



Integration of Absolute Assignment in the Takaful Industry and its Implications on Islamic Estate Planning

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Abstract: One of the important aspects of takaful is the use of Absolute Assignment which allows the transfer of full ownership of takaful benefits to the trustee. However, the implementation of the Absolute Assignment in the context of Islamic estate planning is still unclear and will affect to the inheritance conflicts. Therefore, this study will analyze the extent to which the integration of the Absolute Assignment can be implemented in the Islamic estate planning industry, especially involving the appointment of trust institutions as a trustee. This study is qualitative by using the content analysis method on journal articles, books, acts and court cases. Interview were also conducted with representatives of two trust institutions in Malaysia, namely Amanah Raya Berhad (ARB) and as-Salihin Trustee Berhad, to find out about estate planning products that use Absolute Assignment. In addition, an interview was also conducted with a takaful practitioner from Takaful Ikhlas company to learn more about the implementation of the Absolute Assignment. In conclusion, this study found that there are four main implications through the integration of Absolute Assignment in the takaful industry, namely speeding up the estate administration process, helping to ease the cost burden, safeguarding the welfare of beneficiaries and free tax of takaful benefit. This study suggests that an active collaboration should be implemented between takaful companies and trust institutions in Malaysia to produce variations of takaful products based on Islamic estate planning.

Keywords: Absolute Assignment, takaful, implication, trust institution, Islamic estate planning

Abstrak: Salah satu aspek penting dalam takaful adalah penggunaan Penyerahan Mutlak yang memungkinkan pengalihan kepemilikan penuh atas manfaat takaful kepada wali amanat. Namun, penerapan Penyerahan Mutlak dalam konteks perencanaan harta warisan Islam masih belum jelas dan akan berdampak pada konflik pewarisan. Oleh karena itu, penelitian ini akan menganalisis sejauh mana integrasi Penyerahan Mutlak dapat diterapkan dalam industri perencanaan harta warisan Islam, terutama yang melibatkan penunjukan lembaga perwalian sebagai wali amanat. Penelitian ini bersifat kualitatif dengan menggunakan metode analisis konten terhadap artikel jurnal, buku, undang-undang, dan kasus pengadilan. Wawancara juga dilakukan dengan perwakilan dari dua lembaga perwalian di Malaysia, yaitu Amanah Raya Berhad (ARB) dan as-Salihin Trustee Berhad, untuk mengetahui tentang produk perencanaan harta warisan yang menggunakan Penyerahan Mutlak. Selain itu, wawancara juga dilakukan dengan seorang praktisi takaful dari perusahaan Takaful Ikhlas untuk mempelajari lebih lanjut tentang penerapan Penyerahan Mutlak. Sebagai kesimpulan, penelitian ini menemukan bahwa terdapat empat implikasi utama melalui integrasi Penyerahan Mutlak dalam industri takaful, yaitu mempercepat proses administrasi harta warisan, membantu meringankan beban biaya, menjaga kesejahteraan penerima manfaat, dan pembebasan pajak atas manfaat takaful. Penelitian ini menyarankan agar kolaborasi aktif harus dilaksanakan antara perusahaan takaful dan lembaga perwalian di Malaysia untuk menghasilkan variasi produk takaful berbasis perencanaan harta warisan Islam.

Kata Kunci: Penyerahan Mutlak, Takaful, Implikasi, Lembaga perwalian, Perencanaan harta warisan Islam

Introduction

Takaful means guarantee, care for, or preserve. It was formed to complement the operations of Bank Islam Malaysia Berhad since 1983.¹ It offers an alternative to conventional insurance based on shariah through the use of *al-takaful*, *al-tabarru'*, *al-wakalah*, *al-jua'lah* and *al-mudharabah* contracts.² According to the Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI), takaful is defined as an arrangement based on mutual assistance. Participants protect their group with the payment of contributions that form the source of the insurance fund, and appoint the management of the fund to a policyholder's committee or to a joint stock company that has a license to carry

¹ Mohd Khairy Kamarudin, Azwan Abdullah, Siti Fariha Mohamad, "Nomination Practice In Malaysia: A Review On The Requirements And Conditions From Islamic Perspective," *Intercontinental Journal Of Finance Research Review*, no. 3 (2015), p. 1–7.

² Syaugi Seff & M. Syarif Hidayatullah. "Urgency of the Application of Sharia Guarantee in Islamic Banking in Indonesia." *Syariah: Jurnal Hukum Dan Pemikiran* 20, no. 2 2020, p. 201–15.

on the insurance business.³ In addition, the money collected is also used for investment and business to make profits, in line with the concept of *ta'min ijtima'i*.⁴

The takaful industry in Malaysia is growing rapidly in line with the Islamic banking industry. Bank Negara Malaysia (BNM) has played an active role in the transformation of Islamic finance by introducing the Takaful Act 1984, the Shariah Advisory Council, and the Shariah Supervisory Council and the establishment of specialized courts in the Muamalat Division and Mediation Bureau.⁵ The Islamic Financial Services Act 2013 (IFSA 2013) repealed the Takaful Act 1984 which has been the mainstay of Malaysia's takaful industry over the years.⁶ The introduction of IFSA 2013 has had a positive impact on the takaful industry in introducing various shariah-compliant products.⁷ To date, there are 15 takaful companies under the supervision of BNM such as AIA Public Takaful Berhad, Etiqa Family Takaful Berhad, Takaful Ikhlas General Berhad, Sun Life Malaysia Takaful Berhad, Sun Life Malaysia Takaful Berhad and many others.⁸

For example, IFSA 2013 has allocated broad jurisdiction to BNM to:⁹

- 1) Issue instructions to financial institutions, including takaful operators, to undertake intervention and remedial actions to mitigate risks to the country's financial stability.
- 2) Detailing the method of payment of takaful benefits and requiring the takaful operator to display the payment options to the participant in the nomination form.
- 3) Extending takaful beneficiaries to the beneficiaries of takaful participants, rather than just to the participants themselves in the Takaful Act 1984.
- 4) Separating the Family Takaful business from the General Takaful business, aims to expand these two sectors and increase competition with conventional insurance.

³ AAOIFI. *Shari'ah standards for Islamic financial institutions*. Bahrain: n.p, 2010.

⁴ Hafiz Ali Hassan, "Takaful Models: Origin, Progression and Future," *Journal of Islamic Marketing*, vol. 11, no 6. (2020), p. 1801–1819.

⁵ Mohd Sadad Mahmud, Radiah Abd Kader, "Perkembangan Takaful di Malaysia : Satu Kajian Undang-Undang Kewangan Islam," *Kanun Jurnal Undang-Undang Malaysia*, vol. 24, no 2 (2012), p. 240–261.

⁶ Mohamed Hadi Abd Hamid, and Rusni Hassan, "Akta Perkhidmatan Kewangan Islam 2013: Tinjauan Awal Kesannya Dalam Industri Takaful," *Kanun- Jurnal Undang-Undang Malaysia*, vol. 26, no 2 (2014), p. 254-267.

⁷ Siti Norshila Jamil & Jasri Jamal, "Importance of Islamic Financial Services Act 2013 in Takaful Industry After the Repelled Takaful Act 1984," *Diponegoro Law Review*, vol. 1, no 1 (2016), p. 17-27.

⁸ BNM, "Financial Sector Participants Directory," Accessed on May 31, 2024, <https://www.bnm.gov.my/regulations/fsp-directory?>

⁹ Islamic Financial Services Act 2013, Act 759.

- 5) Requires takaful operators to set up Financial Holding Companies which are subject to capital requirements in Malaysia, making takaful operators a fully commercial venture.

