

Syarie Legal Profession: With Reference to Syarie Legal Profession (Federal Territories) Act 2019

by

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Introduction

In Islam, the disputants and their legal representatives are entrusted with the obligation of upholding absolute justice and this is ordained by Allah (swt) in several verses of the Quran. Suffice at this juncture to quote one verse where Allah (swt) proclaims: 'O ye who believe! Stand out firmly for justice, as witnesses to Allah even against yourselves or your parents or your kin and - whether it be (against) rich or poor. For Allah can best protect both. Follow not the lusts (of your hearts) lest ye swerve, and if ye distort (justice) or decline to do justice, verily Allah is well-acquainted with all that ye do.'¹ Success in a trial means success in upholding justice and rendering what is right to the rightful person. A Syarie lawyer representing a disputant is entrusted with the task of assisting the judge in arriving at a just and fair decision irrespective of the outcome of the trial, even if the decision is against the interest of his client. There may be instances where a lawyer's eloquent argument may persuade the judge in making a decision in his favour although his conscience dictates that righteousness was not on his side. In such a situation, the lawyer might have only managed to do an evil act and thus, incurred sin.²

Undeniably, the Syarie legal profession is an honourable profession, an essential component of ensuring a fair and just proceeding. The Syarie legal profession is discussed herein with reference to the recently enacted Syarie Legal Profession (Federal Territories) Act 2019, a statute passed by Parliament for the Federal Territories in relation to Syarie matters enumerated in List II of the Ninth Schedule to the Federal Constitution. The Act which obtained the royal assent on 15 November 2019 and gazetted on 29 November 2019, is aimed at enhancing the Syarie legal profession to something similar to the civil system. It allows for the establishment of the Syarie Legal Profession Qualifying Board, Badan Peguam Syarie and Majlis Peguam Syarie. Further, the admission requirements of a Peguam Syarie as well as their professional practice, etiquette, conduct and discipline are also featured therein. It comprises 11 parts with 93 sections and three Schedules, and is largely based on the Legal Profession Act 1976 (Act 166) that regulates the legal profession of the civil courts. It is noteworthy that the 1976 Act also provides, *inter alia*, for the establishment of the Legal Profession Qualifying

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Board, the Malaysian Bar, the Bar Council and the State Bar Committees. Further, the Act deals with admission requirements to the Bar as well as the professional practice, etiquette, conduct and discipline of an advocate and solicitor.

At this juncture, it is worthwhile to note that Malaysia administers a mixed legal system or a pluralistic legal system, namely, the common law system and Islamic legal system. The civil courts and the Syariah courts established under the above two systems: respectively are independent of each other. The recognition of the Syariah courts is based on art. 121(1A) of the Federal Constitution which excluded the jurisdiction of the civil courts in respect of matters within the jurisdiction of the Syariah courts.³ However, the Syariah court's jurisdiction is only over persons professing the religion of Islam or a Muslim⁴ and on Muslim personal law and minor offences against the precepts of the religion of Islam under the relevant Syariah Enactments of the States. The head of the Syariah courts is the Chief Syariah Judge,⁵ while the Chief Syariah Prosecutor is empowered to institute, conduct or discontinue any proceeding for an offence before a Syariah court.⁶

Syarie Legal Profession Qualifying Board

Section 3 of the Syarie Legal Profession (Federal Territories) Act 2019 ('2019 Act') allows for the establishment of a Syarie Legal Profession Qualifying Board whose functions as stated in s. 4 are as follows: (a) to determine the qualifications of the persons intending to apply for the admission as a Peguam Syarie; and (b) to provide for - (i) the course of instruction, training, education, interview and examination by the Board for the persons intending to apply for admission as a Peguam Syarie; and (ii) the course of instruction, training and continuous professional development of Peguam Syarie. The Chief Syariah Judge and the Chairman of the Majlis Peguam Syarie are the Chairman and Deputy Chairman of the Board, respectively. The other members of the Board are a Muslim representative of the Attorney General, the Chief Syariah Prosecutor, a Peguam Syarie with a minimum of 20 years or more in practise nominated by Majlis Peguam Syarie, an academician in Syariah from a higher learning institution, and an academician in the legal field from a higher learning institution. The academician in Syariah and legal field must be nominated by the Minister.⁷

The Board may, with the approval of the Minister, make rules with the following purpose: (a) the qualification of persons for admission as a Peguam Syarie; (b) the course of instruction, training, education, interview and examination of persons for admission as a Peguam Syarie; (c) the practical experience required for admission as a Peguam Syarie; (d) the fees or charges that may be imposed by the Board in the performance of its functions and the exercise of its powers; and (e) such other matters required to be prescribed by the Board under this Act.⁸ Section 10 allows the Board to

exempt any person or a group of persons who intends to apply for admission as a Peguam Syarie from undergoing courses of instruction, training, education, interview and examination subject to such conditions as the Board thinks fit.

