

# **Islamic Legal Education in Public Law Schools in Malaysia – Charting the Direction**

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## **Scope of the Paper**

This paper ventures into the various possibilities of making Islamic legal education in Malaysia compatible with the contemporary legal trend and issues. Being an Islamic State, there is a need to work within capable local environment to nurture greater degree of scholarship in Islamic law and qualified practitioners. Speaking from local experience, it concludes that broadening the scope of Islamic legal education is crucial in bridging the gaps towards understanding and harmony between shariah and civil (secular) law.

## **Islamic Law in Dualistic Legal System**

As other counterparts in Commonwealth countries, Malaysian legal system is deeply rooted in the common law, and entrenched into bulk of legislations and precedents. The common law tradition was once judicially construed to all branches of law applicable to locals. In the Straits Settlements, English judges endorsed the full-fledged common law reception having considered to the position of the states as *terra nullius*. Variably, in the Malay States, reception was effected through legislation.<sup>1</sup> Later, the Malaysian Civil Law Act 1956<sup>2</sup> inserted 'saving provisions' that English common law and equity is applicable only to fill the vacuum in law or in the absence of written law in force. Should English law applied, it shall pass the test of suitability (appropriateness?) to local circumstances. The extent of English law application has led the country to the future roadmap – that is to introduce Malaysian Common Law.<sup>3</sup>

Occupation of British, inevitably to say, has marginalized the application of Islamic law into Muslim personal law, and directly attributed to the limitation of Shariah Court jurisdiction in Malaysia. Both Civil Court and Shariah Court are created by the Federal Constitution, hence jurisdiction and power of the respective courts are defined by the same.<sup>4</sup> Shariah Court works side by side with its civil counterparts. Being a State Court,

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<sup>1</sup> Salleh Buang, *Malaysian Legal History: Cases and Materials*, Dewan Bahasa dan Pustaka, Kuala Lumpur, 2002.

<sup>2</sup> Section 3(1), s. 5(1) of the Civil Law Act 1956. For critical analysis about the British implant on the framework of Malaysian Constitution, see Abdul Aziz Bari, *British Westminster System in Asia-The Malaysia Variation*, US-China Law Review, January 2007, Vol.4, No. 1 Serial No. 26.

<sup>3</sup> The realization of Malaysian Common Law might prolong due to many constraints and pending conflicts taking into account the divisive political parties, cross-religion issues and etc.

<sup>4</sup> List I (Federal List) and List II, Ninth Schedule (State List) of the Federal Constitution. For greater analysis see Farid Sufian, *Jurisdiction and Power of Shariah Courts in Malaysia*, 2003, Malayan Law Journal, Kuala Lumpur, pp.7-24

however, does not forbid the Constitution from appreciating the special position of Islam,<sup>5</sup> freedom of religion<sup>6</sup> and other position associated with the religion of Islam.

On matters relating to capacity building, two federal governmental agencies are created – that are the Department of Shariah Judiciary Malaysia<sup>7</sup> and few special Units under the purview of the Attorney General's Chambers of Malaysia.<sup>8</sup> Both departments bring together local and foreign experts for consultation on regular basis. Following widespread practice of Islamic law in Islamic banking and finance law, the latter is currently putting the existing legislation under review. Indeed, graduates from premier public law schools are preferred due to their mastery of subject matter and high proficiency in Arabic and English.<sup>9</sup>

The need of having qualified personnel in Islamic law is increasingly demanding in the global market. Nik Ahmad Kamal<sup>10</sup> observed that:

Though Islamic law is applied to limited subject matter, it should be overestimated as more than 50 percent of the population is Muslim and use Islamic law. An amendment to the Federal Constitution that gave the Shariah Court exclusive jurisdiction over all matters pertaining to Islamic law reiterates its importance and status.

Following similar line of arguments, Farid Sufian echoed:

The ability of Muslim to exercise their right to have Islamic law applied to them, to certain extent, depend on the existence of a court system that is able to administer Islamic law. In the Malaysian context, the most able court system to do that is the Shariah Court system mainly because it possesses the qualified personnel Islamic law.<sup>11</sup>

Should Islamic legal education reach the genuine framework, this would in turn enrich the range of expertise in all fields of law in Islamic context. Whilst legal practice mainly deals with corporate and banking law (in which Islamic application is limited), learning Islamic law and Islamic Jurisprudence (*Usul Fiqh*) probably significant in other emerging legal and non-legal areas (ethics and bioethics, policy guidelines, best practices and etc).

