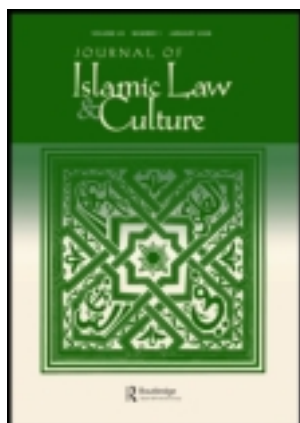


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The administration of Syariah Courts in Malaysia, 1957–2009

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This article analyses the development of the administration of Syariah Courts in Malaysia from the pre-colonial to the post-independence periods. The status of Islam as the official religion during the Malacca Sultanate and the application of Islamic law throughout the administration during that period are agreed upon by most historians. The structure of courts consisting of subordinate and superior levels with the Sultan as the head of the judiciary shows the existence of an organized structure which recognized natural justice as one of the rules of law. After Merdeka (independence), the restructuring and restoring of Syariah Courts in Malaysia took more than 40 years. Subsequently, the current Syariah Court acts and state enactments have been amended and improved to bring them into line with the policy of the government, current situations, and legal pluralism in Malaysia. The process of reform of the Syariah Court was slow, but Muslims in Malaysia handled the matter with tolerance, perseverance, and patience, and, most importantly, without jeopardizing the peace and harmony which is the hallmark of Malaysia as a nation.

Keywords: Syariah Court; Malaysia; colonisation; Islam; Malacca Sultanate

Introduction

The arrival of Islam in Malaya is a matter of scholarly debate.¹ The question of the time in which Islam was introduced in South East Asia is closely related to questions of the region from which it came and the people who brought it. Broadly speaking, Islam was brought² to Tanah Melayu (the Malay Land) between the seventh and 12th centuries by Arab traders and Indian merchants. Subsequently, Islam became an official religion in the country, particularly during the Malacca Sultanate. The word “official” here refers not only to rites and rituals, but also in terms of substantive and procedural law. Islamic law or Syariah was applied to all the subjects residing in and visiting the state. However, after the 1824 Anglo-Dutch Treaty and British colonization³ of Tanah

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¹Malay State means one of the Malay States as circumstances may require and includes all dependencies, islands and places which, on 1 December 1941, were administered as part thereof and the territorial waters adjacent thereto; Federation of Malaya Agreement 1948, Section 2.

²Johan M. Meuleman, ‘The History of Islam in Southeast Asia: Some Questions and Debates’, in KS Nathan and Mohammad Hashim Kamali (eds), *Islam in Southeast Asia* (Institute of Southeast Asian Studies (ISEAS), Singapore 2005) 22-3.

³Some would say that Tanah Melayu was not part of the British colonies but British Possessions and Protectorates. Tanah Melayu belongs to the Malays and the British are merely trustees; Roland Braddel, *The Legal Status of the Malay States* (Malaya Publ., Singapore 1931) 5-7. However, Hussin Mutalib had used the term “Colonialism”; Hussin Mutalib, *Islam in Southeast Asia* (Institute of Southeast Asian Studies (ISEAS), Singapore 2008) 8-9.

Melayu (later known as Malaya), Islamic law was gradually undermined. The British colonization had major ramifications on political, economic, and religious statuses of Syariah Courts particularly and on Islam as a whole. Islam and Islamic law were relegated to the state level and with state legislative councils empowered to enact and administer Islamic laws. After the establishment of the Department of Syariah Judiciary Malaysia (JKSM), Islam and the administration of Syariah Courts were upgraded to the federal level, albeit only in terms of administration. This article, after briefly explaining how Islamic law developed and how it was administered in Malaysia prior to independence, analyses the status of Syariah Courts in the Malaysian judicial system in the post-independence period.

Administration of justice before British Colonialism (1400s-1824)

In Malaya, Islam was propagated by Muslim traders and customs from the Indian Sub-continent and the mercantile centre of the Middle and Near East. It was adopted by the rulers and incorporated into the existing body of Malay custom. Islam profoundly affected the Malays. It not only introduced them to a new way of life away from Hinduism, which was the official religion, but also strengthened their feeling of solidarity with the Islamic *ummah*.