It is noteworthy that the function of the Board is similar to the Legal Profession Qualifying Board (LPQB) established under s. 4 of the 1976 Act whose members consists of the Attorney General as the chairman, two judges nominated by the Chief Justice, the Chairman of the Bar Council and a full-time academic staff of the Faculty of Law nominated by the Minister of Higher Education.⁹ The functions of the LPQB is provided in s. 5 of the 1976 Act namely: (a) prescribing qualifications required for the entry of any person into articles with a view to his admission as an advocate and solicitor; (b) providing courses of instruction for, and regulating the training and instruction of, articulated clerks; (c) providing for the examination of articulated clerks wishing to become qualified persons; (d) to decide on qualifications for 'qualified person'; (e) providing courses of instruction for, and for the examination of persons whose qualifications are not sufficient to make them qualified persons; (f) managing and conducting Bahasa Malaysia Qualifying Examination.

Peguam Syarie: Admission Requirements

The admission requirements as Peguam Syarie for a qualified person¹⁰ is set out in s. 12(1) of the 2019 Act namely, the applicant has attained the age of 21 years;¹¹ a Muslim; is either a citizen or permanent resident of Malaysia;¹² is of good character; has not been convicted in Malaysia or elsewhere of any criminal offence; has not been adjudicated as undischarged bankrupt;¹³ has attended and passed the courses of instruction, training, education, interview or examination prescribed by the Board, where applicable; and has served the period of pupillage as required under s. 13 which is currently set at six months.¹⁴ A pupil shall serve his period of pupillage with a master who is and has been in an active practise in the Federal Territories for a total period of not less than seven years immediately preceding the date of commencement of his pupillage.¹⁵

The Majlis Peguam Syarie may, however, exempt any qualified person who has served as a Syariah officer for a period of at least one year from serving any period of pupillage under s. 13.¹⁶ Under the now-repealed Peguam Syarie Rules 1993, pupillage was not a condition for admission as Peguam Syarie. Since it is now contained in the 2019 Act, the pupillage is basically aimed at exposing the pupils both on the handling of civil and criminal litigations in the Syariah courts as well as non-litigation works. It is worthwhile to note that the Bar Council *vide* its Pupillage Handbook, has provided valuable guidelines for pupils to plan and manage their time effectively at the law firm throughout their pupillage.

As noted earlier, an essential requirement for admission as Peguam Syarie under the 2019 Act is that the qualified person must be a Muslim and this requirement is in line with the *fatwa* issued by the National Islamic Consultative Committee entitled: 'Ruling on the Appointment of a non-Muslim as Syarie Lawyer' which does not permit the admission of a non-Muslim as Syarie lawyer. The fear of misinterpreting the primary texts of Islamic law due to insufficient knowledge of Syariah and the fact that non-Muslims do not have faith in Allah (swt) in the execution of their duties are among the reasons for their exclusion from practising as Peguam Syarie.

Earlier, the requirement to be a Muslim was not specifically provided in the Administration of Islamic Law (Federal Territories) Act 1993 but was imposed in r. 10 of the Peguam Syarie Rules 1993. Section 59(1) of the Act states that the *Majlis Agama Islam Wilayah Persekutuan (Majlis)* may admit any person having sufficient knowledge of Islamic law to be a Peguam Syarie to represent parties in any proceedings before the Syariah court. Referring to the phrase 'any person having sufficient knowledge of Islamic law', the minority decision of the Federal Court¹⁷ in *Majlis Agama Islam Wilayah Persekutuan v. Victoria Jayaseele Martin & Another Appeal*,¹⁸ held *inter alia*, that by admitting only a Muslim as a Peguam Syarie, the 1993 Rules has no nexus to the object of the Act. Hence, the additional requirement to be a Muslim under r. 10 of the Peguam Syarie Rules 1993 has gone past the limit prescribed by the Act, it was clearly *ultra vires* the parent law.¹⁹ Suriyadi Halim Omar FCJ, delivering the dissenting judgment, stated:

Section 59 (1) in its ordinary and natural sense easily understood, it is thus the primary duty of the court to give effect to the intention of Parliament. Applying the plain meaning rule, the enlarged words of any person, by plain and simple reading must include any person regardless of his or her religion ... Had it been the intention of Parliament to merely allow Muslims to be Peguam Syarie, that religious requirement could have been inserted in s. 59(1) without much hassle. This has been done in s. 10 of the Act where detailed provisions have been included to ensure that where an *ex-officio* member of the Majlis is not a Muslim, he is replaced in the Majlis by another officer who is a Muslim and next in seniority from the same Department or Ministry. Similarly, in s. 42, Parliament saw it fit to specify that the Syariah Appeal Court members are to be chosen from a standing panel of not more than seven Muslims. Once the meaning and intention of a statute are clear, it is not the province of the court to find another intention of Parliament. Its duty is to enforce the clear words. A cursory perusal of the impugned part of r. 10 shows that it is not in sync with the object of the Act, as the importation of a religious requirement in this subsidiary piece of legislation without more, has disqualified an otherwise eligible candidate here. More of this later.

