohammedan law of inheritance comprises beyond question the most refined and

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higher compared to the daughter. However, this is a minor argument. The major argument is that the Qur'an has been very explicit, detail and clear about the specific allocation of beneficiaries under *farā'id*.

<sup>26</sup> *Sahih Bukhari, Volume 8, Book 80, Number 725*,  
<https://sunnah.com/bukhari/85/10>.



elaborate system of rules for the devolution of property that is known to the civilised world”.<sup>27</sup>

For Muslims the right to manage property after death is not absolute but subjected to certain limitations. Using *hibah amanah* as an instrument of property management, it is possible to bypass the safeguards provided for in the religion. For example, a non-Muslim decides to convert and embrace Islam while his non-Muslim spouse and son decide to remain in their original religion. Later the new convert marries a Muslimah and has children with the new wife. Under Islam, the convert must do justice to everyone. He is allowed to give away part of his wealth to his ex-wife and son during his lifetime. However, the Islamic law of inheritance is clear in that a non-Muslim child cannot inherit the property of a Muslim father after the father’s death.<sup>28</sup>

If a *muallaf* wants to give a portion of his asset to his non-Muslim wife or children, it should be done during his lifetime and not by some backdoor method since the Islamic prohibition on a non-Muslim inheriting a Muslim’s property after his death is clear. On analysing *hibah amanah* in detail it can be concluded that:

“A conditional *hibah* turns into *wasīyyah* and the general rulings shall apply, for a person is only allowed to spend one third of his property on succession; as for the remaining two thirds, the rights pertaining to its governance falls absolutely under Allah’s.”<sup>29</sup>

In addition, the general principle under Islamic law of inheritance is that a non-Muslim descendant cannot inherit the property of a

<sup>27</sup> “Muslims and their inheritance,” *The Star Online*, last modified 16 February 2016, <https://www.thestar.com.my/opinion/columnists/ikim-views/2016/02/16/muslims-and-their-inheritance/#Hd0kmF1uUevrBsSK>.<sup>99</sup>

<sup>28</sup> Under *hibah amanah*, it is possible for the Muslim father to leave all of his property to his non-Muslim ex-wife or son, bypassing the fixed portion laid down under *farā'id*. From the religious perspective, the alleged permissibility of such transaction is very much questionable as it defeats the spirit and rationale behind the Islamic law of inheritance.

<sup>29</sup> Mohd Kamil Ahmad and Joni Tamkin Borhan, “The application of conditional *hibah* in takaful benefit distribution: a juristic analysis,” (2017) *Shariah Journal*, Vol. 25, No.1, pp.51.

Muslim father as seen from the following hadith:

“Narrated by Usama bin Zaid: The Prophet said, "A Muslim cannot be the heir of a disbeliever, nor can a disbeliever be the heir of a Muslim.”<sup>30</sup>

Some scholars conclude that “on the surface, *hibah amanah* seems to be inconsistent with the Islamic rules of *hibah*, wills, trust and inheritance as the donor does not give up his rights or possession of the property during his lifetime even though the donee has the legal capacity to own and manage his property.”<sup>31</sup>

It must also be noted that circumventing the *farā'id* using *hibah amanah* will definitely lead to cases of hatred and enmity among family members. The deprived beneficiaries might decide to sever relationship with other family members. This is reflected in the increase of cases involving family disputes due to *hibah*.

### **General Characteristics and Legal Requirements**

According to the policy paper on *Hibah* issued by the BNM<sup>32</sup> *hibah* must consist of the following three components:

#### **a. parties**

The parties to a *hibah* arrangement comprises a donor and a recipient with a legal capacity. The donor must have the legal capacity to perform a benevolent act (*ahl li al-tabarru*). In the event that a recipient has no legal capacity, a parent or legal guardian of the recipient may accept and take possession of the *hibah* asset on behalf of the recipient. The parties to a *hibah* arrangement must be a natural person or a legal entity who may act through an agent (*wakil*).

