ICRIL 09
INTERNATIONAL CONFERENCE ON RESEARCH IN ISLAMIC LAWS

"Exploring Challenges & prospects in the 21st Century"

University Of Malaya

Department of Syariah & Law, Academy of Islamic Studies
University of Malaya, Kuala Lumpur MALAYSIA
15th - 16th July, 2009
FIRST DAY: 15th JULY 2009 (WEDNESDAY)

OPENING CEREMONY
(MAIN HALL ACADEMY OF ISLAMIC STUDIES, UNIVERSITY OF MALAYA)

8.00am - 9.00am : Registration
9.00am - 10.00am : Opening Ceremony
: Welcoming Address by Chairman
: Recitation of Doa

: Address by:
Dr Siti Zubaidah Ismail
Director ICRIL09

: Opening Address by:
Tan Sri Dato' Ibrahim Lembut
Director General/Chief Syarie Judge Shariah Judiciary
Department of Malaysia

10.00am -11.00am : Keynote Address 1
Culturalising Research and Development in Islamic Law:
Challenges Forward
Prof Dr Ahmad Hidayat Buang
Director Academy of Islamic Studies

11.00am-11.30am : Tea Break

11.30am-1.00pm : Parallel Session I

1.00pm-2.30pm : Lunch and Zuhr Prayer

2.30pm -5.00pm : Parallel Session II

7.45pm-9.30pm : Welcoming Dinner
Main Hall, 11 Residential College (Ungku Aziz College),
University of Malaya

SECOND DAY: 16th JULY 2009 (THURSDAY)

9.00am - 9.30am : Keynote Address 2
Kepentingan Penyelidikan Perundangan Islam Tradisional
dan Kontemporari
Prof Datuk Dr Abdul Monir Yaacob
Senior Research Fellow, Department of Syariah and Law,
Academy of Islamic Studies, University of Malaya
Venue: Balai Ilmu
9.30am-12.05pm : Parallel Session III
10.30am-10.45am : Tea Break
12.15pm-1.00pm : Parallel Session IV
1.00pm-2.00pm : Zuhr Prayer and Lunch
2.00pm-7.00pm : Excursion

PARALLEL SESSION

Day 1 : 15th July 2009 (Wednesday)

PARALLEL SESSION I (6 PAPERS)
Venue : Balai Ilmu
Methodology of Research in Islamic Law

11.30am-11.45am : Formation Of The Concept Of Istisâın In Islamic Law
Dr. Saim Kayadibi
University of Malaya

11.45am-12.00pm : Towards the Adoption of the Objectives of Shari'ah as aResearch Method in Islamic Jurisprudence and its Principles
Prof. Dr. Salih Qadir al-Zanki
Qatar University

12.00pm-12.15pm : Axiological and Deontological Approach in Contemporary Fiqh
M. Zuhdi Marsuki
University of Wales, Lampeter

12.15pm-12.30pm : The Importance of Recognising Textual Assumptions in the Qur’anic Text in the Development of a Qur’anic Hermeneutic and Islamic Legal Theory
Adis Duderija
University of Western Australia, Perth

12.30pm-12.45pm : منهج القرآن فيما يسمى بالتكărار
سحبان قاروق مشوح
جامعة مالايا

12.45pm-1.00pm : Strategic Analysis for Academic Thesis
Majed Fawzi Abu-Ghazalah
University of Malaya

1.00pm-2.30pm : Lunch & Zuhr Prayer
11.45am-12.00pm : Contested Or Ambiguous Jurisdictions? Land Rights Disputes In Aceh’s Courts
Dr. Arskal Salim
Max Planck Institute for Social Anthropology, Germany

12.00pm-12.15pm : Evolution Of Judiciary In The Middle East Muslim States: A Critical Analysis
Dr. Saim Kayadibi
University of Malaya

12.15pm-12.30pm : The Many Face of Rape: An Evaluation for the Islamic Law Perspective
Dr. Siti Zubaidah Ismail
University of Malaya

12.30pm-12.45pm : Challenges for the Muslim Lawyer in the Civil and Syariah Courts: the Way Forward
Assoc. Prof Dr. Syed Ahmad S A Alsagoff
International Islamic University Malaysia