Apart from the above, an application for admission as Peguam Syarie under the 2019 Act shall be made to the Syariah High Court.²⁰ The application shall be supported by an affidavit exhibiting the certified copies of any

documentary evidence showing that he is a qualified person, two recent certificates as to his good character; a certificate of diligence from his master with whom he served his pupillage; a certificate signed by the Secretary to the Board that the applicant has attended the courses of instruction, training, education, interview or examination prescribed by the Board, where applicable; and certified copies of any documentary evidence showing that the applicant has attained the age of twenty-one years, is a Muslim and is either a citizen or permanent resident of Malaysia.

The applicant shall then serve a copy of his application for admission as a Peguam Syarie on the Board, the Chief Syariah Prosecutor and the Majlis Peguam Syarie within a period not less than 30 days before the date fixed for the hearing of the application for admission or such shorter period as ordered by the Syariah High Court.²¹ Upon receiving the application for admission, the Majlis Peguam Syarie shall make or cause to be made full inquiries into the character of the applicant and submit a confidential report of the result of such inquiries to the Chief Registrar.²² If the report is unfavourable to the applicant, the Chief Registrar shall submit the said report to the Chief Syarie Judge who may, if he thinks fit and reasonable, direct the report to be filed in the Syariah High Court and a copy of the report to be served on the applicant and, subject to such directions as the Syariah High Court may give, such report shall be taken into consideration on the hearing of the application.²³

Upon receiving a copy of the application for admission as Peguam Syarie, s. 19 empowers the Chief Syariah Prosecutor or the Majlis Peguam Syarie to raise objection to the application by filing a notice of objection which shall specify in brief terms the grounds of the objection. The notice of objection shall then be filed in the Chief Registrar's Office and served on the applicant within the period of not less than three days or any shorter period as the Syariah High Court may order before the date fixed for the hearing of the application for admission. Further, s. 20 provides that any person other than the Chief Syariah Prosecutor or the Majlis Peguam Syarie may enter an objection to object the application for admission as a Peguam Syarie. Likewise, the objection should be filed in the Chief Registrar's Office and shall contain the full name, occupation and address of the person objecting the application for admission, a brief statement of the grounds of his objection and an address for service. Upon such objection being filed, the application for admission shall not be heard unless a notice of hearing of not less than three days has been served on the person objecting the application for admission.

The Syariah High Court may, after considering the application under s. 15, the inquiry report under s. 18 and objection under ss. 19 or 20 if any, admit the applicant as a Peguam Syarie.²⁴ Any person who is aggrieved by the decision of the Syariah High Court may, within 30 days of the date of the decision, appeal to the Syariah Appeal Court.²⁵ Upon admission, the Peguam

Syarie must apply to the Chief Registrar²⁶ for the issuance of certificate of Peguam Syarie²⁷ and if he wishes to be active in Syariah legal practice, apply for an annual practising certificate.²⁸ The Chief Registrar shall keep and maintain a Register of Peguam Syarie. The name and the date of admission of a Peguam Syarie shall be entered in the Register and the Register shall be open for inspection by any person without payment unless the application is an extract or a copy of the Register which shall be subject to a prescribed fee.²⁹ Section 25 provides that the name of the Peguam Syarie may be removed from the Register if it can be shown to the satisfaction of the Syariah High Court that the affidavit, acknowledgement or other document filed by the Peguam Syarie contains false or misleading statement in its substance or a suppression of any material fact.