#### **b. offer (*ijab*) of *hibah***

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<sup>30</sup> *Sahih Bukhari, Volume 8, Book 80, Number 756*, <https://sunnah.com/bukhari/85/41>.

<sup>31</sup> Akmal Hidayah Halim and Tajul Aris Ahmad Bustami, “Execution of Hibah Amanah as an Instrument of Islamic Property Management in Malaysia” (2017) *KANUN*, Vol. 28, pg.91.

<sup>32</sup> Central Bank of Malaysia, “Hibah”, policy paper no. BNM/RH/PD 028-5, issued on 3 August 2016.

A *hibah* arrangement is entered into through an offer of a *hibah* by the donor. The offer may be expressed orally, in writing or by any other methods which can be evidenced by appropriate documentation or record.

### c. *hibah* asset

An asset in a *hibah* arrangement must be recognised by *Sharī'ah* as valuable, identifiable and deliverable, and must already be in existence and owned by the donor. An asset to be received in the future by the donor is allowed to be given as a *hibah* in a tangible or intangible form, movable or immovable. It can also be a share or an undivided interest in an asset. An asset belonging to a minor cannot qualify as a *hibah* asset.<sup>33</sup>

It is noted that the components of *hibah* provided in the BNM policy paper is general in nature and cater to *hibah* in general. No specific or in-depth guideline is currently available on *hibah amanah* which can be challenging since *hibah amanah* in its current form is a new hybrid product with numerous legal requirements to be complied with.

Any contract involving *hibah amanah* must comply strictly with the Contracts Act 1950. The many requirements provided under the Contracts Act 1950 include the need for a contract to be specific, and for the offer and acceptance to be absolute with valid consideration and intention to be legally bound by the contract. Being an Islamic financial product, it is essential for *hibah amanah* to comply with all legislations and guidelines related to it especially the Islamic Financial Services Act and the numerous BNM guidelines.

It should be noted that *hibah amanah* is at the borderline of trust law and Islamic inheritance law. Therefore, it is highly possible that law on trust will be applicable in many scenarios despite the name *hibah amanah*. The possibility that beneficiaries deprived from their *farā'id* portion will take the matter to court and invoke the Islamic inheritance law is also high. It is thus important to ensure that

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<sup>33</sup> Central Bank of Malaysia, “Hibah”, policy paper no. BNM/RH/PD 028-5, issued on 3 August 2016.

*hibah amanah* strictly complies with all legal requirements from the plethora of laws, and that is the challenge.

### **Legal Problems and Challenges Related to *Hibah***

The followings are some of the legal problems and challenges related to *hibah amanah*:

#### **a. Fairness and justice**

*Hibah amanah* can lead to preferential treatment which can cause injustice and enmity. Unfair preferential treatment is generally prohibited consistent with the following hadiths:

(i) “Narrated 'Amir: I heard An-Nu`man bin Bashir on the pulpit saying, “My father gave me a gift but `Amra bint Rawaha (my mother) said that she would not agree to it unless he made Allah's Messenger as a witness to it. So, my father went to Allah's Messenger and said, ‘I have given a gift to my son from `Amra bint Rawaha, but she ordered me to make you as a witness to it, O Allah’s Messenger!’ Allah’s Messenger asked, 'Have you given (the like of it) to everyone of your sons?’ He replied in the negative. Allah's Messenger said, 'Be afraid of Allah, and be just to your children.’ My father then returned and took back his gift.”<sup>34</sup>

(ii) “Narrated An-Nu`man bin Bashir: that his father took him to Allah's Messenger and said, "I have given this son of mine a slave." The Prophet asked, "Have you given all your sons the like?" He replied in the negative. The Prophet said, "Take back your gift then.”<sup>35</sup>

(iii) “Ibn 'Umar (May Allah be pleased with them) reported: Messenger of Allah said, “A Muslim is a brother of (another) Muslim, he neither wrongs him nor does hand him over to one who does him wrong. If anyone fulfills his brother's needs, Allah will fulfill his

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<sup>34</sup> *Sahih al-Bukhari, Vol.3, Book 47, Hadith 760*, <https://sunnah.com/bukhari/51/21>.