12.45pm-1.00pm : القانون الدولي الإنساني في منظور الشريعة الإسلامية
محمود المبارك
جامعة الملك فهد للأبحاث السعودية

1.00pm-2.30pm : Lunch & Zuhr Prayer

PARALLEL SESSION 1 (6 PAPERS)
Venue: Staff Room
Islamic Law in Contemporary Society

11.30am-11.45am : الفقاوى التجارية وآثارها التطبيقية في أسواق المسلمين
هاشم محمد يوسف الرفاعي

11.45am-12.00pm : موقف القانون الإسلامي من شعارات الأديان ورموزها
طارق بن سليمان البهلال

12.00pm-12.15pm : صفات المؤمنين المنحلين في القرآن الكريم
إبراهيم محمد توفيق زيود

12.15pm-12.30pm : Islamic Political Discourse on Non-Muslim Leadership in the Muslim State
Dr. H. Mujar Ibnu Syarif
UIN Syarif Hidayatullah, Jakarta, Indonesia
:: Abdullahi Saliu Ishola ::

Like in most countries with a sizeable number of Muslims, Islamic law (Sharia) is a major constituent of the Nigerian law. It is substantively and procedurally independent of common law, whose superiority was established in the state by colonialism. Under the operating 1999 Constitution of the federation, special courts called “Shariah Courts” have been created for justice administration of the system and unique rules and procedure apply to them in their own special way. However, because the legal trainings and the general law practice in this Muslim populated West African nation are substantially dominated by and extremely patterned after the common law system, there is a reigning erroneous belief that the obtainable procedure in common law courts equally operates in other courts, including the Shariah courts. Very few Nigerian legal practitioners, as advocates before Shariah courts, have a grasp of the unique nature of the rules and procedure applicable in these Islamic law specialized courts in the country; they are often guided or rather ‘misguided’ by the common law doctrines. They mostly display this flaw in their stance on how the issue of jurisdiction (wilaya) should be raised and resolved in Islamic law proceedings. Jurisdiction is the power and competence which a court has to adjudicate upon a matter, possession of which is very crucial (lazim) to the validity (sahih) of the court’s verdicts. This paper will disclose the difference between Islamic law practice and procedure for challenging jurisdiction of court, as should be observed in Shariah courts in Nigeria, as against what is applicable in the conventional common law courts in the country. The aim of the study is to equally provide guide for other Shariah courts and Shariah practitioners elsewhere in the world on this most fundamental procedural issue. Jurisdiction (wilaya) is to courts, what soul (ruh) is to life.

Contested or Ambiguous Jurisdictions? Land Rights Disputes in Aceh’s Courts
:: Dr. Arskal Salim ::

Drawn on some studies on civil courts across Muslim countries which in part paid attention to the jurisdiction of Islamic court (Lev 1972, Hirsch 1998, Peletz 2002, Bowen 2003), this study would like to discuss the contested jurisdiction of different courts in Aceh in the light of Indonesian plural legal orders. The amended Indonesian Law on the Religious Court (UU no. 3/2006) stipulates that, so long as both contending parties are Muslims, the dispute of ownership rights (sengketa hak milik) which usually belongs to the jurisdiction of civil court, shall be henceforth adjudicated by the religious or the shari’a court. This newly additional role of the religious court theoretically has taken over partially existing jurisdiction of the other court; *pengadilan negeri*. However, as three years have passed since the enactment of Law 3/2006, such an extended jurisdiction of the religious or the shari’a court has not yet started. Looking closely at land rights disputes between Muslim litigants in Aceh’s courts, this paper will argue that the failure of the shari’a court of Aceh to start adjudicating the dispute of ownership rights has to do with contestation as well as confusion regarding the transfer of jurisdiction. While the confusion stems from the vague provision in the texts of the Law, the contestation takes place because some judges of Aceh’s civil court have been reluctant to render such jurisdiction to the shari’a court. This study reveals that it is always not an easy case for those who expecting a profound role for the shari’a court in Aceh.