It is noteworthy that any unauthorised person who acts as a Peguam Syarie or an agent for any party to a proceeding or in any capacity, other than as a party to an action in which he himself is a party, commences, carries on, solicits or defends any action, suit or other proceedings in the name of any other person in any of the Syariah court or draws or prepares any instrument relating to any proceedings in any Syariah court or wilfully or falsely pretends to be, or takes or uses any name, title, addition or description implying that he is duly qualified or authorised to act as a Peguam Syarie, or that he is recognised by law as so qualified or authorised, commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term of not exceeding three years or to both.³⁰

It may be added that the Administration of Islamic Law (Federal Territories) (Amendment) (No. 2) Act 2019 (Amendment Act) made some important amendment to the Administration of Islamic Law (Federal Territories) Act 1993, the principal Act. Pursuant to s. 3 of the amendment Act, s. 59 of the principal Act is now deleted. Further, s. 4(1) of the amendment Act provides that 'Any application by any person for an admission as a Peguam Syarie, or objection to such application or an admission as a Peguam Syarie, or appeal against the decision relating to the application for admission, or disciplinary proceedings relating to Peguam Syarie, pending before the coming into operation of this Act shall be dealt with under the principal Act as if the principal Act had not been amended.' Further, sub-s. (2) provides that 'on the date of coming into operation of this Act, any Sijil Peguam Syarie issued under the principal Act before the coming into operation of this Act and is still valid, and any Sijil Peguam Syarie issued for the purpose of sub-s. (1), shall be subjected to the Syarie Legal Profession (Federal Territories) Act 2019'.

Badan Peguam Syarie

The Badan Peguam Syarie of the Federal Territories is established pursuant to s. 42 of the Act. It is a body corporate with perpetual succession and a common seal which may sue and be sued in its corporate name. A person

admitted and registered as a Peguam Syarie shall be a member of the Badan Peguam Syarie so long as he has a valid Annual Practising Certificate.³¹ The functions of the Badan Peguam Syarie as provided in s. 43 are as follows:

- (a) to promote and maintain the interest of the Syarie legal profession in relation to the practice of Syariah law in the Federal Territories;
- (b) to uphold the cause of justice without regard to its own interests or that of its members, uninfluenced by fear or favour;
- (c) to maintain and improve the standards of conduct and learning of the Syarie legal profession in the Federal Territories;
- (d) to maintain the integrity and status of the Peguam Syarie as well as to avoid unlawful, dishonest and unethical practices among Syariah law practitioners;
- (e) to promote opportunities for the acquisition and dissemination of knowledge and skills in the practice and application of Syariah law;
- (f) where requested to do so, to express its view on matters affecting practices and Syariah law reform in the Federal Territories;
- (g) to protect and assist the public in all matters incidental to the Syariah law;
- (h) to promote good relations and social relations amongst members and between members and other persons concerned in the administration of law, civil or Syariah, in the Federal Territories or in other States; and
- (i) to promote, establish and maintain good relations with professional bodies of the legal profession in other countries and to participate in the activities of any local or international association and become a member of the association.

A member of the Badan Peguam Syarie shall be eligible to attend and vote at any general meeting. He shall be eligible to be elected as a member of the Majlis Peguam Syarie, to vote on the election of members to the Majlis Peguam Syarie and to serve in any Committee of the Majlis Peguam Syarie.³² Section 44(1) provides that the Badan Peguam Syarie may make rules for prescribing the procedure of any meeting including annual general meeting and extraordinary general meeting of the Badan Peguam Syarie; regulating the conduct of the election of the members of the Majlis Peguam Syarie; and prescribing such other matters that are incidental to the betterment of the Badan Peguam Syarie. The functions of the Badan Peguam Syarie is similar to the Bar Council established pursuant to the Legal Profession Act 1976.

Majlis Peguam Syarie

The Act also provides for the establishment of a Majlis Peguam Syarie (Majlis) for the proper management of the Badan Peguam Syarie and for the proper performance of its functions under the Act.³³ The Majlis shall

comprise of the immediate past President and Vice-President of the Badan Peguam Syarie (except for the first Majlis); and 13 Peguam Syarie elected pursuant to s. 49. The eligibility of nomination for the appointment as members of Majlis Peguam Syarie and the nominations procedure is contained in ss. 51 and 52, respectively. Meanwhile, s. 54(1) provides that the election of members of the Majlis Peguam Syarie shall commence his office from 1 January after the election until 31 December of the consequent years and further, every member elected shall be eligible for re-election. The disqualification of members of Majlis Peguam Syarie or any of its committees is provided in s. 58 namely:

- (i) if he is a member of either House of Parliament, or of a State Legislative Assembly, or of any local authority or
- (ii) he holds any office in any trade union, any political party, or any other organisation, body or group of persons whatsoever, whether or not it is established under any law, whether it is in Malaysia or outside Malaysia, which has objectives or carries on activities which can be construed as being political in nature, character or effect.