The administration of the Syariah Court during this time was largely based on the policies of the Sultan of Malacca as head of state. Each state consisted of a sultan (king), his ministers and *Rakyat* or subjects. The sultan was considered to be sacrosanct who combined social prestige and religious authority.⁴ In practice, however, Muslim religious elites such as the *Mufti*, village headman, and *Kadi* had significant autonomy and exercised considerable authority over the subjects.⁵

The Sultan stood at the top of the court hierarchy. He heard any dispute or case that was brought to his unlimited jurisdiction. He would seek advice from the *Mufti* or *Kadi* on religious matters.⁶ In fact, as early as the 1600s,⁷ most of the cases or disputes were handled by the *Ketua Kampung* or village headman.⁸ This indicates that most people at that time trusted the village headman as a devout Muslim⁹ in their respective villages. People approached the village headman because, among other things, they approved of the reconciliation method adopted by the headman in resolving societal problems.¹⁰

It is true that the Malay text and codification on Islamic laws such as *Hukum Kanun Melaka* (Malacca Legal Code), and *Undang-Undang Laut Melaka* (Malacca maritime Laws) do not show that the Malacca Sultanate had a proper hierarchy of courts in settling the disputes.¹¹ Michael G. Peletz is correct in saying that the existence of

⁴Sir Richard Winstedt, 'Kingship and Enthronement in Malaya' (1947) 20(1) J Malay Branch R Asia Soc 130-7.

⁵Abdul Aziz B. Mohd Ariff, *Undang-Undang Kedah Sebelum Penjajahan Inggeris: Satu Penilaian sejarah* (UKM, Bangi 1996-97) 109.

⁶Ramizah Wan Muhammad, 'The Islamic Judicial Administration System in Malaysia' (2009) 26(1) KANUN 25. [in Malay]

⁷Baskin and Winks, *Malaysia: Selected Historical Readings* (Oxford University Press, Singapore 1966) 23.

⁸SE Merry, 'Mediation in Non Industrialised Societies, in K Kressel and DG Pruittpp (eds), *Mediation Research* (Jossey Bass, San Francisco, CA 1989) 68-90.

⁹James A. Wall, 'Malaysian Community Mediation' (1999) 43 J Conflict Resolut 344-5.

¹⁰Al Quran Surah al Nisa (4:128): "and such amicable settlement is best".

¹¹Michael G. Peletz, *Islamic Modern Religious Courts and Cultural Politics in Malaysia* (Princeton University Press, Princeton, NJ 2002) 26.

references to Islamic law texts of one sort or another need not imply the existence of Islamic Magistrates and functioning Islamic courts.¹² The fact, however, is that the structure did exist (Figure 1). The book on History on Malays contains descriptions for resolving disputes by chieftains and sultans.¹³ It could be that the people could not care less about the courts simply because the cases were settled by the village headman or any devout Muslim scholar. This is what happened in the period of the Companions, after the demise of the Prophet Muhammad S A W. Despite the existence of the hierarchy, people did not use these as they fulfilled their duties and protected each other's rights without resorting to courts.¹⁴

The structure of the courts and the presence of compilations of Islamic laws in Malacca indicate that Malacca, in particular, and Malaya, in general, was once an Islamic state. If not for the Portuguese, the Dutch, and particularly the British arriving on the Peninsula and colonizing the Malay state, "the Muslim laws would have ended up becoming the law of Malaya."¹⁵

Administration of Islamic justice after British colonization (1824-1957)

British intervention in the Malay State began in 1824 after the Anglo-Dutch Treaty was signed between the British and the Dutch in London. The main purpose of the agreement between the two great empires was to settle differences between the representatives of the two countries and also to plan a future without risking further trouble.¹⁶ However, it was with the signing of the Pangkor Treaty in 1874 that the British officially intervened in the religious, cultural, and internal affairs of the Malay states and appointed British Residents to run the administration. One of the declared goals of the direct British intervention after the establishment of Federated Malay States was to develop an administrative system and a communication system, and to formulate labor and land policies to degrade the status of the Sultan and undermine the Islamic laws in existence.¹⁷ They established a court system modeled after the English court system and appointed English judges to run these courts.

It must be noted that from 1875 to 1895, the Sultan in each state controlled matters of religion and culture of the Malays. However, from 1896 to 1904, the Judicial Commissioner replaced the Sultan as the final authority. The Sultan's power in controlling the administration of Islamic affairs ceased. The judicial commissioner presided over a court hierarchy which placed Syariah Court judges and *penghulus* at the bottom of the courts. In 1904, the Malay rulers fought back and demanded a separate institution to administer Islamic law for the Muslims. Instead, in 1905, the British administration introduced Courts Enactment 1905,¹⁸ which, among other things, provided that appeals from the Syariah Courts were to be heard by the British Magistrate Court

¹²Ibid. 26-7.

¹³MP Jain, *Administrative Law of Malaysia and Singapore* (MLJ, Kuala Lumpur 1997).