Evolution of Judiciary in The Middle East Muslim States: A Critical Analysis
:: Dr. Saim Kayadibi ::

The institution of judiciary in Islamic legal tradition took an important part in a state to deal with the society. As qadā’ is considered a right of Allah the accomplishment of that is a collective duty on the community, qadī represents individually the fulfillment of the right of Allah to treat litigants fairly and give them equal opportunity to present their case. Therefore, qadī and maḥkamah are well known concepts from
Islamic legal tradition. Their essential requirements, by mean of which judicial development and practical considerations are essentially made, are less obviously identified. Illustrating on a detailed research of qadi and mahkamah in the Middle East Muslim States, the current paper shows how social, cultural, political and historical elements shape the role of qadi and his institution in secular and non-secular circumstances. In the modern period, due to economic and political influence of colonial powers, Western coded legal systems and institutions, were gradually adopted by the most Muslim majority countries, emerged dual court systems which apply besides shari’ah courts, secular and national courts of Western coded legal systems. This paper’s objective consists of analyzing the evolution of judiciary with its institutions in the Middle East Muslim States including the function of dual court systems through considering influences of social, cultural and political elements.

The Many Faces of Rape: An Evaluation for the Islamic Law Perspective
:: Dr. Siti Zubaidah Ismail ::

Rape is apparently a subject frequently discussed by academicians and public alike and many has been written about it. It seems that this topic elicits passionate responses and such wide attention has been given because it inherently exists at the intersection of many other areas of law: gender studies, criminal law, public morality, sentencing, victimology, human rights and many more, proving that the subject’s capability to generate a multitude of discussions. Islam too does not restrain itself from discussing this crime. This paper examines the many facets of Islamic law response towards rape and its related issues. The main focus would be an its appropriate punishment, and even more so, proving that Islamic law can bring justice and is not discriminatory against rape victims as practically evident in some Muslim countries. Problems that happen in some Muslim countries is because, even though these countries have provisions for this crime, injustice occurs due to “erroneous application” of such law.

Challenges for The Muslim Lawyer in the Civil and Syariah Courts: The Way Forward
:: Assoc Prof Dr. Syed Ahmad S A Alsagoff ::

A paid legal profession is anomalous in a Muslim society. To the early Muslim scholars, defending someone accused of a crime is part of their ‘ibadah to their Creator, Allah. They performed this service in accordance with the commands in the Holy Qur’an to establish and uphold justice and they anticipated only Divine rewards in return. With the fall of the Muslim ummah and its fragmentation and colonization by Christian Europe, the fabric of the Islamic legal system were shredded and the western concept of a paid legal profession were enforced, practising western oriented laws. In Malaysia, it was the common law of England that replaced the Syariah’s supremacy and its administration. Western values dominated the local legal profession. Fortunately or not, the public generally is cynical of the western-trained lawyers’ character. Projecting a proud and pompous appearance, mesmerizing the public with their ‘astute’understanding of unintelligible Latin terms and their legal fees pinching their clients’ pockets, they are quite a disdained lot. Words such as “liars” and “sharks” are their equivalent synonyms. They fight for justice without fear or favour, but always at a hefty price. Legal aid is only but a footnote in their legal dictionary and every political issue is also a legal issue too. With the dawn of independence, Muslims have ventured into this lucrative field. Questions abound on how could they be a lawyer and at the same time be an honest (jujur) and God-fearing (taqwa) Muslim. Could they defend ‘guilty’ clients, draft interest-bearing transactions or offer their services in such transactions, claim interests on defaulted loans or unpaid judgments? The recent upliftment of the Syariah Courts’ administration and enforcement, on par with the civil courts in Malaysia, have put an urgent need for lawyers well-informed in Islamic adab and values to grace our courts and be the catalyst for the changing face of the legal profession. This article explores the challenges and prospects of Muslim lawyers in Malaysia in the 21st Century.
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DEPARTMENT OF SYARIAH AND LAW

The Department of Syariah and Law was established during the formation of a new Academy of Islamic Studies in 1996. The core area of the department is on Islamic laws and judiciary, with similar emphasis on Malaysian and English law. Gradually, we also ventured into Islamic transaction and administration of Muslim property law and asset planning management. There are eight academic staff with various expertise in this legal fields and there continuously active in research groups with other academic and government institutions.

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