The powers of the Majlis Peguam Syarie is provided in s. 59(4) namely:

- (a) to answer questions affecting the practice and etiquette of the Syarie legal profession and the conduct of the members;
- (b) to take cognisance of any matter affecting the Badan Peguam Syarie or the professional conduct of its members and to bring before any general meeting of the Badan Peguam Syarie any matter which it considers material to the Badan Peguam Syarie or to the interests of the profession and to make any recommendations and take any action as it considers fit;
- (c) to appoint officers, clerks, agents and employees as it may consider fair and reasonable and to determine their duties and terms of service;
- (d) to examine and, if it considers fit, report on current law on Syariah or proposed legislation and any other legal matters;
- (e) to represent members of the Majlis Peguam Syarie or any particular member in any matter which may be necessary or expedient;
- (f) to take part as a watching brief, intervener or *amicus curiae* in any proceeding affecting the interest of the profession and legal issues relating to Muslim;
- (g) to purchase, lease or otherwise acquire any movable and immovable property for the use of the Badan Peguam Syarie, and to sell, rent, or otherwise dispose of any property;
- (h) to invest and deal with any moneys of the Badan Peguam Syarie in Syariah compliant investment authorised for the investment of trust funds by any written law;

- (i) to establish, maintain and manage funds of the Badan Peguam Syarie; and
- (j) to exercise all such powers, privileges and discretions as are not by this Act expressly and exclusively required to be exercised by the members of the Badan Peguam Syarie in a general meeting.

Apart from the above, the Majlis is empowered, pursuant to s. 64(1) to make rules for regulating the professional practice, etiquette, conduct and discipline of the Peguam Syarie and any Peguam Syarie who fails to comply with any rules made thereunder shall be subjected to disciplinary proceedings. The practice and etiquette rules which is currently applicable to Peguam Syarie in the Federal Territories is the Amalan dan Etika Peguam Syarie (Wilayah-Wilayah Persekutuan) 2000 made pursuant to s. 59(2)(b) of the Administration of Islamic Law (Federal Territories) Act 1993. It is noteworthy that the practice and etiquette rules regulating an advocate and solicitor in the civil system is the Legal Profession (Practice and Etiquette) Rules 1978 made by the Bar Council which rules are binding upon each lawyer and failure to comply would result in disciplinary action.³⁴ The Rules were made pursuant to s. 77 of the Legal Profession Act 1976 which is primarily intended to ensure that lawyers meet the standard and ethics expected in the profession. It regulates the relationship between lawyer and client, the requirement to act independently and professionally, the requirement to respect the court and other important regulations. Aside from the above, the Majlis is also empowered to make rules in relation to opening and keeping of accounts, and in relation to professional indemnity are governed by ss. 65 and 66, respectively.

Disciplinary Jurisdiction Of Majlis Against Peguam Syarie

Section 77(1) provides that the Majlis Peguam Syarie shall have disciplinary authority over all Peguam Syarie and pupil, and may exercise disciplinary jurisdiction over any complaint concerning the misconduct involving either of them. The term 'misconduct' is defined in s. 77(4) to mean any conduct of, or omission to act by, a Peguam Syarie in a professional capacity or otherwise which amounts to grave impropriety and includes:

- (a) conviction of a criminal offence which makes him unfit to be a member of his profession;
- (b) breach of duty to a Syariah court including any failure by him to comply with an undertaking given to the Syariah court;
- (c) dishonest or fraudulent conduct in the performance of his duties;
- (d) breach of any rules of practice and etiquette of the profession made by the Majlis Peguam Syarie under this Act or otherwise;
- (e) being an adjudicated bankrupt;

- (f) the tendering or giving of any gratification to any person for having procured the employment in any Syariah legal business of himself or any other Peguam Syarie;
- (g) directly or indirectly procuring or attempting to procure the employment of himself or any other Peguam Syarie through or by the instruction of any person to whom any remuneration for obtaining such employment has been given by him or agreed or promised to be so given;
- (h) accepting employment in any Syariah legal business through a tout;
- (i) allowing any unauthorised person to carry on Syariah legal business in his name without his direct and immediate control as principal or without proper supervision;
- (j) the carrying on by himself, directly or indirectly, of any profession, trade, business or calling which is incompatible with the Syariah legal profession or being employed for reward or otherwise in any such profession, trade, business or calling;
- (k) the breach of any provision of this Act or any rules made under this Act or any direction or decision of the Majlis Peguam Syarie;
- (l) the removal or the striking off of his name from the Register, suspension or censure in his capacity as a Peguam Syarie in any other States or being guilty of misconduct which would render him to be punished in any other States;
- (m) the charging, in the absence of a written agreement, in respect of the professional services rendered to a client, of fees or costs which are grossly excessive in all the circumstances;
- (n) gross disregard of his client's interests; and
- (o) acting in any matter which is unbecoming of a Peguam Syarie or which brings or is calculated to bring the Syariah legal profession into disrepute.

