



# HARMONISATION OF THE SHARĪ'AH AND CIVIL LAWS

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**HARMONISATION OF THE  
*SHARĪ'AH* AND CIVIL LAWS  
(PERSPECTIVE AND PRACTICE)**

**EDITORS**

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**IIUM Press**

Published by:  
IIUM Press  
International Islamic University Malaysia

First Edition, 2011  
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Perpustakaan Negara Malaysia

Cataloguing-in-Publication Data

Abdul Haseeb Ansari & Syed Khalid Rashid: Harmonisation of the Shariah and Civil Laws Perspective and Practice

Bibliography p.  
Includes Index  
ISBN

ISBN: 978-967-0225-89-0

Member of Majlis Penerbitan Ilmiah Malaysia – MAPIM  
(Malaysian Scholarly Publishing Council)

Printed by :

**IIUM PRINTING SDN. BHD.**

No. 1, Jalan Industri Batu Caves 1/3

Taman Perindustrian Batu Caves

Batu Caves Centre Point

68100 Batu Caves

Selangor Darul Ehsan

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## HARMONISING THE USE OF LIVING TRUST AS AN INSTRUMENT FOR ISLAMIC ESTATE PLANNING IN MALAYSIA

Akmal Hidayah Halim

### 1. Introduction

Some individuals consider that the Islamic law of succession would in their particular circumstances, limit their freedom of choosing their own successors and produce inappropriate distribution of their estate. Hence, several alternatives have been utilized to avoid the application of the Islamic law of succession to some or all of the property. In this context, the use of living trust is advocated as one of the alternatives to be considered for Islamic estate planning in Malaysia which permits a person to transfer ownership of his property from his individual name into a trust controlled by him. This instrument permits the person who creates such a trust 'the settlor' to retain complete control and enjoyment over the trust property during his lifetime, while securing the transfer of the property to chosen successor after his death in a manner which completely avoids the law of succession.

As a mere avoidance of the law of succession does not invalidate an instrument which is otherwise valid under the Islamic law,<sup>1</sup> there is a pressing need to determine the validity of a living trust as an instrument for Islamic estate planning. This is due to the reason that its constitution seems to be inconsistent with the Islamic law on gift and succession, especially when the beneficiary is a person who has the legal capacity to own property and who may be one of the legal heirs of the deceased-settlor. Hence, this paper aims at examining the execution of living trust by Muslims in Malaysia so that the rights of the beneficiaries under such a trust are legally ascertained according to the Islamic law. The discussion will focus on the constitution of living trust and the applicable law relating to trust in Malaysia. The trust in Islam together with the Islamic law on gift and succession will also be