The implementation of takaful is closely related to the estate planning industry in Malaysia. However, the existence of a trust institution at this point, its operations and jurisdiction are not under the auspices of BNM like the takaful companies mentioned above. Every trust institution currently in existence is established under the Companies Act 2016 (Act 777). Previously, it was known as the Companies Act 1965 (Act 125). Its incorporation can be either registered under the Trust Companies Act 1949 (Act 100) or unregistered. Among the trust institutions in Malaysia today registered under the Trust Companies Act 1949 (Act 100) are Amanah Raya Berhad (ARB) and as-Salihin Trustee Berhad.¹⁰

However, there is a relationship between the management of takaful and the trust institutions in the design of Islamic estate planning. For example, the management of takaful benefits through the use of Absolute Assignment.¹¹ This implementation is in line with the concept of assignment based on Section 142, Schedule 10, 7(1) of IFSA 2013 which states:

“Notwithstanding a nomination under paragraph 2, where the takaful benefits, wholly or partly, have been pledged as security or assigned to a person, the claim of the person entitled under the security or the assignee shall have priority over the claim of the nominee and subject to the rights under the security or the assignment being preserved, the licensed takaful operator shall pay the balance of the takaful benefits to the nominee.”

This study finds that the implementation of Absolute Assignment in the context of Islamic estate planning in managing takaful benefits is still unclear. This can create a risk and may result in inheritance conflicts in the future.¹²

¹⁰ Muhamad Mu'izz Abdullah, Abdul Bari Awang, Nasrul Hisyam Nor Muhammad, “Wiṣāyah Dan Amanah: Analisis Perbandingan Undang-Undang Syariah Dan Sivil Dalam Perancangan Harta Pusaka,” *Jurnal Syariah*, vol. 2, no 28 (2020). p. 157–188.

¹¹ Muhamad Mu'izz Abdullah, Mohamad Fadzil Mohamad, Muhaimin Yaakob, “Pelaksanaan Amanah Takaful Di Malaysia: Analisis Menurut Perspektif Maqasid Syariah,” *Journal of Islamic, Social, Economics and Development*, vol. 5 no. 30 (2020), p. 1–12.

¹² Reni Nur Aniroh, Khoiruddin Nasution & Ali Sodiqin. “The Bilateral Inheritance System in Islamic Family Law: Fairness, Equality, and Mutual Exchange Perspectives.” *Samarah* 8, no. 2 2024, p. 891–911. Muhammad Ibnul Hasan & Rosyidatul Khoiriyah. “Gugatan Harta Waris Terhadap Anak Angkat Analisis Yuridis Terhadap Putusan PA Situbondo No. 0371/Pdt.G/2017/PA.Sit.” *Al-Istinbath: Jurnal Hukum Islam* 4, no. 2 2019, p. 231–52. Syaifuddin Zuhdi, Khudzaifah Dimiyati, Kelik Wardiono, Rahma Shofia & Abdul Hakim. 2024. “The

Therefore, this study will analyze the extent to which the integration of the Absolute Assignment can be implemented in the Islamic estate planning industry, especially involving the appointment of trust institutions as a trustee.

Absolute Assignment Concept

Assignment can be classified into two categories, namely Absolute Assignment and conditional assignment. The implementation of Absolute Assignment in a conventional insurance policy is an absolute transfer of title to another party and does not contain any conditions. While conditional assignment is a conditional transfer of ownership determined by the policyholder (*assignor*)¹³. The assignment may be suspended, fully or partially cancelled if the conditions set out are not met.¹⁴ However, this study will only focus on Absolute Assignment as conditional assignment is not completely absolute and may not be applicable in court in the event of any dispute.¹⁵

Absolute Assignment is widely practiced in the takaful industry and is clearly stated in Section 142, Schedule 10, 7(1) of IFSA 2013 above, but its implementation is not mentioned in its entirety even in the Takaful Act 1984.¹⁶ Absolute Assignment is a process of transferring full ownership whether it involves takaful benefit or any right from the assignor to the assignee. The assignee will act as the absolute beneficiary in managing the takaful benefit for the welfare of the desired beneficiary. The takaful benefit will not become the policyholder's estate after his/her death.¹⁷ This concept is similarly to the *wakalah* and *amanah* contract in Islam during the policyholder's life.

In the practice of the Absolute Assignment in the takaful industry at this point, the Absolute Assignment applies to family takaful products. This Absolute Assignment allows the policyholder to select any individual, corporation, statutory body, local authority, society, trade union, cooperative, partnership and any other body, organization, association or group of persons, whether

Confiscation of Husbands' Wealth as A Collateral for Post-Divorce Child Support: Perspective of Maqāsid Al-Sharī'ah." *Samarah* 8, no. 2, p. 912–33.

¹³ Lanctot, "What Is a Life Insurance Assignment?", accessed on May 31, 2024, <https://finance.zacks.com/absolute-assignment-life-insurance-policies-6460.html>.

¹⁴ Maithreyi, "Assignment" explained in Insurance Policy terms," accessed on Jun 2, 2024. <http://finmantra.co.in/blog/2018/06/29/assignment-explained-in-insurance-policy-terms/>.

¹⁵ Ahmad Basri Ibrahim & Ahmad Fadhil Hamdi Mohd Ali, "Absolute Assignment in Takaful Industry: Shari'ah Contracts, Issues and Solutions," *Intellectual Discourse*, 23 (2015), p. 507–528.

¹⁶ Ahmad Basri Ibrahim & Ahmad Fadhil Hamdi Mohd Ali, "Absolute Assignment in Takaful Industry: Shari'ah Contracts, Issues and Solutions," *Intellectual Discourse*, 23 (2015), p. 507–528.

¹⁷ Siti Norshila Jamil & Jasri Jamal, "Importance of Islamic Financial Services Act 2013 in Takaful Industry After the Repelled Takaful Act 1984," *Diponegoro Law Review*, vol. 1, no 1 (2016), p. 17-27.

incorporated or unincorporated.¹⁸ For example, Figure 1 below is an example of the Prudential BSN Takaful operating company's form regarding the selection of assignee appointments whether it involves individuals or institutions:

Figure 1: Absolute Assignment Form¹⁹

Certificate Number / Nombor Sijil																			
<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>																			
Schedule / Jadual																			
Part 1 / Bahagian 1	(Name and particulars of the Participant) / (Nama dan butiran Peserta)																		
Full Name / Nama Penuh																			
NRIC No or Passport No./ No. KP atau No. Pasport																			
Date of Birth / Tarikh Lahir																			
Address / Alamat																			
Part 2 / Bahagian 2	(The consideration for this assignment) / (Pertimbangan serah hak ini)																		
Reason / Sebab																			
Part 3 / Bahagian 3	(Name and particulars of the Assignee) / (Nama dan Butiran Penerima Serah Hak)																		
	<table border="1"> <tr> <th>INDIVIDUAL / INDIVIDU</th> <th>INSTITUTION / INSTITUSI</th> </tr> <tr> <td>Full Name / Nama Penuh</td> <td></td> </tr> <tr> <td>NRIC No or Passport No./ No. KP atau No. Pasport</td> <td>Registration No. / No. Pendaftaran</td> </tr> <tr> <td>Date of birth / Tarikh Lahir</td> <td></td> </tr> <tr> <td>Country of birth (COB) / Negara Kelahiran</td> <td></td> </tr> <tr> <td>Nationality / Warganegara</td> <td></td> </tr> <tr> <td>Occupation / Pekerjaan</td> <td></td> </tr> <tr> <td>Name of Employer/ Business / Nama Majikan/ Perniagaan</td> <td></td> </tr> <tr> <td>Nature of Business / Bidang Perniagaan</td> <td></td> </tr> </table>	INDIVIDUAL / INDIVIDU	INSTITUTION / INSTITUSI	Full Name / Nama Penuh		NRIC No or Passport No./ No. KP atau No. Pasport	Registration No. / No. Pendaftaran	Date of birth / Tarikh Lahir		Country of birth (COB) / Negara Kelahiran		Nationality / Warganegara		Occupation / Pekerjaan		Name of Employer/ Business / Nama Majikan/ Perniagaan		Nature of Business / Bidang Perniagaan	
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Nature of Business / Bidang Perniagaan																			
	<p>Note / Nota : Should the Assignee is an entity, please proceed to submit together with Entity Declaration Form (FATCA & CRS). You may download the form via prubsn.com.my. / Jika Penerima serah Hak tersebut adalah entiti, sila hantarkan bersama Borang Akuan Entiti (FATCA & CRS). Anda boleh muat turun borang melalui prubsn.com.my.</p>																		

Even though an Absolute Assignment has been perfectly implemented to the assignee, the policyholder is still responsible for making the takaful contribution until the takaful policy is mature or the policyholder dies. The process of Absolute Assignment can be understood through Diagram 1 below:

¹⁸ Islamic Financial Services Act 2013, Act 759.