Further, the Majlis is empowered to establish a mechanism, including the establishment of a Disciplinary Board to deal with the complaint or information received against a Peguam Syarie and any other committees to assist the Disciplinary Board. Section 78(1) provides that any complaint of misconduct against any Peguam Syarie or pupil made to the Disciplinary Board shall be in writing. The Syariah Court Judge or Syariah Prosecutor may also refer any complaints against any Peguam Syarie or pupil to the Disciplinary Board.³⁵

Where a complaint to the Disciplinary Board is against a firm, s. 79(1) provides that the complaint shall be deemed to be made: (i) in the case of a sole proprietorship, against the Peguam Syarie who was at the material time the sole proprietor of the firm; and (ii) in the case of a partnership, against

all the Peguam Syarie who were at the material time partners of the firm, unless the firm satisfies the Disciplinary Board of the identity of the Peguam Syarie in the firm against whom the complaint has arisen. If at any stage of the proceedings, the Disciplinary Board is satisfied that a complaint made against a firm shall be directed against a particular Peguam Syarie, the Disciplinary Board shall forthwith replace the name of the firm with the name of the Peguam Syarie concerned.

A complaint of misconduct against the Peguam Syarie or any pupil shall not be inquired into by the Disciplinary Board after the expiration of six years from the date on which the right of action accrued. The exception, however, is where the complaint is based upon the fraud of the Peguam Syarie or his agent or of any person through whom the Peguam Syarie or his agent claims, or where the right of action to bring the complaint is concealed by the fraud of the Peguam Syarie or of his agent or any person through whom he or his agent claims. In such cases, the period of limitation shall not begin to run until the complainant has discovered the fraud, or could with reasonable diligence have discovered it.³⁶

After the conclusion of the disciplinary proceedings, should the misconduct be established against the Peguam Syarie or the pupil, the Disciplinary Board may impose the following penalties or punishments: (i) the recording of a reprimand or censure against the name of the Peguam Syarie in the Register; (ii) impose a fine not exceeding fifty thousand ringgit; (iii) suspending the Peguam Syarie from practice for such period not exceeding five years; or (iv) the striking off the name of the Peguam Syarie from the Register.³⁷ The punishment meted out against the Peguam Syarie or the pupil must be proportionate with the nature and gravity of the misconduct committed. In determining the appropriate punishment, the Board may consider the serious nature of the misconduct and the extenuating circumstances such as the remorsefulness for his misconduct and pleading of guilty immediately after the reading of the charge, among others.

Further, s. 83(1) provides that 'if a Peguam Syarie:

- (a) has been found guilty by a court of law of any offence involving dishonesty, misuse or misappropriation of any money or property of a client or of any other person;
- (b) has been struck off his name from the Register;
- (c) has been barred, suspended, reprimanded or censured in his capacity as Peguam Syarie in any other States;
- (d) is the subject of a complaint concerning any dishonest act committed by him in his capacity as a Peguam Syarie;
- (e) has left the country or has not attended his office in such circumstances that the Majlis Peguam Syarie may reasonably presume that he has absconded; or

(f) is otherwise incapable from infirmity of body or mind or any other cause of effectively performing the functions of a Peguam Syarie,

and the Majlis Peguam Syarie considers that it would be in the public interest or in the interest of his clients or of the profession that the Peguam Syarie be suspended from practice, the Majlis Peguam Syarie may apply to the Disciplinary Board for an order suspending the Peguam Syarie from practice until further notice is given.'

Any person who is aggrieved by any order or decision made against him by the Disciplinary Board in the exercise of its disciplinary jurisdiction may appeal to the Syariah High Court within 30 days of the receipt of the notification of the order or decision.³⁸

Apart from the above, s. 89 accorded statutory immunity or protection of the law to Badan Peguam Syarie, Majlis Peguam Syarie, Disciplinary Board or any of its members against all or any act done or ordered to be done by them in the discharge of their duties under this Act unless it is proven that the act or thing was done in bad faith or with malice. The protection is primarily to ensure that they should be able to discharge their functions with complete independence and without any external interference. The only exception is when the officer committed misconduct for example, accepted bribes, is corrupt or has committed any criminal conduct in which case, not only that they may be removed from office but may also be liable to criminal prosecution.