<sup>35</sup> *Sahih al-Bukhari, Vol. 3, Book 47, Hadith 759*, <https://sunnah.com/bukhari/51/20>.

needs; if one relieves a Muslim of his troubles, Allah will relieve his troubles on the Day of Resurrection; and if anyone covers up a Muslim (his sins), Allah will cover him up (his sins) on the Resurrection Day”.<sup>36</sup>

Preferential treatment that causes enmity and dissatisfaction among beneficiaries is forbidden in Islam. A number of jurists are of the view that although Muslims are strongly discouraged from committing preferential treatment such transactions are still legal and valid.<sup>37</sup>

There are many differences of view. The Hanafi, Maliki and Shafi’*e* schools are of the view that it is better to give *hibah* fairly and preferential treatment is unfavourable (*makruh*) but permissible, while the Hambali school is of the view that fairness in giving *hibah* is obligatory. Imam Malik was of the view that it is not permissible for someone to give away all his property to only a few children and not the rest.<sup>38</sup> The scholar Ibn ‘*Āshū* has highlighted that it is wrong to misuse instrument and cause injustice to others:

“The fourth specific objective Ibn ‘*Āshū* presents is that *tabarru ‘āt* should not be used as an instrument to violate other’s property (*dharī‘ahilā idā‘atimāl al-ghayr*). For instance the benefactor, in order to prevent his children from inheriting his property, gives his entire property as *waqf*. The practice of the pagan Arabs in the pre-Islamic era was similar to this. Bequests (*waṣāyah*) were used by them to deprive their next of kin and allocate their property for the notables of their tribe. People used bequests and donations to alter inheritance or harm creditors. The new legislations brought by *Sharī‘ah*

<sup>36</sup> *Sahih al-Bukhari and Muslim, Book 1, Hadith 244,*

<https://sunnah.com/riyadussaliheen/1/244>.

<sup>37</sup> Abdul Bari Awang and Amilah Awang Abd Rahman, “Are parents free to bestow their wealth onto their children? A juristic discourse on equality and justice in *hibah*” (2014) *Shariah Journal*, Vol. 22, No.3, pp.415.

<sup>38</sup> Mohd Zamro Muda, “Instruments of *hibah* and wills: Analysis of the regulations and applications in Malaysia” (2008) (paper presented at the *Hibah and Faraid National Convention 2008*, organized by JAKIM on August 7, 2008 at Multipurpose Hall, the Wilayah Mosque, Kuala Lumpur).

were to prevent people from using *tabarru'āt* in manipulative ways.”<sup>39</sup>

One of the main concerns related to *hibah amanah* is that it allows the donor complete control of the division of the inheritance left behind when he passes away. Technically, using *hibah amanah* it is possible for a donor to leave all the inheritance to someone else without leaving anything to legal heirs including his children. As a result, his orphaned children will not get anything and Islam is very particular about the well-being of orphans as can be seen in the following verses:

“And do not approach the orphan’s property except in a way that is best until he reaches maturity. And give full measure and weight in justice. We do not charge any soul except [with that within] its capacity. And when you testify, be just, even if [it concerns] a near relative. And the covenant of Allah fulfill. This has He instructed you that you may remember.”<sup>40</sup>

In addition, stipulating conditions with *hibah* can sometimes resulted in abuse:

“Similarly stipulating *hibah* with conditions steals away the spirit of mutual help and brotherhood. By setting conditions, people sometimes give *hibah* not to convey benefit to the recipient, but to gain personal benefit. For instance, when one offers gift to a company/government in order to obtain a contract for himself, or gives a gift to a person in authority to bypass the law. In such instances *hibah* is utilized to serve purposes which are negative in nature and represent abusive instances of *hibah*. A quotation of ‘Umar Ibn ‘Abdal-Azīz by Imām Bukhārī sheds more light on *hibah* as abused for negative purposes: “The gift in Prophet’s time was gift

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<sup>39</sup> Mohammed Farid Ali, “Modern application of *hibah* in the light of *Sharī’ah* objectives of gift and donation contracts (*al-tabarru’at*),” *Islamic Sciences*, Vol. 13, No.1 (2015), 34.