¹⁹ Pru BSN, "Absolute Deed of Assignment," accessed Jun 2, 2024. <https://www.prubsn.com.my/export/sites/prudential-pbtb/ms/.galleries/pdf/61301001-Absolute-Deed-of-Assignment-24-5-2019.pdf>.

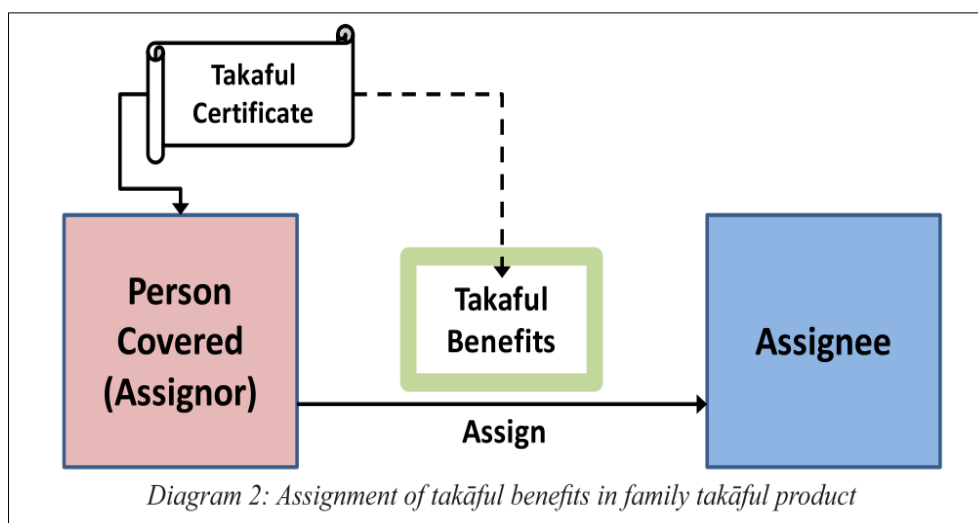
Diagram 1: Absolute Assignment process²⁰

Diagram 1 above clearly explains the process of how takaful benefit can be handed over from the policyholder to the beneficiary through Absolute Assignment. The takaful certificate is given to the assignee at the beginning of the takaful coverage. This can be done during the policyholder's life or after his or her death depending on the terms and conditions of the takaful policy. The submission of takaful benefit is important in estate planning as it ensures that the takaful benefit is channelled to the right parties according to the wishes of the individual being protected. In this process, the policyholder only transfers the right to takaful benefit, meaning that the policyholder remains the owner of the certificate. The submission of takaful benefit is an important aspect of family takaful product that protect family members and heirs. Once the assignee has received the takaful benefit, it can hand it over to the beneficiary who has been designated by the policyholder during his or her lifetime.²¹

The implementation of Absolute Assignment in the takaful industry is different among the operators of takaful companies, resulting in different execution of surrender. Not all takaful companies have the same process for this Absolute Assignment. First, there are takaful companies that have a type of surrender where the policyholder transfers the takaful benefit including the takaful certificate to the beneficiary. As a result, the policyholder is no longer the owner

²⁰ Ahmad Basri Ibrahim & Ahmad Fadhil Hamdi Mohd Ali, "Absolute Assignment in Takaful Industry: Shari'ah Contracts, Issues and Solutions," *Intellectual Discourse*, 23 (2015), p. 507–528.

²¹ Azman Mohd Noor & Mohamad Asmadi Abdullah, "Takaful (Islamic Insurance) Benefit: Ownership and Distribution Issues in Malaysia," *Journal of Islamic Economics, Banking and Finance*, vol. 5, no 3 (2009), p. 35–48.

of the certificate and loses the power to make a nomination but still has to pay contributions. Second, a situation where the policy is not changed to the beneficiary's name even though the takaful benefit is given to the assignee. As a result, the policyholder retains ownership of the policy and the power to name and surrender, while the takaful benefit is owned by the assignee.²²

Absolute Assignment, Nomination, and Hibah

The implementation of Absolute Assignment has been widely used in the Malaysia takaful industry.²³ For example, AIA Takaful Company and AM Metlife Takaful Company offer to the takaful participant the option to make the Absolute Assignment specific beneficiary of their choice.²⁴ Therefore, this study found that there are differences between Absolute Assignment, nomination, and hibah implemented in the takaful industry at this point as shown in Table 1 below:

Table 1: Differences in Absolute Assignment, Nomination, and Hibah²⁵

No.	Characteristics	Absolute Assignment	Nomination	Hibah
1.	Benefits of takaful	All benefits of the takaful policy or anything related thereto shall be vested in the assignee in an absolute manner whether the participant dies or becomes permanently disabled.	Transfer of ownership of takaful benefit to the nominee or recipient (<i>al-mauhub lahu</i>) only involves death benefit.	
2.	Change of assignee/nominee/beneficiary	The assignee cannot be changed during the life of the	There is no need to obtain permission from the nominee or recipient.	

²² Ahmad Basri Ibrahim & Ahmad Fadhil Hamdi Mohd Ali, "Absolute Assignment in Takaful Industry: Shari'ah Contracts, Issues and Solutions," *Intellectual Discourse*, 23 (2015), p. 507–528.

²³ Mohd Kamil Ahmad & Joni Tamkin Borhan, "Penggunaan Hibah Bersyarat (Berta'liq) Dalam Masalah Pembahagian Manfaat Takaful: Analisis Hukum," *Jurnal Syariah* vol 25, no 1 (2017), p. 51–74.

²⁴ AIA Takaful, "Absolute Assignment," accessed on Jun 2, 2024. <https://www.aia.com.my/content/dam/my/en/docs/forms/aiabhd/penyerahan-hak-mutlak.pdf>.

AM Metlife Takaful, "Absolute Assignment," accessed on Jun 2, 2024. <https://www.ammetylifetakaful.com/getattachment/0de0d962-bace-4a86-8379-231bd4d881d8/DocumentName.aspx>.

²⁵ Author Analysis.

		policyholder after the completion of the Absolute Assignment unless the consent of the assignee is obtained.	
3.	Cancellation of takaful policy	A takaful policy cannot be cancelled unless the consent of the assignee is obtained.	Policyholder can cancel the takaful policy at any time without permission from the nominee or receipt.
4.	Trust Deed	An additional trust deed that explains the implementation of takaful benefit management to the beneficiary.	No additional SIA is needed instead only Takaful Form is used.
5.	Appointment of assignee/nominee/beneficiary	The appointment of an assignee can involve an individual or a trust institution.	Recipient involves individual only.

Table 1 above details the key differences between Absolute Assignment, Nomination, and Hibah in the context of takaful benefits. Each of these methods has unique characteristics that affect how takaful benefits are managed and handed over to the designated beneficiary.