Further, the order, decision, resolution and direction of the Disciplinary Board, Badan Peguam Syarie and Majlis Peguam Syarie shall be treated as confidential unless and until it is necessary to disclose for the purpose of enforcing this Act.³⁹ Secrecy of confidential documents, information, conversations and actions used or relied upon is a must but not absolute as its disclosure may be warranted on the basis of law or where public interest demand for its disclosure, among others. Last but not least, any Peguam Syarie who is practising as an advocate and solicitor under the Legal Profession Act 1976 whose name has been removed from the Roll of Advocates and Solicitors of the High Court kept by the Registrar of the High Court shall be duly removed from all the Registers kept and maintained under this Act.⁴⁰

Conclusion

The Syarie Legal Profession (Federal Territories) Act 2019 has allowed for the establishment of the Syarie Legal Profession Qualifying Board, Badan Peguam Syarie and Majlis Peguam Syarie which is primarily aimed at regulating the practice of the Syarie legal profession in the Federal Territories. The would-be-Syarie lawyer is now required to undergo mandatory pupillage or chambers training for six months to familiarise them with the practice and procedure of the Syariah courts. Undoubtedly, with the adoption of this Act, it would enhance the professional standard and quality

of Syariah lawyers in Malaysia. Although this Act is only applicable in the Federal Territories, it nevertheless would certainly serve as a benchmark and model to be emulated by other states. This Act is similar to the Legal Profession Act 1976 applicable to legal profession of the civil system which allows for the establishment of the Legal Profession Qualifying Board, the Malaysian Bar, the Bar Council and the State Bar Committees. It also deals with the professional practice, etiquette, conduct and discipline of advocates and solicitors and disciplinary proceedings, among others. With the adoption of the 2019 Act, it is hoped that it would enhance the Syariah legal profession and certainly, could lead to a uniform legal regime for Syariah lawyers throughout the country.

Endnotes:

1. *Quran, An-Nisa'* (4): 135.
2. In a hadith narrated by Ummu Salamah, the Prophet (saw) said: "I am only a human being and you bring your disputes to me, some perhaps being more eloquent in their plea than others, so that I give my judgment on their behalf according to what I hear from them. Therefore, whatever I decide for anyone who by rights belongs to his brother, he must not take anything for I am granting him a portion of hell: see *Sunan Abu Dawud: Kitab Aqdiyah*, p. 1016.
3. Article 121(1A) provides: 'The courts referred to in cl. (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts.' See *Subashini Rajasingam v. Saravanan Thangathoray & Other Appeals* [2008] 2 CLJ 1, FC.
4. See Ninth Schedule item 1 of List II of the Federal Constitution. Section 2 of the Administration of Islamic Law (Federal Territories) Act 1993 defines a 'Muslim' as: (a) a person who professes the religion of Islam; (b) a person either or both of whose parents were, at the time of the person's birth, Muslims; (c) a person whose upbringing was conducted on the basis that he was a Muslim; (d) a person who has reverted to Islam in accordance with the requirements of s. 85; (e) a person who is commonly reputed to be a Muslim; or (f) a person who is shown to have stated, in circumstances in which he was bound by law to state the truth, that he was a Muslim, whether the statement be verbal or written. Further, art. 160 of the Federal Constitution defines the word 'Malay' as a person who professes the religion of Islam.
5. Section 41(1) of the Administration of Islamic Law (Federal Territories) Act 1993 provides that the Yang di-Pertuan Agong may, on the advice of the Minister charged with responsibility for the administration of the religion of Islam in the Federal Territories, after consultation with the Majlis Agama Islam Wilayah Persekutuan, appoint a Chief Syariah Judge. The requirements to be a Chief Syariah Judge, see s. 41(2) of the said Act.

6. *Ibid.*
7. Section 6 of the 2019 Act. The 'Minister' here means the Minister charged with the responsibility for the administration of the religion of Islam in the Federal Territories, see s. 2 of the Act.
8. Section 9(2) of the 2019 Act.
9. Section 7 of the 1976 Act.
10. Section 11 of the 2019 Act defined a 'qualified person' as any person who - (a) possesses any qualification prescribed by the Board; or (b) is an advocate and solicitor and has any additional qualification in the Syariah field or judicial Syarie as prescribed under s. 12.
11. Section 53 of the Interpretation Acts 1948 and 1967 provides: 'In computing years of age for the purposes of any written law, a person shall be regarded as having completed a year of age on the expiration of the day preceding the anniversary of his birth, reckoned according to the Gregorian calendar: Provided that for the purposes of this section the anniversary of the birth of a person born on 29 February shall, in a year which is not a leap year, be taken as 1 March.'
12. Malaysian citizenship is acquired either by registration or by naturalisation and the requirements of the above is contained in Part III, Chapter I (arts. 14 to 22) of the Federal Constitution. Generally, a person born in Malaysia or outside of Malaysia to Malaysian parents is entitled to citizenship by operation of law. If he is born in Malaysia and any one of his parents is Malaysian citizen, the child is also deemed a citizen, see *Madhuvita Janjara Augustin (Suing Through Next Friend, Margaret Louisa Tan) v. Augustin Lourdsamy & Ors* [2018] 4 CLJ 758. Citizenship may also be acquired by a foreign woman whose husband is a citizen of the Federation with the marriage registered according to Malaysian law. However, if the birth of the person is outside Malaysia, he would not be entitled to citizenship under the operation of law if at the time of the birth the child's father was not a citizen of the Federation. Again, a child of foreign parents who are not Malaysian who gives birth in Malaysia does not acquire citizenship by operation of law. Meanwhile, permanent resident refers to a person who has been granted the right to live in a particular country for an indefinite period while he continues to remain a citizen of another country. The term 'permanent resident' is defined in s. 3 of the Courts of Judicature Act 1964 as 'a person who has permission granted without limit of time under any federal law to reside in Malaysia, and includes a person treated as such under any written law relating to immigration'. This provision describes the conditions as recognised by the law before a person is regarded as a permanent resident. In Malaysia, a permanent resident holds a 'red' identity card.