<sup>40</sup> *Al-Qur’an Surah Al-An’am* 6:152.

in its original sense whereas today a gift is meant as a bribe”.<sup>41</sup>

The general principle is that a Muslim should not be selective when it comes to accepting the religion as can be seen in the following verse:

“... So do you believe in part of the Scripture and disbelieve in part? Then what is the recompense for those who do that among you except disgrace in worldly life; and on the Day of Resurrection they will be sent back to the severest of punishment. And Allah is not unaware of what you do.”<sup>42</sup>

In modern Muslim countries it has been suggested that there should be clear rulings and proper guidelines to avoid injustice in relation to *hibah*:

“Since there have been related fatwa on justice in *hibah* endorsed by various Fatwa institutions in the Muslim countries such as Senior Scholars for Fatwa and Research (Hay’ah Kibār ‘Ulamā al-Sa‘ū iyyah), Council of Fatwa in Egypt (Dā al-Iftā al-Miṣriyyah) and Committee for Legal Ruling of al- Azhar (Lajnah al-Fatwa bi al-Azhar), it is a humble recommendation that clear rulings and proper guidelines be endorsed in accordance to the issue of justice in bestowing *hibah* at the institutional levels in Malaysia. The attention must go to the highest authority in endorsing *Shari’ah* rules, i.e. the National Council of Fatwa and Shari’ah Advisory Board of Bank Negara Malaysia.”<sup>43</sup>

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<sup>41</sup> Mohammed Farid Ali, “Modern application of *hibah* in the light of *shari’ah* objectives of gift and donation contracts (*al-tabarru’at*)” *Islamic Sciences*, Vol. 13, No.1 (2015), 40.

<sup>42</sup> *Al-Qur’an Surah Al-Baqarah* 2:85.

<sup>43</sup> Abdul Bari Awang and Amilah Awang Abd Rahman, “Are parents free to bestow their wealth onto their children? A juristic discourse on equality and justice in *hibah*,” *Shariah Journal*, Vol. 22, No.3, (2014), 407-426.

Since *hibah amanah* seems to be a grey area with a lot of concerns highlighted by scholars, the Central Bank of Malaysia must come up with a comprehensive guideline on *hibah amanah*.

### **b. Conflict of Jurisdiction**

Under the Federal Constitution of Malaysia the legislative powers are distributed between the Federal Legislature and States Legislature. According to the Article 73 (Extent of Federal and State laws) of the Federal Constitution:

“In exercising the legislative powers conferred on it by this Constitution— (a) parliament may make laws for the whole or any part of the Federation and laws having effect outside as well as within the Federation; (b) the Legislature of a State may make laws for the whole or any part of that State.”

According to the Article 74 (subject matter of Federal and State laws) of the Federal Constitution:

“(1) without prejudice to any power to make laws conferred on it by any other Article, parliament may make laws with respect to any of the matters enumerated in the Federal List or the Concurrent List (that is to say, the First or third List set out in the ninth Schedule).

(2) without prejudice to any power to make laws conferred on it by any other Article, the Legislature of a State may make laws with respect to any of the matters enumerated in the State List (that is to say, the Second List set out in the ninth Schedule) or the Concurrent List.

(3) the power to make laws conferred by this Article is exercisable subject to any conditions or restrictions imposed with respect to any particular matter by this Constitution.

(4) where general as well as specific expressions are used in describing any of the matters enumerated in the



Lists set out in the ninth Schedule the generality of the former shall not be taken to be limited by the latter.”