1. Takaful Benefit

In the context of takaful benefit, Absolute Assignment involves the transfer of all takaful policy or anything related to it to the assignee on an absolute basis, whether in the event of the death of the participant or permanent disability. This means, that once the assignment is completed, the takaful company has full control over the policy and all the benefits associated with it. The assignee will be the rightful owner of all benefits derived from the policy. On the other hand, in the nomination and hibah, the transfer of takaful benefit ownership only takes place to the nominee or recipient in the event of the death of the participant, and it only involves the death benefit. In the event of permanent disability or claim due to an accident during his or her lifetime, the takaful benefit will be handed over to the policyholder only.

2. Change of Assignee, Nominee and Beneficiary

In Absolute Assignment, the process of changing the assignee is subject to strict conditions. Once the assignment has been transferred to the assignee absolutely, the policyholder no longer has the power to change the assignee without the consent of the existing assignee. This means that, unless the assignee gives consent for the change, the assignee will continue to hold all the benefits of the submitted takaful policy. This process is binding and guarantees the beneficiary's right. Whereas in nomination and hibah, the change of nominee and recipient can be done without consent from them. This provides more flexibility to policyholder in managing his or her property properly.²⁶

3. Takaful Policy Cancellation

In the context of Absolute Assignment, the cancellation of the policy by the policyholder is limited and requires the consent of the assignee. When the Absolute Assignment is done, the policyholder loses control over the policy including the ability to cancel it. The assignee, who currently holds the right to the policy benefits, will need to give consent before any cancellation can take place. This protects the interests of the assignee, ensuring that they do not lose the promised benefits without their consent. This process demonstrates a serious and lasting commitment to the chosen assignee.

However, this cancellation issue also raises problems. What if the policyholder no longer wants to continue or there are financial constraints when the Absolute Assignment has been fully transferred? This is because, only the takaful policy benefit is transferred, and the new assignee is not responsible for paying off the policyholder's takaful contributions. Thus, the surrender of the Absolute Assignment is a form of hibah.²⁷ For example, in the event of financial constraints, then the Absolute Assignment is automatically cancelled.²⁸ If there is an excess contribution in the participant's *tabarru'* fund account, then the contribution will be returned to the policyholder.

Meanwhile, in nomination and hibah, there is no issue as the policyholder can cancel the takaful policy at any time without having to obtain permission from the nominee or recipient. This can be referred to the case of *Mohd Akbar Bin Shafawi v Fara Soraya Binti Tarmizi and Khafil Rusyaidi Bin Kamarul Rasydan (06100-044-0473-2014)* at the Kuantan Syariah High Court. The Syarie judge has allowed the application of the takaful benefit based on the decision of the 34th

²⁶ Interview with Ahmad Mustafa Mat Ali, Takaful Ikhlas practitioner, November 25, 2023.

²⁷ Ahmad Basri Ibrahim & Ahmad Fadhil Hamdi Mohd Ali, "Absolute Assignment in Takaful Industry: Shari'ah Contracts, Issues and Solutions," *Intellectual Discourse*, 23 (2015), p. 507–528.

²⁸ Azman Mohd Noor & Mohamad Sabri Zakaria, "Takaful : Analisis Terhadap Konsep dan Akad," *Jurnal Muamalat*, vol 3, (2010), p. 1–28.

meeting of the Shariah Advisory Council of Bank Negara Malaysia (BNM). This is because the concept of Hibah takaful benefit is equivalent to Hibah Ruqba. After all, it is associated with the death of the policyholder.²⁹

4. Trust Deed

Trust deed is a legal document that has the authority to implement the intention and expectation of the policyholder.³⁰ The information contained in the trust deed is such as the information of the policyholder, takaful benefit, objective and the duration of administration of the trust deed for the welfare and benefit of the named beneficiary. For example education, investment and medical matters. The existence of an additional trust deed in the Absolute Assignment is to clarify the implementation of the management of takaful benefit to the beneficiary. On the other hand, in nomination and hibah, no additional trust deed is required, only with the Takaful Form provided by the takaful company.

5. Appointment of Assignee

The appointment of an assignee in an Absolute Assignment and nomination may involve an individual or trust institution based on Section 142, Schedule 10, 7(1) of IFSA 2013. This means that not only individuals can be assigned, but also recognized institutions. It can be noted here, the concept of implementing the Absolute Assignment is broader. In contrast, to benefit of hibah in the takaful industry, the appointment allowed only to involve individual.³¹ However, the concept of the assignee is different from the nomination concept. The assignee is the absolute recipient because it is in accordance to the hibah concept is syariah. Meanwhile, the executor is the nominee and is responsible for distributing the takaful benefit according to the faraid law as stated in Table 10, Section 6, IFSA 2013:

(1) A licensed takaful operator shall be discharged from liability for the payment of takaful benefits payable under a takaful certificate if a licensed takaful operator has paid a takaful benefit to the nominee named in the takaful certificate whether the nominee receives the takaful benefit as an executor or beneficiary under a conditional hibah.

²⁹ Nurul Syuhadah Azalan & Noor Lizza Mohamed Said, “Keputusan Hakim Syarie Dalam Kes-Kes Pengesahan Hibah Ruqba,” *Journal of Contemporary Islamic Law* vol 1, no 2 (2016), p. 91–101.

³⁰ Muhamad Mu’izz Abdullah, Abdul Bari Awang, Nasrul Hisyam Nor Muhammad, “Wiṣāyah Dan Amanah: Analisis Perbandingan Undang-Undang Syariah Dan Sivil Dalam Perancangan Harta Pusaka,” *Jurnal Syariah*, vol. 2, no 28 (2020). p. 157–188.

³¹ Interview with Ahmad Mustafa Mat Ali, Takaful Ikhlas practitioner, November 25, 2023.

(2) For the purposes of subparagraph (1), if a nominee for a takaful participant receives the takaful benefit as a beneficiary, such nominee shall divide the takaful benefit in the course of the takaful in accordance with the will of the takaful participant or in accordance with the law relating to the distribution of the estate of the deceased person applicable to the administration of the estate of the deceased takaful participant.

Next, the nomination in hibah involves individual. This is because hibah has a pillar that must be fulfilled, namely the donor (*al-wahib*), recipient (*al-mauhub lahu*), property (*al-mauhub*) and contractual agreement (*ijab qabul*).³² Takaful contributor has the freedom either appoint a beneficiary as a beneficiary under the Conditional of Hibah or as an executor. For example, Figure 2 below is the type of beneficiary nomination in the Takaful Hibah Nomination Form:

Figure 2: Takaful Hibah Nomination Form³³

PART 2: NOMINEE(S) DETAILS / BAHAGIAN 2: BUTIR-BUTIR PENAMA (Only Applicable If The Participant Is Also The Person Covered / Hanya Digunakan Sekiranya Peserta Adalah Orang Yang Dilindungi)			
1. By virtue of Section 142 of Islamic Financial Services Act 2013, you may: a) assign the takaful benefits to a person or designate the nominee to receive the takaful benefits as a beneficiary under conditional hibah; or b) designate the nominee to receive the takaful benefits as an executor. Menurut Seksyen 142, Akta Perkhidmatan Kewangan Islam 2013, anda boleh: a) menyerahkan hak manfaat takaful kepada seorang penama atau menetapkan penama untuk menerima manfaat takaful sebagai beneficiaries di bawah hibah bersyarat; atau b) menetapkan penama untuk menerima manfaat takaful sebagai seorang wasi.			
2. Total share must be 100%. / Jumlah syer mesti 100%.			
3. If you select a New Nomination, all existing nominees(s) named earlier will be revoked and replaced with the new nomination as follow. Sekiranya anda memilih Penamaan Baharu, semua penama yang sedia ada akan dibatalkan dan digantikan dengan penamaan baharu seperti berikut.			
<input type="checkbox"/> New Nomination Penamaan Baharu <input type="checkbox"/> Delete Existing Nomination and without a New Nomination Membatalkan Penama Sedia Ada tanpa Penamaan Baharu <input type="checkbox"/> Amendment of Existing Nomination Details Pindaan Butiran Penama Sedia Ada			
Please tick (✓) either one of the Nomination Type below. The selected Nomination Type will be applied to all the appointed nominee(s). Sila tanda (✓) pada salah satu Jenis Penamaan yang berkenaan. Jenis Penamaan yang dipilih akan digunakan kepada semua penama-penama yang dilantik.			
<input type="checkbox"/> Beneficiary Under Conditional Hibah / Benefisiari Di Bawah Hibah Bersyarat		<input type="checkbox"/> Executor / Wasi	
	Nominee I / Penama I	Nominee II / Penama II	Nominee III / Penama III
Name / Nama			
MyKad / Birth Certificate No. No. MyKad / Sijil Kelahiran			

