

Malaysia at 50

achievements
& aspirations

Edited by
Syed Arabi Idid

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Achievements and Aspirations

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Malaysia At 50: Achievements and Aspirations

Edited by Syed Arabi Idid

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Development of the Islamic Legal System

Shamrahayu A. Aziz*

Malaysia is part of the common law world which has England as its prototype. However, a closer look at its legal system shows that it is not entirely English in orientation. Some local values are embodied in the system.

After independence, the Federal Constitution became the major source of Malaysian law and also the supreme law of the country. As in other countries, the legal system in Malaysia forms part of the constitutional structure. The Constitution provides for a federation, a bicameral legislature and a judiciary. It provides for separate jurisdictions for the two levels of government.¹ Parliament is responsible for legislating laws for the whole country and the state legislature legislates on matters under the state jurisdiction. The Constitution also created the superior courts of the country.² The courts play a major role in developing the law and are indeed involved in making the law through creative interpretations. However, the executive too plays a role in law-making because there is no rigid separation of membership between the legislature and the executive.

A BRIEF HISTORY

Since the early 14th century, there have been Sultanates in Peninsular Malaya. The most well-known was the Malacca Sultanate. When the British set foot in the peninsula in the late 18th century, a legal order was already in place in the early Malay Sultanates, especially the Malacca Sultanate, and Islam had a major influence on the system. Islamic law and local custom were adopted in the legal system and administered accordingly. Two sets of Malacca laws, the Malacca Legal Code (*Hukum Kanun Melaka*) and the Maritime Law of Malacca (*Undang-undang Laut Melaka*) contained principles of Islamic law relating to civil, criminal and

* Dr. Shamrahayu A. Aziz is Assistant Professor, Department of Islamic Law, Ahmad Ibrahim Kulliyah of Laws, International Islamic University of Malaysia (IIUM).

¹ See Article 74 and the 9th Schedule of the Federal Constitution.

² The superior courts are the Federal Court, the Court of Appeal and the High Courts. The subordinate courts were created by the Subordinate Courts Act 1948 (Revised 1972). The subordinate courts are the Sessions Courts, the Magistrates' Courts and the Penghulu's Courts. See Section 3 of the Act.