

Researching International Law: The Malaysian Experience

TRILA (Teaching and Researching International
Law) Malaysia Workshop

3-5 March 2021

Day 2 (4 March 2021), Session 5

Professor Dr. Abdul Ghafur Hamid

Ahmad Ibrahim kulliyyah of Laws

International Islamic University Malaysia

1. Developing research projects

1.1 Finding a research gap

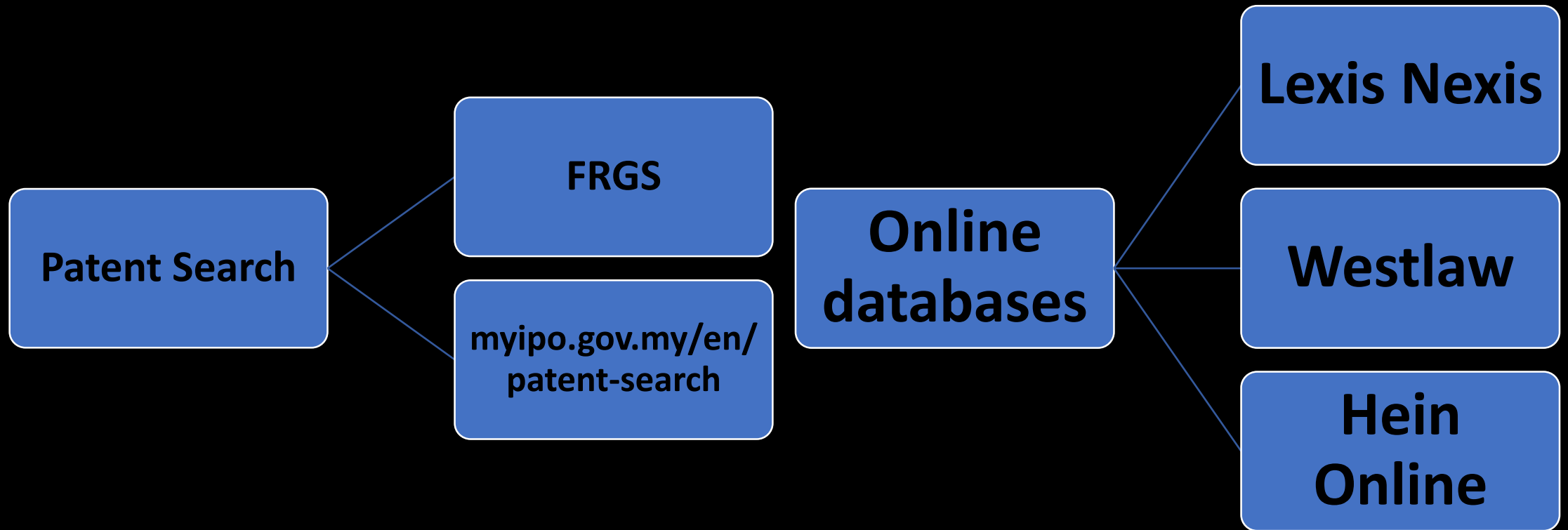
1.2 Linking teaching and research

1.3 Know the uniqueness of Malaysia

1.1 Finding a research gap

- The first step of conducting a research is identifying a previously unexplored area of research, that is, choosing an untapped area.
- But the big question is: how to decide which research problem should you study? You will need to zero down on a research topic that is original and innovative.
- The best way to do this is to identify a gap in existing research in the field, i.e., finding a research gap!

Finding a research gap



Involving in the training of Jessup International Law Mooters

- Jessup International Law Mooting competitions are famous for creating mooted problems that explore controversial or emerging areas of international law, which have potential for researching.
- Involving in training of Jessup mooters can help one to get ideas in identifying research gaps in international law.

1.2 Linking teaching and research:

Can benefit both faculty and students

By discovering new ideas, approaches and developments, your expertise in teaching will grow in the area you are researching.

Time saving as it takes less time to prepare a lecture that is directly linked to one's research area.

You can incorporate research outcomes into teaching, engage students in research groups, and co-publish with students.

•Students can gain benefit from the research in terms of depth of learning and understanding when they are involved actively, particularly in inquiry-based learning.