However, the appointment of the institution as an executor is allowed due to the Hibah Amanah instrument. Hibah Amanah is formed through a combination of trust principles in hibah products. In theory, the concept of trust applied in hibah instrument has been recognized by shariah law and civil law. The property

³² Rositah Kambol. "Pengurusan Harta Orang Islam Melalui Hibah: Isu dan Penyelesaian," *Journal of Law & Governance* vol 2, no 1 (2019), p. 99–113.

³³ Takaful Malaysia, "Borang Penamaan Takful Hibah", Accessed on Jun 2, 2024. https://www.takaful-malaysia.com.my/wp-content/uploads/2023/03/Nomination_Form.pdf.

of hibah will be transferred to the trustee, which will then be handed over to the recipient after the death of the donor using the concept of Hibah Ruqba.³⁴

Integration of Absolute Assignment in the Islamic Estate Planning

Islamic estate planning products in the industry are now growing to meet the demands of society and address social problems. The emergence of various contemporary products in estate planning makes it easier for an individual to plan during his or her lifetime, especially in overcoming the crisis of inheritance in the event of death.³⁵ Among the estate planning instruments that need attention is the "Takaful Trust" product. They are two different types of instruments that combine two different contracts and refer to two legal systems; Islamic and civil. The selection of a takaful trust is aimed at appointing a replacement trustee (*wasi*) to manage the takaful benefit after the death of the policyholder.³⁶ In contrast to the implementation of normal Hibah Takaful, the testator only names the beneficiary for the submission of takaful benefit. Upon the death of the policyholder, the takaful benefits will be transferred directly to the named beneficiary.

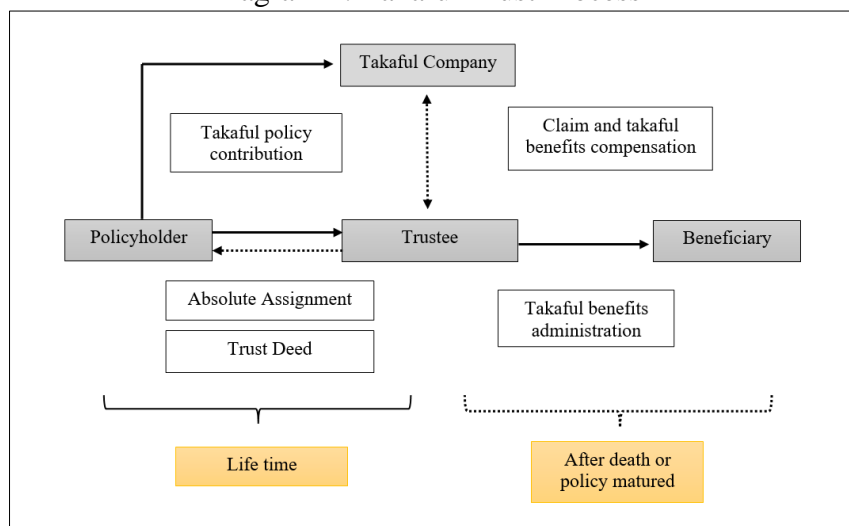
The discussion on the implementation of the Takaful Trust above can be understood as shown in Diagram 2 below:

³⁴ Muhamad Mu'izz Abdullah, Amirul Hafizin Othman & Mohamad Fadzil Mohamad. "Transformation of Collateral Hibah in Amanah Raya Berhad: Analysis from the Shariah Perspective and its Implementation in Malaysia," *IJUM Law Journal* vol 32, no 1 (2024). p. 187–232. Mohd Zamro Muda, Nurnazirah Rosdi & Noor Lizza Mohamed Said. "Analisis Perundangan dan Kes Hibah Amanah di Malaysia," *International Journal of Islamic Thought* vol 23, no 1 (2023), p. 79–90. Akmal Hidayah Halim & Tajul Aris Ahmad Bustami, "Pelaksanaan Hibah Amanah Sebagai Suatu Instrumen Pengurusan Harta Islam Di Malaysia," *Kanun* vol 29, no 2 (2017), p. 90–115. Nazrul Hazizi Noordin, Muhammad Issyam Ismail, Muhammad Abd Hadi Abd Rahman, Siti Nurah Haron and Adam Abdullah. "Re-Evaluating the Practice of Hibah Trust in Malaysia," *Humanomics* vol 32, no 4 (2016), p. 418–436.

³⁵ Noor Lizza Mohamed Said, Wan Amirul Adli Wan Ayub, Mohd Zamro Muda, Adnan Mohamed Yusoff, Mohd Izhar Ariff Mohd Kashim. (2019), "Pengamanahan Dalam Perancangan Dan Pengurusan Harta Orang Islam," *Islamiyyat* vol 41, no 2, p. 71–79. Muhammad Hasan. "Construction of Modern Islamic Inheritance Law Based on Ijtihad of the Judges at the Religious Court of Pontianak, West Kalimantan." *Samarah* 7, no. 2 (2023), p. 650–68. Munawar. "The Legality of Smart Contract in the Perspectives of Indonesian Law and Islamic Law." *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 (2022), p. 265–86. A. Zaenurrosyid, Hidayatus Sholihah & Nurhidayatulloh. "The Islamic Philanthropy Model Based on Maslahah Principles for Developing Islamic Campus in Java." *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 24, no. 2 (2024), p. 279–304.

³⁵ Muhamad Mu'izz Abdullah, Mohamad Fadzil Mohamad, Muhaimin Yaakob "Pelaksanaan Amanah Takaful Di Malaysia: Analisis Menurut Perspektif Maqasid Syariah," *Journal of Islamic, Social, Economics and Development*, vol. 5 no. 30 (2020), p. 1–12.

³⁶ Mohd Sadad Mahmud & Radiah Abd Kader, "Perkembangan Takaful di Malaysia : Satu Kajian Undang-Undang Kewangan Islam," *Kanun Jurnal Undang-Undang Malaysia*, vol. 24, no 2 (2012), p. 240–261.

Diagram 2: Takaful Trust Process³⁷

Based on Diagram 2 above, the administration of a Takaful Trust can take place in two parts; the first is during life, and the second is after death or policy matured. The Takaful Trust process begins with the selection of a takaful company by prospective policyholder who is looking for a plan that suits his or her needs. Thereafter, the policyholder completes the Absolute Assignment Form to nominate and appoint the trustee who is responsible for managing the takaful benefit policy on behalf of the beneficiary. This was followed by the completion of the trust deed between the policyholder and the trustee which sets out the terms and conditions of trust administration. The signed trust deed will be binding on both parties, namely between the policyholder and the trustee.

Nevertheless, the policyholder may revoke the appointment of the trustee upon obtaining the consent of the trustee. This is because the contract signed is not a binding contract (*al-aqd ghair lazim*).³⁸ Then, the takaful policy will be handed over to the trustee, followed by document storage and temporary closure of the file at the trust institution. Throughout the policy period, the policyholder will make regular life takaful contribution according to the condition set by the takaful company operator.³⁹

The trustee will receive information related to the policy by the takaful company operator whether the policyholder has passed away or when the takaful policy has reached maturity. The trustee will then reopen the takaful trust file and

³⁸ Azila Ahmad Sarkawi, "Akad-akad Muamalah Dalam Fiqh: Satu Analisis," *Jurnal Syariah* Vol 6, (1998), p. 37–42.