In the past civil courts have disregarded Islamic law, fatwas by Muftis and the decisions of *Syari'ah* courts even when the disputes involve Muslims. In order to avoid racial tension over jurisdictional conflict, the Federal Constitution was amended to include Article 121 (1A). According to the Article 121 (Judicial power of the Federation) of the Federal Constitution:

“(1) there shall be two high Courts of co-ordinate jurisdiction and status, namely—

(a) one in the States of Malaya, which shall be known as the High Court in Malaya and shall have its principal registry at such place in the States of Malaya as the Yang di-Pertuan Agong may determine; and

(b) one in the States of Sabah and Sarawak, which shall be known as the High Court in Sabah and Sarawak and shall have its principal registry at such place in the States of Sabah and Sarawak as the Yang di-Pertuan Agong may determine;

(c) (Repealed),

and such inferior courts as may be provided by federal law; and the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law.

(1a) the courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts.”

The application of Islamic law in civil courts may also create a problem of interpretation of Islamic law since in the absence of any expert of Islamic law on the bench, the civil court judges would decide based on cases and statutory provisions without resorting to authoritative sources of Islamic law.<sup>44</sup>

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<sup>44</sup> Farid Sufian Shuaib, Tajul Aris Ahmad Bustami and Mohd Hisham Mohd Kamal,

In *Wan Naimah v Wan Mohamad Nawawi*<sup>45</sup>, the court applied the civil law on trust and not Islamic trust law to implement an oral gift involving a Muslim family. The Court of Appeal in the case of *TM Feroze Khan and ors v Meera Hussain TM Mohamed Mydin*<sup>46</sup> also held that the law governing trust in Malaysia is the civil law, regardless of whether the parties are Muslim or not. The same judgment was made in *Dato' Kadar Shah Tun Sulaiman v Datin Fauziah Haron*.<sup>47</sup> Chief Justice Turner in *Milroy v Lord*<sup>48</sup> stated the following:

“I take the law of this court to be well settled, that, in order to render a voluntary settlement valid and effectual, the settler must have done everything which, according to the nature of the property comprised in settlement, was necessary to be done in order to transfer the property and render the settlement binding upon him. He may, of course, do this by actually transferring the property to the persons for whom he intends to provide, and the provision will then be effectual, and it will be equally effectual if he transfers the property to a trustee for the purpose of the settlement, or declares that he himself holds it in trust for those purposes.”

The following statement from Sir George MR in *Richards v Delbribge*<sup>49</sup> is also relevant:

“... the legal owner of the property may, by one or other of the modes recognized amounting to a valid declaration of trust, constitute himself a trustee, and without an actual transfer of the legal title, may so deal with the property as to deprive himself of its ownership, and declare that he will hold it from that time forward on trust for the other person. It is true he need not use

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*Administration of Islamic Law in Malaysia* (Selangor: LexisNexis, 2010) pg.138.

<sup>45</sup> (1974) 1 MLJ 41.

<sup>46</sup> (2006) 3 CLJ 616.

<sup>47</sup> (2008) 7 MLJ 799.

<sup>48</sup> (1862) 4 De G.F. & J. (pp.274-275).

<sup>49</sup> (1874) LR 18 Eq 11.

the words, “I declare myself a trustee” but he must do something which is equivalent to it, and use expressions which have that meaning; for however anxious the court may be to carry out a man’s intention, it is not at liberty to construe words otherwise than according to their proper meaning ... for a man to make himself a trustee there must be an intention to become a trustee ...”

It is clear that the tendency of the civil court is to declare that trust or anything resembling it is to be under the jurisdiction of the civil court. *Hibah amanah*, being a ‘hybrid product’ of *hibah* and trust, can be problematic from the legal perspective.

### c. Money Laundering Perspective

*Hibah amanah* can cause concern from the money laundering perspective. Under *hibah amanah* the giver in many cases will be in complete control of the assets during his lifetime and not the beneficiary. This is quite similar to the concept of trust. The Financial Action Task Force, the standard-setter for anti-money laundering and counter financing of terrorism (AML/CFT) law takes note that trust can be misused for money laundering and terrorism financing purpose and therefore needs to be properly regulated and monitored.

The main legislation governing the AML/CTF regime in Malaysia is the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA). This Act provides wide-ranging investigating powers including power to freeze and seize property or suspects involved in money laundering or terrorism financing offences. It also provides the court with power to forfeit properties derived from the proceeds of unlawful activities. The enforcement of AMLA is undertaken by various ministries and agencies based on the predicate offences under their particular purview. As of the year 2014 there are 356 offences under 42 pieces of legislations that are listed under the Second Schedule of AMLA.