Students can Increase confidence as learners and independent thinkers.

Can develop capacity to conduct research and inquiry.

1.3 Know the uniqueness of Malaysia

Malaysia is unique as It amalgamates a variety of characteristics.

Malaysia is a federal state.
It practices a dual legal system: a combination of Islamic law and civil law.

It has two parallel system of courts: Shari'ah courts and civil courts.
Malaysia is a purely a dualist country.

2. Research Projects: My experience

Example 1: Reforming Laws Relating to the Protection of the Marine Environment in Malaysia

Research granted by the Law Reform Committee of the Prime Minister's Department

Findings

- Existing anti-marine pollution laws in Malaysia contain loopholes, discrepancies, and even contradictions among them.
- Need necessary law reforms..

Research Report together with findings and recommendations were presented to a special forum attended by the Law Minister himself, AG's Chambers, and the other stake holders

Recommendations

- Discrepancies are due to piecemeal approach to law-making.
- To follow a holistic approach in law-making, empowering stake-holders and academia in the process.

Acknowledgement and implementation: NIL

Example 2: Formulation of a Legal framework for Sustainable Maritime Security in Malaysia

A Fundamental Research Grant Scheme (FRGS); a project sponsored by the Ministry of Higher Education

Many research articles and conference papers were published and produced.

Acknowledgement and implementation: NIL

Findings

- With outdated Penal Code and lack of piracy law, contemporary maritime crimes cannot be properly addressed.
- Due to the Official Secrets Act, it is difficult in getting official data from the government departments and agencies

Recommendations

- The government should either add a new chapter in the Penal Code or enact a new law in the name of “Maritime Offences Act,”
- The Essential provisions of the draft Bill were proposed.

Example 3: Malaysia's Accession to the Hague Children's Conventions: A Feasibility Analysis

A Sponsored Research Project:

Sponsored by the Attorney General's Chambers (AGC) of Malaysia

Research grant: RM 159,860

Main venue: Senate Hall, IIUM

Research Team: 19 Professors and senior lecturers from AIKOL, IIUM, with expertise in Public and Private International Law, Family Law, Islamic Law, Constitutional Law, and Human Rights Law.

Statement of the Problem

The Hague Conference on Private International Law (HCCH) has been seeking Malaysia's accession to the Hague Children's Conventions, namely:

- (1) The Hague Abduction Convention 1980
- (2) The Child Protection Convention 1996; and
- (3) The Child Support Convention, 2017.

- As a Muslim majority country, Malaysia's main concern will be whether the conventions are compatible with Shari'ah or not. Another crucial factor is the unique nature of Malaysia with its dual legal system and dual court system.
- On the basis of situation on the ground, it is necessary to decide whether Malaysia should accede to all or any one of the conventions and consider what law reforms Malaysia needs to be made should Malaysia decides to accede to the conventions.

Research Objectives

Research Objectives



```
graph LR; A[Research Objectives] --- B[To investigate the legal implications in Malaysia of parental and transboundary child abductions and related conflict of laws issues]; A --- C[To examine the compatibility of the Hague Children's Conventions with Shari'ah]; A --- D[To analyse the Hague Children's Conventions in the Malaysian context of the dual legal system of civil and Shari'ah]; A --- E[To advise the Government of Malaysia on the feasibility of adopting the Hague Children's Conventions and the necessary law reforms to be made];
```

To investigate the legal implications in Malaysia of parental and transboundary child abductions and related conflict of laws issues

To examine the compatibility of the Hague Children's Conventions with Shari'ah

To analyse the Hague Children's Conventions in the Malaysian context of the dual legal system of civil and Shari'ah

To advise the Government of Malaysia on the feasibility of adopting the Hague Children's Conventions and the necessary law reforms to be made

Experts' Roundtable Discussions

Day 1: Experts' Paper Presentations [152 participants]

Opening (Keynote) Speech

- Professor Dato' Sri Dr. Zaleha Kamarudin, Rector, International Islamic University Malaysia

Speaker 1

- Dr. Christophe Bernasconi, Secretary General of the Hague Conference on Private International Law (HCCH)