¹⁴Farid Sufian Shuaib, 'Development of Syariah Courts in Malaysia: Waves of Reformation' (2008) 9 *Curr Law J* xli.

¹⁵RJ Wilkinson, 'Papers on Malay Subjects', in *Law* (Kuala Lumpur 1971); cited in Ahmad Ibrahim and Ahilemah Jonid, *The Malaysian Legal System* (Dewan Bahasa dan Pustaka, Kuala Lumpur 1988) 54.

¹⁶J Kennedy, *A History of Malaya* (S. Abdul Majeed, Kuala Lumpur 1993) 100-1.

¹⁷Emily Sadka, *The Protected Malay States 1874-1895* (University of Malaya Press, Kuala Lumpur 1968) xiv.

¹⁸Perak Courts Enactment 1905.

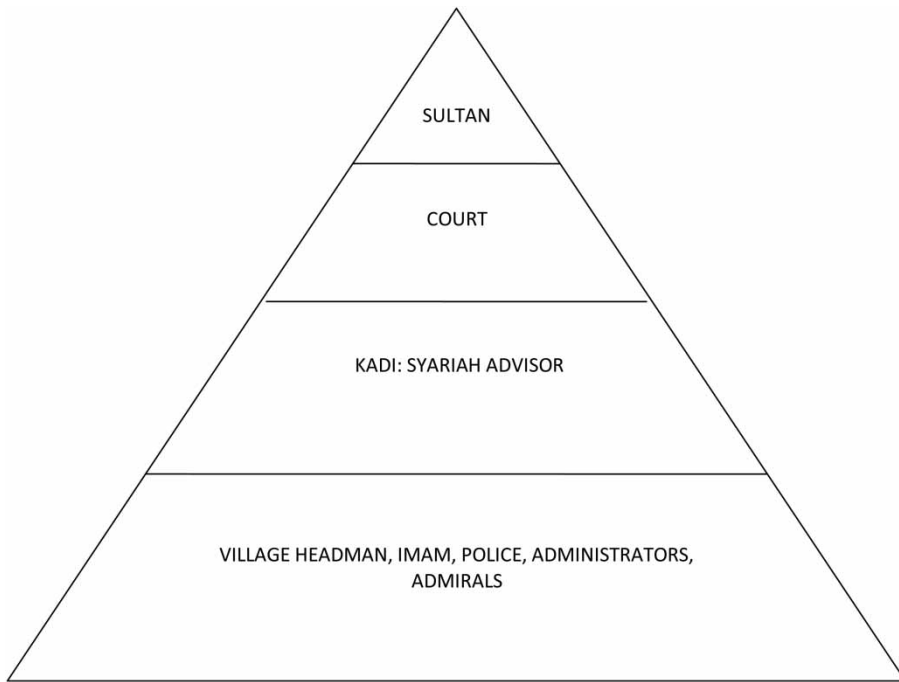


Figure 1. Structure of the Syariah Courts during the Malacca Sultanate

judge. When the opposition to Enactment became serious the British had replaced the 1905 Enactment with Courts Ordinance 1948. This ordinance downgraded Syariah Courts to the state level. The Malay Rulers regained authority over Islamic law but subject to the approval of the British resident.¹⁹

Beginning in 1948, the Syariah Court, which was originally part of the federal courts, was demoted to the State level with limited jurisdiction. For example, the Selangor Administration of Muslim Law Enactment 1952 stipulated that Sultan in Council may constitute Kadis Courts for the State of Selangor. In Kelantan, there was Courts Enactment 1955 to create Courts of Mufti as an appellate jurisdiction to hear and determine appeals from any judgment from the court of *Kadi*.²⁰ In Penang, the Administration of Muslim law Enactment 1959 provides the establishment of Syariah Courts by virtue of state legislative council. These kinds of state systems had actually functioned under the aegis of the state legislature and had crystallized into almost rival judiciaries with concurrent, though restricted, jurisdictions.²¹ The Islamic system was gradually eroded through the emphasis of separation between “church and state” and bureaucratization of the states.²²

¹⁹Iza R Hussin, ‘The Politics of Islamic Law Local Elites, Colonial Authority and the Making of Muslim State’ (unpublished PhD thesis, University of Washington 2008) 112-13.

²⁰Section 6, Court Enactment Kelantan 1955.

²¹Abdul Majid Mohamad Mackeen, ‘The Shariah Law Courts in Malaya’, in Ahmad Ibrahim, Sharon Siddque and Yasmin Hussin (eds), *Readings on Islam in Southeast Asia* (Institute of Southeast Asian Studies (ISEAS), Singapore 1985) 229.

