

ISLAMIC ESTATE AND WAQF

In the last article, we discussed Zakat and Tax and how zakat being obligatory charity for the Muslims is to purify and protect one's wealth. We also learnt that zakat paid to the State authorities are treated favorably by the Inland Revenue Board. We now look at Islamic Estate and Waqf, the fourth major component of Islamic financial planning. The major theme of this component is wealth distribution according to Islam and how Muslims can plan for their life in the hereafter.

Truly, this topic is unfamiliar to many layman – Muslims or otherwise. The Malaysian society would not have the issue of RM40 billion worth of unclaimed cash and assets left by the dead (NST, 21/1/07) if we are familiar! As such, we shall begin with the definitions. Estate is literally property or possessions. In estate planning, it is used to refer to those assets of a person upon his death. Islamic estate is simply the assets of a Muslim upon his death.

Waqf is charitable endowment

Waqf is Arabic. For our purpose, it means charitable endowment. Technically, there is no equivalent word in English to convey the meaning of Waqf. It is usually spelt as *Wakaf* or *Waqaf* in Malay.

So, Islamic Estate and Waqf in the context of financial planning concerns primarily with what a Muslim leaves behind upon death and how he should plan his estate according to Shariah. The issue of *Hukum Faraid* (the Islamic law of Inheritance) quickly comes to the mind of many Muslims, but we shall not discuss this in this article. Suffice to mention that this law is obligatory for the Muslim to follow, especially by the heirs of the deceased Muslim. From the perspective of the Muslim who is making plans of his estate, there are many other issues that he should be aware of.

We first look at the rationale of making a plan. We plan our estate simply because we care for our dependants in the event of our death. This needs to be reiterated again and again because the tendency is strong for people to postpone and forget. The worst is to become angry when reminded.

When estate planning becomes necessary

Caring for the dependants is a subjective matter. However, in cases of where the dependants are utterly dependent such as having infants or elderly parent or disable child, having a plan becomes necessary. Clearly, having a plan in these circumstances is deemed as an act of worship (*ibadah*) because the plan secures a benefit for the dependant. The importance – nay, the object – of having a plan is to ensure the continuity of dependants' livelihood.

Another issue that people must be aware of is the administrative matters that must be settled before any estate of the deceased can be distributed, that is, the reality of the estate being locked by law. We have heard of the saying that ignorance is bliss but for the dependants of the deceased, the situation surely cannot be blissful when means of support are cut off abruptly and for a long period of time. It is for this reason that some planning measures must be put in place for our loved ones, because we care.

Having a will for Muslims is highly recommended

We now go into the basic Islamic estate planning issues. First is the issue of having a will for a Muslim. Can a Muslim have a will? Yes, of course. Must a Muslim have a will? It depends; generally, it is not obligatory for Muslim but a recommended act to have a will document.

According to a hadith, it is not right for a Muslim who has some property to bequest that he should pass two nights without having his will written down. And, in another hadith, a Muslim having made a will is he who dies on a clear path (having a peace of mind), on a recommended practice, on being fearful of Allah wanting martyrdom and he dies forgiven.

A Muslim preparing to have a will document need to know some basic rules. He must keep in mind the concept of wealth ownership in Islam, namely, all wealth belongs to Allah and man acts as trustee. As such, he cannot will away according to his wishes. Two basic rules are: (1) He cannot bequest to his legal heirs. Legal heirs are those who have a fixed share of the deceased's estate according to Faraid, and (2) Bequest shall not exceed one-third of the estate after settling debts.

Even though the settlement of debts is a more important matter than having a will document, these two matters can be resolved concurrently in estate planning – in fact, an effective financial plan must deal with all material issues comprehensively. It must be noted that there could be other claims against the estate such as matrimonial assets and legal suits made in good faith before the distribution amount is ascertained.

For all Malaysians, Muslim and non-Muslim, having a will is highly recommended because of the estate administration laws. When a person dies without a will, also referred to as dying intestate, the process to get the letter of administration from the court to unlock the estate of the deceased will take longer time compared to the case where there is a will document.

Islamic Estate and Waqf planning is planning for the hereafter

So, how is estate planning related to charitable endowment (waqf)? Basically, the former is making plans for our loved ones that we leave behind in this world when die and the latter is making plans for ourselves in our lives in the hereafter after we die. Needless to say but to truly understand this, one must believe that there is another life after his death. For Muslims and followers of other religions, this is part of faith.

Going back to the Islamic worldviews, the objective of undertaking waqf planning is to achieve al-Falah i.e. being successful in this world and in the hereafter.

As indicated earlier, the body of knowledge on waqf is rich and matters can be rather technical; legally and shariah-wise. Nonetheless, for the Muslim, his planning for waqf is because he wants to achieve a “recurring charity”.

In a hadith reported in Sahih Muslim, “Abu Huraira reported Allah's Messenger (may peace be upon him) as saying: When a man dies, his acts come to an end, but three; (1)

recurring charity, or (2) knowledge (by which people) benefit, or (3) a pious son, who prays for him.”

A recurring charity is a charitable act whereby the benefits of the act flow to the needy repeatedly. Through a waqf, a Muslim can achieve a recurring charity. So, what is really a waqf? To define a waqf can be baffling because there are so many technicalities surrounding it. A waqf is akin to a trust but with features that are unique only to waqf. Perhaps through an example this concept of recurring charity can be understood properly.

Consider the giving away of a tenanted house as charity into a waqf and specifying to the manager of the waqf that rental proceeds are to be given away to any orphanage homes. So, as long as there are tenants, there will be money for the orphans. Depending on the waqf manager, the giving away of an enduring asset such as a house can result in the charity being repeated many times. Through a waqf, a single act of charity can produce recurring benefits to the needy, and if the waqf is properly structured the benefits can even last in perpetuity.

Since the donor will die sooner or later, the rewards from Allah for his charitable act of waqf will accrue to him even in his life in the hereafter. A Muslim can create a waqf during his lifetime or upon death by using the one-third provision for bequest. It is in this way that Islamic Estate and Waqf planning is planning for the hereafter.