³⁹ Interview with Mohamad Fadzil Mohamad, Senior Executive, Product Development Department, Amanah Raya Berhad, Jun 2, 2024.

claim the takaful benefit to the takaful company. Once the claim is processed and approved, the payment of takaful benefit is made to the trustee. The method of takaful benefit payment under the family takaful certificate and personal accident takaful certificate is referred to Part IX, Devisiion 3, IFSA 2013:

“.... the payment of takaful benefits upon death of a takaful participant under a family takaful certificate, and a personal accident takaful certificate, issued in respect of a contract of takaful entered into by the takaful participant upon his life.”

The trustee will then manage the trust account based on the terms in the trust deed, and once all benefits have been disbursed and administrative matters have been completed, the trust account will be closed again. This process ensures that the takaful benefit are properly managed and channelled to the beneficiary according to the wishes of the policyholder.⁴⁰

Product Analysis

Every trust institution currently in existence is established under the Companies Act 2016 (Act 777). Previously, it was known as the Companies Act 1965 (Act 125). For example, referring to the Companies Act 2016 (Act 777), Section 14(a) to (j) clearly states that any application for incorporation must include the details of the proposed company, private or public, type of business, proposed address of registered office, name, identification, nationality, and principal place of residence of each person who will be a director or secretary. Its incorporation can be either registered under the Trust Companies Act 1949 (Act 100) or unregistered.⁴¹

Therefore, to look at the practical implementation of the integration of Absolute Assignment in Trust Takaful products in the Islamic estate planning industry, this study will analyze two major trust institutions in Malaysia. The first is ARB and the second is as-Salihin Trustee Berhad.

1. Amanah Raya Berhad (ARB)

ARB is a wholly owned company by the Malaysian government which was formerly known as the Public Trustee Department and Estate Management Officer of Malaysia. It was first established in 1921 and is a Public Trustee in Malaysia responsible for providing trust services such as will, trust and estate administration. On 29th May 1995 ARB was incorporated and subsequently

⁴⁰ Interview with Mohamad Fadzil Mohamad, Senior Executive, Product Development Department, Amanah Raya Berhad, June 2, 2024.

⁴¹ Abdul Bari Awang, Muhamad Mu'izz Abdullah, Nasrul Hisyam Nor Muhammad, "The Analysis Of Trust As An Islamic Estate Planning Instrument In Malaysia: Challenges And Effects," *UUM Journal of Legal Studies* vol 1, no. 1, (2022). p. 107–129.

registered under the Public Trust Corporation Act 1995 (Act 532) and the Companies Act 1965.⁴² The features of the Takaful Trust product offered are as shown in Table 2 below:

Table 2: Features of Takaful Trust product at ARB⁴³

Product Name	Takaful Trust	
	Basic	Comprehensive
Type of Policy		
Fi	RM750 (per policy)	RM1,200.00 (per policy)
Features of trust deed	1. The donor is allowed to name only limited to 2 beneficiaries. 2. A percentage is placed for each beneficiary.	Trust deed can be made according to the donor's wishes.
Clause Amendment	Any amendment of clauses in the trust deed is not allowed.	1. Any amendment to the clause is subject to a fee of RM200. 2. Meanwhile, an additional clause is charged a fee of RM100
Administration Fee	0.5% per annum on the Trust's capital * Will be charged upon receipt of compensation from the appointed takaful company	

2. As-Salihin Trustee Berhad

A trust company established in 2004 to cater to the needs of Muslims, etc: to preserve, protect, and distribute assets based on Shariah principles. Offering a variety of shariah-compliant estate planning products and having a systematic management system to ensure that estate administration can be carried out quickly, smoothly and trustedly.⁴⁴ The features of Amanah Takaful product offered are as shown in Table 3 below:

⁴² Amanah Raya Berhad, "Mengenai Amanah Raya Berhad," retrieved on Jun 2, 2024. <https://www.amanahraya.my/ms/tentang/tentang-amanah-raya-berhad>,

⁴³ Interview with Mohamad Fadzil Mohamad, Senior Executive, Product Development Department, Amanah Raya Berhad, Jun 2, 2024.

⁴⁴ As-Salihin Trustee Berhad, "About As-Salihin," retrieved on Jun 2, 2024. <https://as-salihin.com/en/tentang-as-salihin/>.

Table 3: features of Takaful Trust product at As-Salihin Trustee Berhad⁴⁵

Product Name	Pri-TI	
	Basic	Comprehensive
Type of Policy		
Fi	RM1,400 (per policy)	RM1,400 – RM3,000 (per policy)
Features of trust deed	Direct instructions such as payment of debts and maintenance to children.	Can be made according to the donor's wishes in detail and variety.
Clause Amendment	The first trust deed should be revoked and the second trust deed re-prepared. Other than that, repayment according to the type of policy selected along with a 20% price reduction.	
Administration Fee	0.75% per annum from the first RM 1 million *Will be charged upon receipt of compensation from the appointed takaful company	

Based on Table 2 and Table 3 above, there are significant differences in the characteristics of Takaful Trust product at ARB and As-Salihin Trustee Berhad. ARB offers Takaful Trust products with two types of policies, namely basic and comprehensive. For the basic policy, the fee charged is RM750 per policy. Meanwhile, for a comprehensive policy, the fee charged is RM1,200 per policy. In terms of trust deed characteristics, for the basic policy at ARB, the donor is only allowed to place two beneficiaries with a certain percentage for each beneficiary. On the other hand, a comprehensive policy allows trust deed to be made according to the wishes of donors with no limit to the number of beneficiaries or a set percentage. Regarding the amendment of the clause, for the basic policy, any amendment in the trust deed is not allowed. Meanwhile, for comprehensive policy, any amendments are subject to a fee of RM200, and additional clauses are subject to a fee of RM100. The last is the administrative fee. It is charged upon receipt of compensation from the appointed takaful company at the rate of 0.5% per annum of the Amanah's capital.⁴⁶

For the Pri-TI product introduced by Takaful Trust at As-Salihin Trustee Berhad, the fee charged is RM1,400 for each basic policy, and the comprehensive policy is between RM1,400 to RM3,000. The trust deed features of the basic policy at As-Salihin Trustee Berhad allow direct instructions such as the payment of debts and child support, while for a comprehensive policy, the trust deed can

⁴⁵ Interview with Muhammad Ihsan Ahmad, Senior executive of As-Salihin Trustee Berhad, June 2, 2024.

⁴⁶ Interview with Mohamad Fadzil Mohamad, Senior Executive, Product Development Development, Amanah Raya Berhad, June 2, 2024.

be made according to the donor's wishes in detail and variously. Meanwhile, from the point of view of clause amendments, the first trust deed must be cancelled and the second trust deed re-prepared with a refund according to the type of policy chosen along with a 20% price reduction. Subsequently, an administration fee is charged at the rate of 0.75% per annum of the first RM1 million charged after receiving compensation from the appointed takaful company.⁴⁷

In conclusion, the comparison between these two Takaful Trust products shows that ARB offers lower fees for basic policy but higher fees for comprehensive policy. In terms of trust deed characteristics, ARB is stricter in the number of beneficiaries and percentage limits for basic policy, while As-Salihin Trustee Berhad offers direct instructions for debt and maintenance payments. In addition, the clause amendment in ARB is more limited to the basic policy compared to As-Salihin Trustee Berhad which allows for the cancellation and re-preparation of trust deed with reduced prices.