13. For the disability of an undischarged bankrupt, see s. 38(1) of the Insolvency Act 1967.
14. Section 12 of the 2019 Act.
15. During the pupillage, a pupil should not, unless special leave in writing is first obtained from the Majlis Peguam Syarie, hold any office or engage in any employment of any kind, whether full time or otherwise. The Majlis Peguam Syarie may on special grounds allow a pupil to serve his period of pupillage with a Peguam Syarie who is practising in other States or has been practising less than seven years (s. 14(1)). The Majlis may also allow any qualified person to serve different parts of his period of pupillage with different masters (s. 14(2) of the 2019 Act). Any qualified person who has served as a Syariah officer for a period of at least one year may be given exception from serving any period of pupillage under s. 13 (s. 14(3) of the 2019 Act).
16. Section 14(3) of the 2019 Act. The Syariah officer is however, required to submit to the Majlis Peguam Syarie a certificate from the Director General of Department of Syariah Judiciary Malaysia or respective head of service, as the case may be, stating his period of service as a Syariah officer, see s. 14(4) of the 2019 Act.
17. Minority decision by Suriyadi Halim Omar and Zaharah Ibrahim FCJJ.
18. [2016] 4 CLJ 12, FC
19. The admission requirements to be a Peguam Syarie under r. 10 of the Peguam Syarie Rules 1993 is as follows: '(a) (i) is a Muslim and has passed the oral examinations which leads to the certificate of a bachelor's degree in Syariah from any university or any Islamic educational institution recognised by the Government of Malaysia; or (ii) is a Muslim member of the judicial and legal service of the Federation; or (iii) is a Muslim advocate and solicitor enrolled under the Legal Profession Act 1976; or (iv) has served as a Syariah Judge or as a Kathi with any State Government in Malaysia for a period of not less than seven years; (b) has attained the age of twenty-one years; (c) is of good behaviour and: (i) has never been convicted in Malaysia or in any other place of any criminal offence; (ii) has never been adjudged a bankrupt; (d) is a Malaysian citizen; and (e) as an advocate and solicitor, has passed the Sijil Peguam Syarie examination.'
20. Section 15 of the 2019 Act.
21. *Ibid*, s. 17.
22. *Ibid*, s. 18(1).
23. *Ibid*, s. 18(2).

24. *Ibid*, s. 21
 25. *Ibid*, s. 22.
 26. Section 45 of the Administration of Islamic Law (Federal Territories) Act 1993 provides that the Yang di-Pertuan Agong may, on the advice of the Chief Syariah Judge, appoint, from amongst members of the general public service of the Federation, a Chief Registrar of the Syariah Appeal Court, a Registrar of the Syariah High Court, and Assistant Registrars of the Syariah Subordinate Courts. Chief Registrar of the Syariah Appeal Court is the chief administrative arm of the Syariah Judiciary and directly responsible to the Chief Syariah Judge.
 27. Section 23 of the 2019 Act.
 28. *Ibid*, s. 28
 29. *Ibid*, s. 24.
 30. *Ibid*, s. 35(1).
 31. *Ibid*, s. 45(1).
 32. *Ibid*, s. 46.
 33. *Ibid*, s. 48(1).
 34. The disciplinary proceedings are elaborated in Part VII of the Legal Profession Act 1976. The Bar Council has also set up rules to elaborate on the proceeding in the Legal Profession (Disciplinary Board) (Procedure) Rules 1994, Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 and Legal Profession (Disciplinary Proceedings) (Appeal) Rules 1994.
 35. Section 78(2) of the 2019 Act.
 36. *Ibid*, s. 80.
 37. *Ibid*, s. 82.
 38. *Ibid*, s. 84.
 39. *Ibid*, s. 90.
 40. *Ibid*, s. 91.
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