²²Abdul Aziz Bari, ‘Judiciary’, in Abdul Rashid Moten (ed), *Government and Politics in Malaysia* (Cengage Learning, Kuala Lumpur 2008) 25-6.

During the times when the Malay states were under British occupation, the positions of the Syariah Courts, judges, and their officers were greatly undermined. There was no proper court complex, and the welfare of their staff was sadly neglected.²³ Many of the *Kadis* (Syariah Court judges), some of whom were university graduates, were not given any professional status. Hence, graduates from the Syariah faculties were not attracted to serve as judicial officers in Syariah Courts.²⁴ J. S. Mason, British Advisor to the state of Kelantan, also wrote in his Annual Report that Syariah Courts in Kelantan were not “even satisfactory” and indicated that there were many complaints about their inefficiency.²⁵

Administration of Syariah Courts after Independence (1957-2009)

Independence of Malaysia in 1957 did not see much improvement of the Syariah Courts. They remained, as before, lacking resources and devoid of budgetary allocation. Administration of Islamic law in Malaysia after independence could be categorized into two phases: 1957–1998 and from 1998 to present.

Administration of Syariah Courts before 1998

On 31 August 1957, the Federation of Malaya gained independence and became a sovereign country. The Supreme Court as the apex court of pre-independence days was retained in the court structure. After the formation of Malaysia in 1963, the term “Federal Court” came into being by virtue of Courts of Judicature Act 1964. In 1985, the Supreme Court was renamed as the Federal Court.²⁶ By 1994, the Court of Appeal and the Federal Court were established. The establishment, jurisdiction, and powers of all courts, except Syariah Courts, were within the legislative powers of the Federation.²⁷ In other words, Civil Courts such as the Magistrate Court, Session Court, High Court, etc. were created under the federal law’s umbrella. Syariah Courts remained under the jurisdiction of the State legislative council.²⁸ Syariah Courts were applicable for Muslims, and the laws applicable for them were the state-made laws.²⁹

Before the 1990s, the structure and the administration of Syariah Courts in Malaysia were in a state of confusion. There was an overlapping of power and jurisdiction between the Religious Affairs Office, the Mufti Office, and other offices. This tarnished the importance of the Syariah Court as an independent and respectable institution. The public lost its faith in the status of Syariah Courts and regarded them incompetent

²³ Ahmad Ibrahim, ‘Shariah Courts in Malaysia: Past, Present and Future’, in Ahmad Ibrahim and Abdul Monir Yaacob (eds), *The Administration of Islamic Laws* (IKIM, Kuala Lumpur 1997) 23-9.

²⁴ Ahmad Ibrahim, ‘The Shariah Court in Malaysia’ (1986) 2 *Malayan Law J* cxxxiii.

²⁵ Cited in Abdullah Alwi Haji Hassan, *The Administration of Islamic law in Kelantan* (Dewan Bahasa dan Pustaka, Kuala Lumpur 1996) 30.

²⁶ RR Sethu, ‘Re-Defining the Appellate Role of the Federal Court’ (1999) 4 *Malayan Law J* cxlv-cxlciv.

²⁷ Articles 121(1), 121(1A) and 121(2) of the Federal Constitution of Malaysia.

²⁸ The Syariah Courts in the Federal Territories such as Kuala Lumpur and Labuan are created by Parliament; see Section 40-57 of the Administration of Islamic law (Federal Territories) Act 1993 Act 505.

²⁹ Shamrahayu A Aziz, ‘Islamic Legal System’, in Syed Arabi Idid (ed), *Malaysia at 50: Achievements and Aspirations* (Thomson Learning, Kuala Lumpur 2007) 236.

institutions to dispense justice. Not many people came to a Syariah Court to settle their problems due to the less satisfactory service and the people during those days preferred to keep their family problems private.³⁰ The structure of administration of Islamic matters in Malaysia prior to 1998 is shown in Figure 2.

Most of the laws promulgated during the colonial powers continued in operation even after independence. For example, the Courts Ordinance 1948 ceased only in 1964. The Syariah Courts continued to suffer poor status. The creation of the Court of Judicature Act 1964, which gave power to the Civil Court to reverse the decision of the Syariah Court, shows that the Syariah Court was subordinate to the civil court.³¹ There are numerous examples where the civil court simply quashed the decisions of the Syariah Court concerning Islamic matters depriving the Muslims from following the rulings as prescribed in Islamic law.³² Interestingly, some of the presiding judges were non-Muslims. The civil courts not only interpreted Islamic law simply, but also curtailed the jurisdiction of Syariah Courts.³³

In June 1988, the 1957 Federal Constitution of Malaysia was amended and the new clause, 1(A), was inserted to article 121, which reads as follows:

(1) There shall be two High Courts of coordinate jurisdiction and status, namely

(a) One in the States of Malaya, which shall be known as the High Court in Malaya and that shall have its principal registry in Kuala Lumpur; and

(b) One in the States of Sabah and Sarawak, which shall be known as the High Court in Sabah and Sarawak and shall have its principal registry at such place in the states of Sabah and Sarawak as the Yang di-Pertuan Agong may determine;

and such inferior courts as may be provided by Federal Law; and the High Courts and inferior courts shall have jurisdiction and powers as may be conferred by or under the federal law.

