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

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OBLIGATORY BEQUEST IN MALAYSIA: THE CLASSICAL LAW AND ITS ENFORCEMENT THROUGH VARIOUS ENACTMENTS

Tajul Aris Ahmad Bustami

1. Introduction

Before 1999, there was no specific legislation on Muslim bequest in Malaysia. While dealing with issues related to bequest, syariah courts in all states of Malaysia, therefore, relied heavily on non-codified hukum Sharī‘ah’ and general provisions in their respective Administration of Islamic Law Enactment.¹ Selangor, through Muslim Wills (Selangor) Enactment 1999,² was the first state in Malaysia introducing specific law relating to Muslim bequest.³ The statute provides, among other things, that any application relating to inheritance⁴ and bequest, including obligatory bequest, shall be dealt with by the Syariah Subordinate Court or Syariah High Court depending on the value of the subject matter.⁵ Later in 2004, Negeri Sembilan followed Selangor and enacted its Muslim Wills (State of Negeri Sembilan) 2004 and then in 2005, Malacca passed its Muslim Wills (State of Malacca) Enactment 2005.⁶ The statutes were prepared based on the legislations in Middle Eastern Countries. There is no such statute in other states in Malaysia.

This chapter attempts to discuss the position of the obligatory bequest as existed in those states’ legislations and its application in the Sharī‘ah courts. A comparative analysis will be done with the position of the obligatory bequest as existed in other Muslim countries. This chapter shall highlight legal constraints relating to the provisions and shall propose suggestions for the improvement of the system.