Several designated investigation agencies, in particular within the Royal Malaysia Police (RMP), the Anti-corruption Agency (ACA) and the SC have their investigative capacity systematically developed for proper investigation on money laundering and terrorist

financing. The 2007 Mutual Evaluation Report (2017 MER) highlighted that ‘most of the investigations undertaken thus far are related to cases of ‘self-laundering’. There is an absence of investigation capacity for cross-border and customs-related money-laundering offences.’ The latest report is the Mutual Evaluation Report 2015 where many of the points highlighted in the 2007 report were remedied.

The Central Bank of Malaysia has issued the ‘Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) – Designated Non-Financial Businesses and Professions (DNFBPs) & Other Non-Financial Sectors (Sector 5)’ to guide advocates and solicitors, companies, common gaming houses as defined in the Common Gaming Houses Act 1953 (referred to as “licensed casino” in this document), licensee as defined in the Pool Betting Act 1967, totalizator agency as defined in the Racing (Totalizator Board) Act 1961, a racing club as defined in the Racing Club (Public Sweeptakes) Act 1965, moneylenders, accountants, public notaries, pawnbrokers, company secretaries, registered estate agents, corporation as defined in the Public Trust Corporation Act 1995 and trust companies as defined in the Trust Companies Act 1949.

Since the *hibah amanah* is a new untested hybrid product there will be uncertainty from the money laundering perspective. There is a separate guideline issued by the Central Bank of Malaysia for banking products and trust. Until the legal status related to *hibah amanah* is settled, the uncertainty remains. The reporting obligations provided under the AML/CFT law might also be difficult to enforce in relation to *hibah amanah*.

## Conclusion

It is essential that *hibah amanah* is not being used as a backdoor method to deny the legal heirs their property rights and maintenance. The Arabic word *farā'id* is the plural form of *faridah* which refers to share that has been predetermined. The introduction of the Islamic law of inheritance (*farā'id*) which is derived from the *Qur'ān* and the Sunnah of Prophet Muhammad s.a.w has replaced the outdated and discriminatory inheritance laws of the dark ages (*jahiliyah*) that denied the rights of female beneficiaries and rightful heirs. Any

misuse of *hibah amanah* to bypass the Islamic law of inheritance and to give everything to the person(s) chosen by the donor is a clear step backward.

It is vital to have a clear legislation on the matter to ensure an accurate, legally defined position in relation to the rights and responsibilities of the parties involved, together with the necessary guidelines and limitations on *hibah amanah*. Muda (2008) suggests that “each state needs to establish a certain Muslim Hibah Act/Enactment in specific, orderly and uniform manner to facilitate referencing when matters about *hibah* arise” and “The Fatwa Committee either at the federal or state level should issue a clear and strict fatwa to be the guideline for Muslims who wish to employ *hibah* or will so that it suits current needs as well as meets Islamic law requirements.”<sup>50</sup>

There should be proper legal remedies in cases of misuse. In the case of Muslims in Malaysia, the distribution of inheritance has to be consistent with the principles of *Sharī‘ah*. With regard to non-Muslims if there is no will, the inheritance of property will be based on the Distribution Act 1958. When a person dies without making a will he is said to have died intestate. An intestate’s estate will be distributed among his surviving family members according to the Distribution Act 1958. For non-Muslims without a will in Malaysia, the division of property will be based on the Distribution Act 1958 and Inheritance (Family Provision) Act 1971. For those with a will, the will is to be followed. If the dependents of a non-Muslim are not adequately taken care of in the will, the law still provides protection to them in the form of the Inheritance (Family Provision) Act 1971 which enables the court to give reasonable provisions for the maintenance of the dependents. Currently there is no equivalent to the Inheritance (Family Provision) Act 1971 that give the *Sharī‘ah* or civil court power to give reasonable provisions for maintenance to dependants who have not been adequately provided for by the Muslim deceased due to the misuse of *hibah*

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<sup>50</sup> Mohd Zamro Muda, “Instruments of hibah and wills: Analysis of the regulations and applications in Malaysia” (paper presented at the *Hibah and Faraid National Convention 2008*, organized by JAKIM on August 7, 2008 at Multipurpose Hall, the Wilayah Mosque, Kuala Lumpur) (2008), 38.