(1A) The courts referred to in clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts.

The objective of the amendment was to prevent overlapping jurisdiction between civil courts and Syariah Courts. According to Ahmad Ibrahim, the amendment was meant to prevent further conflict between the decisions of the two courts,³⁴ but subsequent

³⁰The author confined it to family problems because of the limited jurisdiction conferred by the Federal Constitution to the State Legislative Council to enact Islamic laws in every state in Malaysia. See the 9th schedule State List II of the Federal Constitution.

³¹Mohamed Imam, 'Syariah/Civil Courts' Jurisdiction in Matters of Hukum Syara': A Persisting Dichotomy' (1995) 1 CLJ 6.

³²Roberts v Ummi Kalsum [1966] 1 MLJ 163, Nafsiah v Abdul Majid [1969] 2 MLJ 174, Myriam v Mohamed Ariff [1971] 1 MLJ 265, Ali Mat bin Khamis v Jamaliah Bte Kassim [1974] 1 MLJ 18.

³³Farid Sufian Shuaib, *Powers and Jurisdiction of Syariah Courts in Malaysia* (Lexis Nexis, Kuala Lumpur 2008) 155.

³⁴Ahmad Ibrahim, 'The Amendment of Article 121 of the Federal Constitution: Its Effect on Administration of Islamic Law' (1989) 2 Malaya Law J xvii.

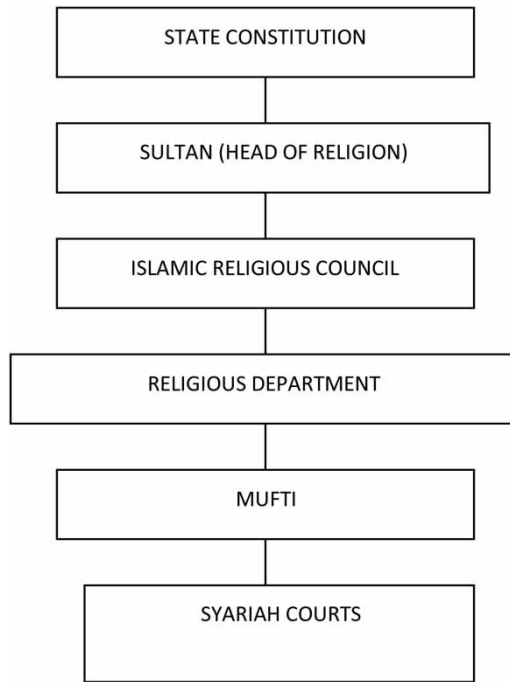


Figure 2. Administration of Islamic law at the state level, 1900s–1980s

events nullified this assumption. In 1991, the civil court ruled that the issue of the custody of children in Shahamin Faizal Kung's³⁵ case was within the jurisdiction of the Civil Court. Judge Edgar Joseph Jr. (as he was then) opined that the courts of Judicature Act 1964 was not overridden by the insertion of article 121(1A) and thus the civil court's jurisdiction was not excluded in hearing the case.³⁶ It was quite surprising that the civil court did not recognize the jurisdiction conferred by the Federal Constitution to the Syariah Court through the amendment of the constitution.

In 1992, another case came before the Supreme Court (the last appellate level), *Mohamed Habibullah b Mohamed v. Faridah Bin Dato' Talib*. The Supreme Court judge touched on the issue of jurisdiction of Syariah and civil courts. He noted the error made on Shahamin's case and pointed out that "no Act of Parliament, however, precisely worded can nullify the provision of the Constitution."³⁷ The Act of Parliament to which he was referring was sections 23–24 of Court of Judicature Act of 1964.

The subsequent cases³⁸ actually recognized the status and exclusive jurisdiction of the Syariah Court in Malaysia. There were some cases, though, where the civil court did

³⁵Shahamin Faizal Kung Bin Abdullah v Asma Bte Haji Yunus [1991] 2 CLJ 327.