However, the study also found that there are similarities in the form of distribution and implementation of the takaful benefis. To facilitate the implementation of takaful benefit in the future, the policyholder is required to set a percentage rate for each named objective or beneficiary. Among the forms of distribution that are allowed are outstanding debts, the opening of trust account, estate administration cost, funeral expenses, *badal hajj*, *waqf*, beneficiary alimony, welfare, medical expenses, nursing home, allowance to guardian and payments to the donor.⁴⁸

For example, the implementation of a Takaful Trust can be implemented as Table 4 follows:

Table 4: The implementation of a Takaful Trust⁴⁹

Absolute Assignment with AA Takaful Company		
Total takaful benefit of RM1,000,000		Amount allocated
Administrative instructions in trust deed	1. Payment to Wife	20% @ RM200,000
	2. Payment to 2 children B and C:	

⁴⁷ Interview with Muhammad Ihsan Ahmad, Senior executive of As-Salihin Trustee Berhad, June 2, 2024.

⁴⁸ Interview with Mohamad Fadzil Mohamad, Senior Executive, Product Development Development, Amanah Raya Berhad, June 2, 2024. Interview with Muhammad Ihsan Ahmad, Senior executive As-Salihin Trustee Berhad, June 2, 2024.

⁴⁹ Author's analysis

	<p>Situation 1: If the policyholder passes away and both children reach the age of majority, then 60% of the total takaful benefit will be handed over to them equally.</p> <p>Situation 2: If the policyholder passes away first while both children are still minors, then the monthly alimony, schooling, and festival payment is through the opening and administration of the trust account, the alimony payment will be paid to the guardian every month as appropriate until they reach the age of 18, or until the total amount of takaful benefit is utilised.</p>	<p>Child B : 30% @ RM300,000</p> <p>Child C: 30% @ RM300,000</p>
3.	Re-contribution to AA Takaful Company for 2 children up to 18 years old at a rate of 20%.	<p>Child B : 10% @ RM100,000</p> <p>Child C: 10% @ RM100,000</p>
4.	Cash <i>waqf</i> to the Federal Territories Islamic Religious Council (MAIWP)	20% @ RM200,000

Implications Of The Implementation Of Absolute Assignment

1. Speeding Up the Estate Administration Process

The implementation of Absolute Assignment can expedite the estate administration process by allowing the transfer of property directly to the named beneficiary upon the death of the policyholder. It will avoid the need to wait for the estate division process which is usually lengthy more than 6 months.⁵⁰ With

⁵⁰ Joe C. Stephens & Jack Gray Johnson, "Life Insurance in Estate Planning", *SMU Law Review* vol. 15, no 4 (1960), p. 570-610. Abdul Bari Awang, Muhamad Mu'izz Abdullah, Nasrul

the Absolute Assignment, the benefit of takaful or other assets involved can be immediately handed over to the recipient without the need to go through a will or probate, which often slows down the process of handing over the property and involves complex legal procedures.⁵¹

In addition, the Absolute Assignment implemented through the appointment of a trustee can also help reduce disputes between beneficiaries. This problem can overcome the ambiguity of the instructions in the will, or when no will is left until the dispute is brought to the Syariah Court. This is important to ensure that the wishes of the policyholder are executed accurately.⁵² This can indirectly help the smooth administrative process without involving any conflicts in the future and can avoid the issue of unclaimed property.⁵³

2. Helping to Ease the Burden of Estate Administration Costs

The estate administration costs imposed on the estate of the deceased depend on the value of the assets left behind. The higher the value of the asset, the higher the inheritance fee that will be charged.⁵⁴ The estate administration will be more complicated if there are no cash assets left by the deceased. For example, if the deceased only leaves immovable assets such as land and houses, how will the immovable assets be transferred to the heirs? Therefore, this is what causes the Muslim community to postpone the estate administration immediately due to

Hisyam Nor Muhammad, "The Analysis of Trust as an Islamic Estate Planning Instrument in Malaysia: Challenges And Effects," *UUM Journal of Legal Studies* vol 1, no. 1, (2022). p. 107–129.

⁵¹ Resali Muda, "Harta pusaka Islam di Malaysia: Antara Perundangan dan Pentadbiran," *Malaysian Journal of Syariah and Law*, vol 4, (2016). p. 1–10. Meirison Elfia & Qasim Muhammadi. "Distribution of Heritage Association of Harta Pusaka Tinggi And Harta Pusaka Rendah in Padang Pariaman." *Al-Ahkam* 30, no.1 (2020), p. 39–60.

⁵² Nasrul Hisyam Nor Muhamad. "Wasiat Sebagai Instrumen Perancangan Harta Islam: Prosedur Dan Pelaksanaan," *Jurnal Hadhari* vol. 9, no 1 (2017), p. 17–32. Nur Shalihin Elfia. Surwati, Yan Fajri & Aulia Rahmat. "Institutionalizing Maqāsid Hifz Al-Nasl within the Minangkabau Inheritance Framework." *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 24, no. 2 2024, p. 193–222.

⁵³ Nur Fadlin Roslan & Azlin Alisa Ahmad, "Pentadbiran Harta Pusaka dan Implikasi Negatif Harta Tidak Dituntut," *Malaysian Journal of Social Sciences and Humanities*, vol 7, no 4 (2022), p. 1–15. Maimanah, M. Fahmi Al-Amruzy, Siti Faridah & Arni. "Delay in the Division of Inheritance: A Theoretical Review Within Legal System Framework in Indonesia." *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (2024), p. 241–57. Budiono, Eko, Oyo Sunaryo Mukhlas, Mustofa, Ending Solehudin, and Ahmad Hasan Ridwan. 2023. "Analyzing the Legal Framework of Substitute Heirs in Islamic Inheritance Cases: Dki Jakarta High Religious Courts Perspective." *Syariah: Jurnal Hukum Dan Pemikiran* 23 (2), p. 281–99. Rasyid, Arbanur, Rayendriani Fahmei Lubis & Idris Saleh. "Contestation of Customary Law and Islamic Law in Inheritance Distribution: A Sociology of Islamic Law Perspective." *Al-Ahkam* 34, no. 2 2024, p. 419–48.

⁵⁴ Resali Muda, "Harta pusaka Islam di Malaysia: Antara Perundangan dan Pentadbiran," *Malaysian Journal of Syariah and Law*, vol 4, (2016). p. 1–10.

financial factors.⁵⁵ In addition, none of the beneficiary want to withdraw the deposit first to start the estate administration process.⁵⁶

In Malaysia, there are currently 3 official institutions that have the authority to issue a Letter of Administration to enable the assets of the deceased to be transferred to the heirs. The institutions are ARB through Public Trust Corporation Act 1995⁵⁷, the Estate Distribution Unit through Section 8, Small Estate (Distribution) Act 1955,⁵⁸ and the Civil High Court through Section 13, Probate and Administration Act 1959⁵⁹. Each of these official institutions has its own jurisdiction according to the type of assets. Table 4 below is an example of the inheritance fee rate that will be charged to various types of assets:

Table 5: Estate administration costs at three official institutions in Malaysia⁶⁰

Agency	Asset	Estate administration fee	Total
ARB	1. Car – RM3,0000	5% for the first RM25 thousand	RM13,490
	2. Motorcycle – RM5,000		
	3. Tabung Haji (saving account) – RM100,000	4% for the next RM225 thousand	
	4. Unit Trust – RM200,000	3% for the next RM250 thousand	

⁵⁵ Hamdani, Fahmi Fatwa Rosyadi Satria, Suci Pebrianti, Liza Dzulhijjah, and Hudzaifah Muhammad Maricar. "Traditional Law vs. Islamic Law; An Analysis of Muslim Community Awareness in Inheritance Issues." *Al-Ahkam* 32, no. 1 2022, p. 109–30.