Speaker 2

- Mr. Frank Poon, Regional Representative for Asia and the Pacific for Hague Conference on Private International Law (HCCH)

Speaker 3

- Dr Arik Sanusi bin Yeop Johari, Director of Shari'ah Section, Attorney General's Chambers, Malaysia

Speaker 4

- Professor Dr. Abdul Ghafur Hamid, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia

Day 2: Breakup sessions and Roundtable Discussions

The participating experts include:

- Syariah High Court Judges
- Senior federal counsels, AG's Chambers
- State Legal advisers
- State religious affairs officers
- State Muftis
- Syariah Judiciary Departments
- Officers from Departments of Islamic Religious Affairs
- Human Rights Commission (SUHAKAM); Human Rights NGOs
- Ministry of Women Development, Family and Society
- Ministry of Home Affairs
- Academia

Four Roundtables and Four Themes

Roundtable 1

- Analysis of the Conventions in the context of the Law Reform (Marriage and Divorce) Act 1976, Child Act 2001, Penal Code, Criminal Procedure Code, Courts of Judicature Act 1964, Rules of Court 2012 and the Malaysian case law

Roundtable 2

- Analysis of the Conventions in the context of *Shari'ah* and Islamic Family Law Enactments

Four Roundtables and Four Themes

Roundtable 3

- Analysis of the Conventions in the context of the dual legal system (powers and jurisdiction of *Shari'ah* courts and Civil courts)

Roundtable 4

- Discussions on accession process, affected laws, matters relating to the designation of Central Authority and recommendations for the necessary law reforms.

Opinion Poll

- During the Roundtables, opinion poll forms were given to the participants to get their opinion on whether Malaysia should accede to the Hague Children Conventions, together with their reasons why they accept or reject.

Meeting of Shariah Experts

- It was a final brainstorming session of leaders of the Research team and specially invited Shariah experts headed by YBhg. Tan Sri Sheikh Ghazali b. Abd Rahman (former Shari'ah Chief Justice of Malaysia) at Sama Sama Hotel, KLIA.

Research Findings

The Experts Roundtable Discussions finally concluded that the Government of Malaysia **should not accede to the Hague Children's Conventions** due to the following reasons:

- 1) Some provisions of the conventions **cannot be accepted** as they are **incompatible with Syari'ah** and the conventions do not allow any substantive **reservations**;
- 2) A few provisions are also **incompatible with state laws** in various states of Malaysia. Accession therefore may **require amendments to the Federal Constitution** as well as **respective state Laws** and for that matter may **need to seek the assent of the Conference of Rulers**, which is a long and tedious process.

Recommendations

The RTD produced **two alternative suggestions** to solve the problem of cross border child abduction and child protection in case the Government of Malaysia decided not to accede to the Hague Children's Conventions:

- 1) To establish a division that would manage **Mediation or *Sulh*** under the **Attorney General's Chambers** and under a **Federal law**; and
- 2) To **establish a *Tahkim* or arbitration tribunal** to solve cases of cross border parental child abduction.

3. Challenges commonly faced by Malaysian researchers

Constant pressure for finding research grant and funding

- Scarcity of research grant and funding
- Highly competitive

Insufficient data

- Insufficiency of data is a potential problem. Most of the **government agencies are very reluctant to cooperate in data collection.** This is not so much to blame them as they are bound by the **Official Secrets Act.**

Challenges commonly faced by Malaysian researchers [Cont.]

Insufficient library facilities

- Due to budget cutting, the university libraries have **removed many databases and international journals and periodicals** from their order list.
- This **seriously affect the quality** of the data available for research.

Too Much Stress, Too Little Time

- Researchers face a significant **challenge in finding enough time** for all the activities necessary to conduct their research.
- They feel **tension between research, teaching, and administrative responsibilities.**

Challenges commonly faced by Malaysian researchers [Cont.]

Weak collaboration between academia and industry

- Industry (both government and private) must **respect the research capability of academia**.
- Need to have a systematic and effective **research collaboration** between academia and industry.

Poor acknowledgement of research outcomes

- Need to establish an **independent Law Reform Commission**; like LAW Commissions of the UK, Australia, Canada, India, and many other countries.

**Thank you
for your kind attention**