³⁶Farid Sufian Shuaib, *Powers and Jurisdiction of Syariah Courts in Malaysia* (2nd edn Lexis Nexis Malaysia Bhd, Kuala Lumpur 2008) 108-09.

³⁷Mohamed Habibullah v. Faridah Bte Dato' Talib' [1992] 2 MLJ 803.

³⁸Mohamed Hakim Lee v. Majlis Agama Islam Wilayah Persekutuan [1998] 1 MLJ 681, Soon Sing v. Pertubuhan kebajikan Islam Malaysia (PERKIM) [1999] 1 MLJ 489, Lina Joy v. Majlis Agama Islam Wilayah Persekutuan [2007] 4 MLJ 585, Latifah bte Mat Zin v. Rosmawati bte Sharibun & Anor [2007] 5 MLJ 101.

not give judgments in favor of Islamic law due to the different approach in interpreting article 121(1A) of the Federal Constitution.³⁹ In each of the mentioned cases, the judges determined whether there was an implied or express conferment by the state legislative council of jurisdiction over the matter to the Syariah.

The conflict of jurisdiction between Syariah and civil courts in Malaysia is yet to be fully resolved. However, in the Lina Joys case she approached the civil court to legalize her conversion from Islam to Christianity. The civil court referred her request to be declared a non-Muslim to the Syariah Court.⁴⁰ Likewise, the Latifah Mat Zin⁴¹ case on the issue of probate and succession was referred by the civil court to the Syariah Court. Yet, family issues such as the custody of children and dissolution of marriage after one spouse had embraced Islam are still disputed technically among Muslims and non-Muslims in Malaysia. The issues of close proximity where one party is a non-Muslim as well as the *wakaf* property which involved the non-Muslim party are still not resolved.

Prior to the restructuring of Syariah Courts in Malaysia in 1998, there was no mechanism to administer Syariah Courts efficiently. There were no proper guidelines and directions on how to manage the administration of the Syariah Court. Everything was left to the creativity and discretionary power of each officer in charge of administration, resulting in a lack of uniformity between states in issuing decisions. Also, there was no court complex for the Syariah Court to operate on its own. Likewise, Syariah judicial officers were not adequate in terms of quality and quantity to run the institution.⁴² The nature of Islamic judicial institution in Malaysia before 1998 is depicted in Figure 3.⁴³ It shows the overlapping power and jurisdiction between *Fatwa* institutions, the Department of Religious Council, and Syariah Courts. As for the latter, it should be placed as an independent institution without any interference whatsoever from any form of administrative bodies. Any court, whether Syariah or civil, should exercise its function as independently as possible so that it is free to dispense justice without fear and favor.

The state enactments during this period were confined to family laws and Syariah Court enactments such as Family Law Act/Enactment, Administration of Islamic law Enactment, etc. There was also a hodgepodge of legislation containing provisions on the administration of Islam, Syariah Courts, Syariah offences, and family law,⁴⁴ such as the Administration of Muslim Law Enactment 1952, which was still enforced even after independence.⁴⁵ Among the laws that existed during this period were the Administration of Islamic Law enactment 1992 (Negeri Sembilan), Administration of Islamic Religious Affairs 1986 (Terengganu), and the Administration of

³⁹Ng Wan Chan v. Majlis Agama Islam Wilayah Persekutuan & Anor [1991] 3 MLJ 487, Lim Chan seng v. Director of Department of Religious Affairs Pulau Pinang [1996] 3 CLJ 231, Barkath Ali bin Abu Backer v. Anwar Kabir bin abu Backer [1997] 4 MLJ 389.

⁴⁰Lina Joy v Majlis Agama Islam Wilayah Persekutuan & Anor [2007] 4 MLJ 585.

⁴¹Latifah Bte Mat Zin v Rosmawati Bt Sharibu & Anor [2007] 5 MLJ 101.

⁴²Ahmad Ibrahim, 'The Roles and Future of Syariah Legal Officials in Malaysia' (1997) 11(1) Jurnal Hukum 10-11. [in Malay]

⁴³Ramizah Wan Muhammad, 'Sejarah Pentadbiran Kehakiman Islam di Malaysia: Satu Sorotan' (2009) 21(1) KANUN 1.

⁴⁴Farid Sufian Shuaib, 'Constitutional Restatement of Parallel Jurisdiction Between Civil Courts and Syariah Courts in Malaysia: Twenty Years On (1988-2008)' (2008) 5 Malaya Law J 35.

⁴⁵It ceased from operation in 1989 after the new law was introduced, i.e. Administration of Islamic law 1989.