⁵⁶ Bibi Nur Adila Zulkafli & Md Yazid Ahmad, "Kekangan dan Penyelesaian Kelewatan Pengurusan Aset Pusaka Tak Alih Orang Islam di Malaysia," *Islāmiyyāt* vol. 38, no 1 (2017). p. 53–63.

⁵⁷ The jurisdiction of Amanah Raya Berhad is specific to the administration of testamentary and non-testamentary estates. Assets that can be administered are movable assets with a value below RM600 thousand and below. Amanah Raya Incorporation Act 1995. 'Ainan Husnaa Muhammad Saifullah & Siti Mashitoh Mahamood, "Isu-Isu Berbangkit Dalam Pengurusan Harta Pusaka Ringkas Secara Berwasiat Dan Tidak Berwasiat Di Amanah Raya Berhad (ARB)," *Journal of Shariah Law Research* vol. 5, no (2) (2020), p. 207–230.

⁵⁸ The jurisdiction of the Small Estate Distribution Unit is specific to the administration of untestamentary estates. Assets that can be administered are movable and immovable assets with a value below RM5 million and below. Small Estates (Distribution) (Amendment) Act 2022 (Act A1643).

⁵⁹ The jurisdiction of the High Court is specific to the administration of testamentary and non-testamentary estates. Assets that can be administered are movable and immovable assets. No specific value is allocated. 'Ainan Husnaa Muhammad Saifullah & Siti Mashitoh Mahamood, "Isu-Isu Berbangkit Dalam Pengurusan Harta Pusaka Ringkas Secara Berwasiat Dan Tidak Berwasiat Di Amanah Raya Berhad (ARB)," *Journal of Shariah Law Research* vol. 5, no (2) (2020), p. 207–230.

⁶⁰ Author analysis.

	5. Personal loan – RM50,000	2% for the next RM500 thousand	
High Court	House – RM 1,500,000	1% for the next RM600 thousand	RM27,750
Small Estate	House – RM 800,000	0.2%	RM1,6000

Referring to Table 4 above, the three institutions have different fee structures in estate administration. ARB uses a progressive fee scale, where the fee rate decreases as the asset value increases. This may encourage efficiency in the management of lower-value assets. For example, for movable assets administered in ARB including car, motorcycle, Tabung Haji, Unit Trust and Personal Loan, the total amount is RM 358,000 with a fee rate of RM13,490.

Subsequently, the High Court imposed a fee using the same scale as ARB, specifically involving a testamentary estate. For example, a house with a value of RM1,500,000 is subject to an estate administration fee of RM27,750. Meanwhile, the Small Estate charge a lower fee of only 0.2%. For example, a house priced at RM 800 is subject to an estate administration fee of RM1,6000.

Based on the estate administration fee involving the three agencies, the fee increases as an asset increases. However, the burden of estate administration can be reduced when the policyholder leaves cash such as takaful benefit that are sufficient to carry out estate administration. In addition, it can also help ease the financial burden of heirs.

3. Taking Care of the Welfare of the Beneficiary

Absolute Assignment helps safeguard the welfare of the beneficiary by ensuring that they receive benefit from the estate immediately and without facing lengthy bureaucratic processes. A quick and efficient transfer of property helps ease the emotional and financial stress⁶¹ that beneficiary may face during difficult times after the death of the policyholder. This indirectly supports the moral and spiritual of the heirs after the death of a loved one.⁶² Through the detailed

⁶¹ Zaenul Mahmudi, M. Fauzan Zenrif, Abdul Haris, Ahsin Dinal Mustafa & Noer Yasin. "The Charity Values within Islamic Law of Inheritance in Malang: Maqāsid Al-Sharī'ah and Social Construction Perspectives." *Samarah* 8, no. 3 2024, p. 1324–45. Ainul Yakin & Musta'in Syafi'ie. "Euthanasia Active in Perspective of Islamic Inheritance Ainul Yakin & Musta'in Syafi'i." *Samarah* 4, no.1 2020, p. 25–64.

⁶² Syabbul Bachri. "Rekonstruksi Kewarisan Islam: Studi Hermeneutika Ibn Abbas Atas Ayat-Ayat Waris." *Al-Istinbath: Jurnal Hukum Islam* 5, no. 1 2020, p. 21–50. Laras Shesa. "Keterjaminan Kedudukan Dzau' Arham Dalam Kewarisan Islam Melalui Wasiat Wajibah." *Al-Istinbath : Jurnal Hukum Islam* 3, no. 2 (2018), p. 147-166.

directives in the trust deed and the use of trust instrument, the use of takaful benefit can be maximized for the benefit of the beneficiary.⁶³

4. Takaful benefits are not taxable

Takaful plays an important role in estate management mainly through the tax benefits it offers. Proceeds from takaful benefit paid in bulk amounts are usually not subject to income tax. Thus, this makes the takaful benefit very valuable in estate planning. This benefit means that the beneficiary can receive the full sum insured without tax deduction, ensuring that the full value of the asset can be used to settle debts, and other liabilities that may arise after the death of the policyholder. This helps in safeguarding the value of the estate and reducing the financial burden on the heirs at a very critical time.⁶⁴

In addition, in the context of estate planning, the advantage of this tax exemption facilitates the payment of property taxes that may arise on other properties in the estate.⁶⁵ For example, if an individual owns a highly valuable asset that may require liquidation to settle the tax burden, the proceeds of the tax-free takaful benefit can be used to bear this burden without having to sell the asset below market value. This not only safeguards the overall integrity of the estate, but also ensures that beneficiary can maximize the inheritance received without being squeezed by huge financial claims after the policyholder's death.⁶⁶

Conclusion

This study has analysed the extent to which the integration of Absolute Assignment can be implemented in the Islamic estate planning industry, with a particular focus on the role of trust institutions in Malaysia, namely ARB and As-Salihin Trustee Berhad. This study found that the Absolute Assignment offers an efficient and effective mechanism for facilitating estate administration. The Absolute Assignment plays an important role in the takaful industry and estate planning by providing a more orderly and secure way to ensure that takaful benefit is delivered to the beneficiary based on trust deed signed during the policyholder's lifetime. This integration not only speeds up the estate administration process but also reduces conflicts between beneficiaries and ensures that the welfare of beneficiary is maintained. As a proposal to strengthen the implementation of

⁶³ Muhamad Mu'izz Abdullah, "Wasiat Beramanah: Alternatif Kepada Perancangan Harta Pusaka Yang Komprehensif Di Malaysia," *Journal of Islamic Philanthropy & Social Finance*, vol 5, no 1 (2023), p. 33–44.

⁶⁴ Joe C. Stephens & Jack Gray Johnson, "Life Insurance in Estate Planning", *SMU Law Review* vol. 15, no 4 (1960), p. 570-610.

⁶⁵ Paul H. Gessaman, "Life Insurance as an Estate Planning Tool," *Library Philosophy and Practice (e-journal)*, (1996). p. 1-7.

⁶⁶ Muhammad Hasan. "Construction of Modern Islamic Inheritance Law Based on Ijtihad of the Judges at the Religious Court of Pontianak, West Kalimantan." *Samarah* 7, no. 2 2023, p. 650–68.

Absolute Assignment, firstly it is important to increase awareness and understanding among takaful policyholders on the implementation of Absolute Assignment. This is because policyholder also has other options such as making nomination and hibah. Secondly, other trust institutions in Malaysia can also take advantage of the Absolute Assignment provided for in IFSA 2013 and establish a new policy by increasing collaboration with takaful operators to diversify estate planning products. Thirdly, collaboration can also be done with takaful companies and trust institutions in other Islamic countries such as Indonesia and Brunei to understand their practices. Fourth, increased training and education for practitioners in the takaful and estate planning industry should also be developed to explore more deeply the practical implementation of Absolute Assignment. Thus, this will help ensure that the integration of Absolute Assignment in the takaful industry has positive implications for Islamic estate planning.

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Interviews

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