*amanah.*

It is vital to ensure fairness and justice to all parties involved. In Islam, the government and authority are given the responsibility to ensure justice to all citizens. Since there are many allegations of occurrences of injustices towards the non-Muslim family of the *muallaf* including the allegation that many are left without proper maintenance, it is essential for the government to put proper mechanisms in place to ensure that the non-Muslim family of the *muallaf* is not neglected and are being properly taken care of. Failure to put proper mechanisms and legislations in place will result in continuous clashes of jurisdiction between the civil court and *Shari'ah* court and injustice to the parties involved. To conclude innovative Islamic products should be welcomed but cautiously implemented. In the end, any *Shari'ah* decisions taken for the innovation of products should be of moderation (*al-wasatiyyah*)” and “it should not be too rigid (*al-tadyiqwa al-tashaddud*) or too liberal (*al-tasahul*).<sup>51</sup>

#### ACKNOWLEDGEMENT

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<sup>51</sup> Aznan Hasan, Sarfaraz Dawar Khan and Nazrul Hazizi Noordin, “Innovation in Islamic finance: the way forward” (2016) *Al-Shajarah* (Special issue), p.18.

## TRANSLITERATION TABLE

### CONSONANTS

Ar=Arabic, Pr=Persian, OT=Ottoman Turkish, Ur=Urdu

Ar	Pr	OT	UR	Ar	Pr	OT	UR	Ar	Pr	OT	UR	
ء	ب	پ	پ	ز	ز	ز	ز	گ	—	g	g	g
ب	ب	ب	ب	ژ	—	—	ř	ل	l	l	l	l
پ	پ	پ	پ	ژ	—	zh	j	م	m	m	m	m
ت	ت	ت	ت	س	s	s	s	ن	n	n	n	n
ث	—	—	ṭ	ش	sh	sh	ş	ه	h	h	h <sup>1</sup>	h <sup>1</sup>
ث	th	th	th	ص	ş	ş	ş	و	w	v/u	v	v/u
ج	j	j	c	ض	ḏ	ḏ	ž	ی	y	y	y	y
چ	—	ch	çh	ط	ṭ	ṭ	ṭ	ة	-ah	—	—	-a <sup>2</sup>
ح	ḥ	ḥ	ḥ	ظ	ẓ	ẓ	ẓ	ال	al <sup>3</sup>	—	—	—
خ	kh	kh	kh	ع	‘	‘	‘	—	—	—	—	—
د	d	d	d	غ	gh	gh	ğh	—	—	—	—	—
ڈ	—	—	d	ف	f	f	f	—	—	—	—	—
ذ	dh	dh	dh	ق	q	q	k	—	—	—	—	—
ر	r	r	r	ك	k	k/g	k/ñ	—	—	—	—	—

<sup>1</sup> – when not final  
<sup>2</sup> – at in construct state  
<sup>3</sup> – (article) al - or l-

### VOWELS

	Arabic and Persian	Urdu	Ottoman Turkish
Long	ا	ā	ā
	آ	Ā	—
	و	ū	ū
	ي	ī	ī
Doubled	ي	īyy (final form ī)	īyy (final form ī)
	و	uww (final form ū)	uvv
	و	uvv (for Persian)	uvv
Diphthongs	و	au or aw	ev
	ی	ai or ay	ey
Short	ا	a	a or e
	ا	u	u or ū
	ا	i	o or ö
	ا	i	i

### URDU ASPIRATED SOUNDS

For aspirated sounds not used in Arabic, Persian, and Turkish add h after the letter and underline both the letters e.g. چ jh گ gh

For Ottoman Turkish, modern Turkish orthography may be used.

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