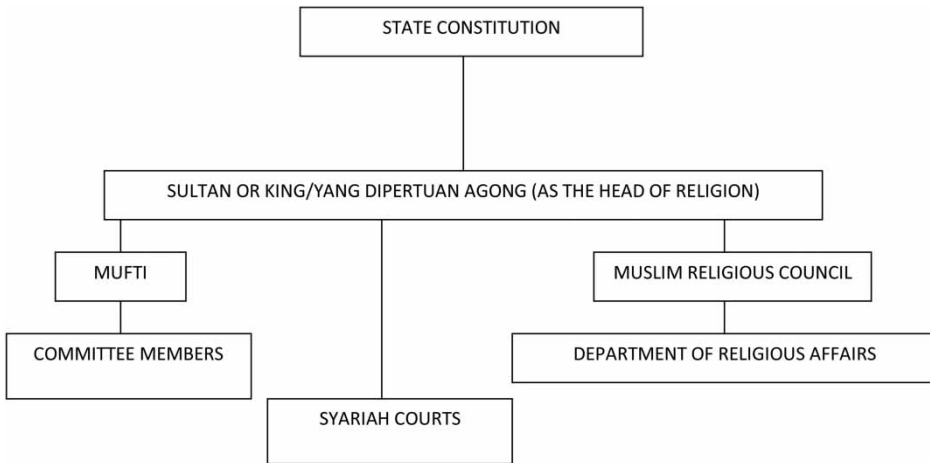


Figure 3. Structure of the Syariah judiciary before 1998

Muslim Law 1955 (Malacca). On top of that those laws vary from one state to another, and as a result there was a conflict of administration between each state in Malaysia.

Administration of Syariah Courts after 1998

In 1998, the federal government took measures to improve the administration of Syariah Courts in Malaysia and established the JKSM on 1 March 1998. The judicial department at the state level was also established so that there would be coordination between the state and the federal level. The administration of Syariah Courts was streamlined whereby the summons and warrants by the Syariah Courts in one state could be served in another state.

The JKSM coordinates the administration of Syariah Courts in Malaysia in terms of judges, *syarie* prosecutors, *Sulh* officers (mediators), as well as the physical structure of Syariah Courts. However, the coordination and initiative made by the JKSM is subject to the consent of each state's authority. A Joint Scheme was introduced in 1998 to upgrade the status of Syariah Courts and to improve the welfare and interest of Syariah officers. This scheme can be realized only with consent of the Head of Religion in each state, that is the Sultan. To that effect, a Joint Service Treaty was signed on 17 May 1999 between the federal government and states over enactments of Selangor, Perlis, and Malacca, as well as the Federal Territories. In August 1999, Negeri Sembilan and Pulau Pinang had also joined, followed by the state of Sabah in 2000.

Syariah Courts are still under the jurisdictions of states since Islamic matters and Islamic law fall under the state jurisdiction. Nevertheless, the JKSM took the initiative to bring uniformity to Islamic law in the states. Consequently, the JKSM has created Syariah Court laws for the Federal Territory of Kuala Lumpur. It is expected that states in Malaysia will follow the Federal Territory Acts.

The following new laws have been enacted by the JKSM to administer Islamic law in the Federal Territories to be emulated by Syariah Courts in all states in Malaysia:

