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Garden of Knowledge and Virtue

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The Role of *Wasi* in the Administration of Minor's Property under Provisions of Islamic law in Malaysia

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ISSUES

- To what extent the provision of Islamic law that is codified in Malaysia prescribed the duties and powers of wasi in relation to the management of minor's property.
- what is the safeguard that has been taken by the legal provisions in order to ensure that the minor's property is well managed and is not infringed and embezzled by the wasi.



OBJECTIVE OF THE STUDY

- To examine the adequacy of the law in relation to the role of wasi in the administration of minor's property.
- To find out the means that have been taken by the provision in safeguarding and protecting the minor's property.



Introduction

- The laws that relate to the guardianship of property is placed in the State List of the Federal Constitution.
- The law that is applicable to Muslim with respect to guardianship of property is Islamic family law enactments or act.
- For the purpose of this study, concentration will be on the Islamic Family Law (Federal Territories) Act 1984 (hereinafter IFLA)



Who is wasi?

- Wasi is a person who is entrusted (*musa ilayh*) by another person.
- In general, there are three types of *wasi*: *wasi* of the Muslim ruler (*wasi al-khalīfah*), judicial *wasi* (*wasi al-Qadi*) and *wasi mukhtar*.
- *Wasi mukhtar* is a person who is appointed by another person to be a deputy after his death for the purpose of administering his estate and the property of his minor children.



Who is wasi?

- The *wasimukhtar* may be appointed either from among relatives or strangers.
- The position of the *wasi mukhtar* among the guardians of property, as mentioned earlier, ranks after the father in the view of the majority of Muslim jurists or after the father and paternal grandfather according to the Shafii jurists.



Meaning of minor

- Subsection (4) of section 88 of the IFLA provides that a person is considered minor and shall be placed under guardianship when he/she has not yet completed eighteen years old.
- This sub-section is in agreement with the view of the majority of the Malikis and Imam Abu Hanifah (with respect to male) who regard that the age of eighteen years as the age of puberty



Meaning of minor

- Nevertheless, it needs further explanation as to whether this age is also considered as the age of maturity which marks the end of guardianship over ward's property where the property will be submitted to him/her completely and he/she is considered mature enough and capable to dispose of his/her own property by himself/herself which is in compliance with the verse of the *Qur'an* (Surah al-Nisa': 6), "Make trial of orphans until they reach the age of marriage; if then ye find sound judgment in them release their property to them..."



Finding

- There are no provisions:
 - relating to the number of *wasi*.
 - how to resolve the disputes between joint *wasi*
 - and the power of the Court to appoint a new *wasi* to replace the dead or disqualified *wasi*.



Finding

- Similarly, the IFLA does not set out the essential duties of *wasi* with respect to his guardianship over the minor's property for instance:
 - the duty to collect the property that belongs to the minor;
 - the duty to pay *zakat*, tax, revenue or any liability that relates to the minor himself as well as his property; duty to accept gifts or bequests that is given to the minor and the taking of possession of the property so given.
 - The duty or power of *wasi* with respect to investment is not clearly elaborated.



Finding

- There are provisions in IFLA relating to the power of the *wasi* but only restricted to dispositions such sale or pledge.
- Many dispositions that the *wasi* has power to carry out are not explicitly set out for instance: power to purchase property for the minor, taking loan for the minor in case of need or employment of an agent etc.
- There is also no provision to limit the power of *wasi* in carrying out certain dispositions.



Finding

- Finally, the Act has no provision regarding the entitlement of a *wasi* to remuneration, whether he is entitled to the payment in consideration of his work.
- Besides that, the liabilities of the *wasi* in the course of his management of the minor's property are also not provided. There is also no further reason that may bring the guardianship of *wasi* to an end and his important duties after termination of *al-wilayah*.



Finding

- The power of *wasi* with respect to the disposition of the minor's property under this provision is subjected to the permission of the Court.
- selling, charging, mortgaging, exchanging, or otherwise parting with possession of any movable or immovable property of minor;
- leasing any land belonging to the minor for a term exceeding one year
- Any disposal of minor's property in contravention of order may be declare void.



Recommendation

- Statutory provisions on guardianship of property particularly the guardianship of a *wasi* have room for improvement.
- It is also timely that the provisions on the issue should be formulated adequately.
- It is suggested that the existing statutory provisions of Islamic law in Malaysia will have to be read in light of Islamic law as propounded by Muslim jurists and the contemporary *ijtihad*.



Conclusion

- The legal clarity on the role of *wasi* in the administration of a minor's property is pressingly required.



THANK YOU



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