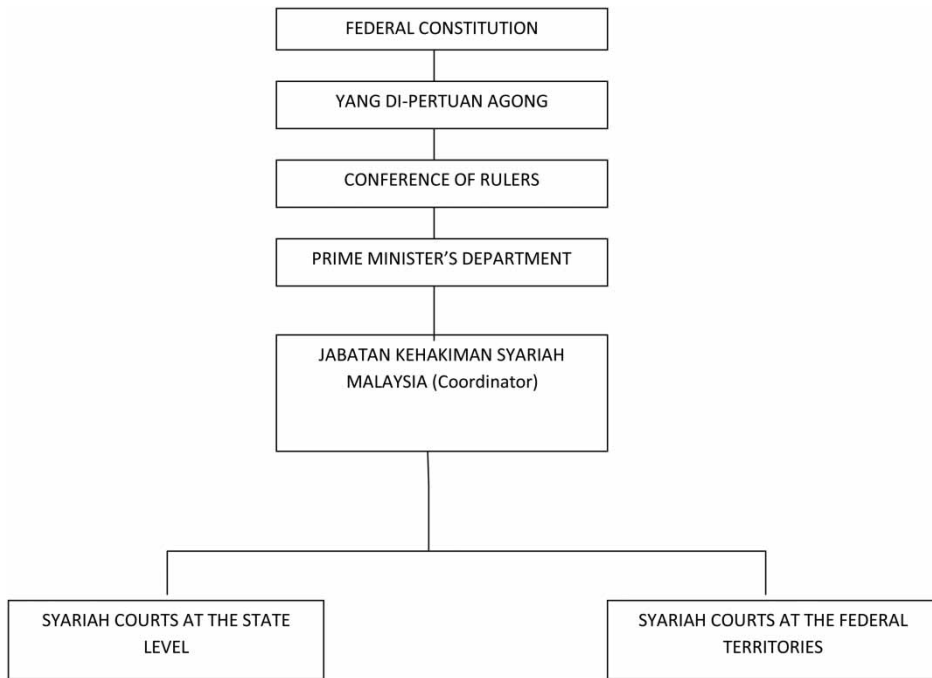


Figure 4. Administration of the Syariah Court at the federal level, 1998-present

- Administration of Islamic Law Act 1993 (Akta Undang-undang Pentadbiran Agama Islam)
- Family Law Act (Wilayah-Wilayah Persekutuan) (Amendment) 2006 (Akta Undang-undang Keluarga)
- Evidence Act 2005 (Akta Keterangan Mahkamah Syariah)
- Civil Procedural Laws Act 2005 (Akta Pentadbiran Acara Mal)
- Criminal Procedural Laws Act 2005 (Akta Pentadbiran Tata cara Jenayah)
- Syariah Criminal Offences Act 1997 (Akta Kesalahan Jenayah Syariah)

One of the objectives of the Syariah Court is to give swift and efficient treatment to each case registered in each court. Cases go on trial not more than 21 days after the date of registration.⁴⁶ The JKSM also had introduced the *Sulh* or Mediation as an alternative tool for resolving cases without trial. This method was officially introduced in 2001 in the Syariah Court of Kuala Lumpur as a pilot project and it was followed by other states in Malaysia.⁴⁷ In family matters it is encouraged for disputed parties to opt for *Sulh* because this method saves time, helps maintain privacy, gives comfort to the parties in dispute, and the solution it provides has a long-term effect.

The introduction of an E-syariah portal permitting parties to register their case online needs to be applauded. This should help erase the doubt about the efficiency of Syariah Courts in Malaysia. The recruitment and service scheme of judges and

⁴⁶Practice Direction No. 2/2001 issued by JKSM on 2 February 2001.

⁴⁷Ramizah Wan Muhammad, 'The Theory and Practice of *Sulh* (Mediation) in the Malaysian Shariah Courts' (2008) 16(1) IIUM Law J 33.

legal officers of Syariah Courts are continuously being improved. The JKSM has also introduced Practice Directions since 2000 to all staff including judges and administrative staff pertaining to administrative aspects, substantive laws, and procedural laws. This will ensure efficiency and uniformity in administering cases in all states in Malaysia.

In each state there is a State Syariah Judicial Department and the JKSM will supervise its administration. The establishment of the JKSM is not meant to take away the power of each sultan or king as the head of religion, but it is a simple administrative device to streamline the administration and bring uniformity of Islamic law. The establishment of a Family Support Division under the JKSM, for example, was purposed with enforcing Syariah Court decisions and also with finding husbands who failed to pay maintenance to their children and ex-wives.⁴⁸ This unit is created purposely to take action against a father who refuses to comply with the court's decisions.

The current structure of Syariah Courts in Malaysia is shown Figure 4. As can be seen, the JKSM is placed under the supervision of the Prime Minister's Department, which means Syariah Courts are now coordinated at the federal level.

Conclusions

Justice in Islam is not only to be done, but also to be seen; to be done through the proper mechanism and adequate laws so that the mission can be achieved as prescribed by *syariah*. This mechanism existed in pre-colonial days. The colonial administration gradually undermined the status of the Syariah Court and eventually relegated it to the state level. The court procedure of Malaysia witnessed the continuation of the Syariah Court as it existed in colonial times. It gradually dawned upon the authorities that legal pluralism requires giving due respect to civil and Syariah courts. Early attempts at reducing jurisdictional conflicts between the two court systems did not bear the desired outcome. The reforms undertaken after 1998, however, deserve closer scrutiny. The establishment of the JKSM and other units under it performed reasonably well. The JKSM's attempts of bringing uniformity to the application of Syariah at the state level is laudatory. Syariah Courts remain under state jurisdiction. However, the status of the Syariah Court has been upgraded and is seemingly at par with courts at the federal level. This has been done without amending the constitution.

⁴⁸“Enforcing Syariah Court Decision”, *New Straits Times* (Malaysia 15 June 2008) 16.