## **Islamic Legal Education in Public Law Schools**

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<sup>5</sup> Article of 3(1) of the Federal Constitution

<sup>6</sup> *ibid*, Article 11(1), (3).

<sup>7</sup> The Department has successfully marked effort on the standardization of Islamic law throughout all states in Malaysia and enhance capacity building within the structure of Syariah judicial system

<sup>8</sup> The Attorney General's Chambers of Malaysia has already created three Units to strategize development in Islamic law in Malaysia, particularly Islamic Family Law and Shariah Judicial System Development Unit, Islamic Banking and Finance Unit, and Interaction and Harmonization Unit.

<sup>9</sup> For further reading on fundamentals, constraints and challenges in Islamization of legal education, read Abdul Aziz Bari, *Legal Education and Islamization* (1997) 7 IIUM L.J.

<sup>10</sup> Nik Ahmad Kamal Nik Mahmud, *The Importance of Understanding and Teaching Islamic Law in Asia*, Asian Journal of Comparative law Vol. 1, Issue 1, 2006: 13-14.

<sup>11</sup> Farid Sufian, *Jurisdiction and Power of Shariah Courts in Malaysia*, 2003, Malayan Law Journal, Kuala Lumpur.

There were two courses offered on Islamic law in Malaysian law schools - that were historical development and sources of Islamic law, and the other that encompassed perfunctory principles of Muslim personal law and Islamic criminal law.<sup>12</sup> Elective courses including Islamic Jurisprudence and Islamic Banking are available in their third and final year of law studies. Given the preferred purpose of getting the law degree recognized for professional practice, the syllabus content and delivery of Islamic law courses were very minimal, superficial and introductory in many law schools.

At least, there are two law schools<sup>13</sup> that have offered other branches of Islamic law. As expounded in those university missions and goals, prospective graduates are expected to be Muslim professionals who are well grounded with exposition Islamic revealed knowledge into contemporary world. Courses offered are varied, but of practical significance to the future carrier and for those pursuing postgraduate level. Irrespective of compulsory or elective papers, the curriculum is always at its best seeks to present comparative analysis whenever possible. This would help student assess the merit, suitability and flexibility of Islamic law in critical way.

In addition, adequate understanding about other legal traditions, without any doubt, is of major importance to strike the balance between argumentative reasoning of adopting certain legal principles and peculiarities subsisting therein. Rather than being defensive, students will be able to synthesize the extent of compatibility of other legal system to principles subscribed under Islamic law. Advocating such approaches also enable Islamic law to gain better respects and confidence in the secular systems. In doing so, it will not only restore the originality of Islamic law, but also make Islamic legal system acceptable to Western readers as the secular system are acceptable to Muslim world.<sup>14</sup>

In terms of teaching methodology, the traditional didactic method of teaching and dogmatic approach of teacher can become barren and purely intellectual exercise in Islamic law teaching.<sup>15</sup> As Islamic law constitutes substantial component in professional law program, shifting the existing paradigm are necessary. By any account, there should be deducted approach in which the theoretical framework of Islamic law is applied into specific real life issues. In what is termed as 'professionalization', the teaching methodology of Islamic law:

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<sup>12</sup> Nik Ahmad Kamal Nik Mahmud, *The Importance of Understanding and Teaching Islamic Law in Asia*, Asian Journal of Comparative law Vol. 1, Issue 1, 2006: 9. There are currently six law schools in public universities in Malaysia – that are University of Malaya, Universiti Kebangsaan Malaysia, International Islamic University of Malaysia, University Teknologi MARA, Islamic Science University of Malaysia and Universiti Utara Malaysia.

<sup>13</sup> Ahmad Ibrahim Kulliyah of Laws, International Islamic University of Malaysia (established since 1985) and Faculty of Shariah and Law, Islamic Science University of Malaysia (created since 2000). The Bachelor of Shariah and Law (with Honours) is only offered since 2005. Prior to that, the Faculty offered Bachelor of Shariah and Judiciary (with Honours).

<sup>14</sup> Mohammad Tahir Mohammad, *Rights and Duties in Shariah and Common Law*, 2003, Ilmiah Publisher, Kuala Lumpur, pp. 334-335.

<sup>15</sup> Nik Ahmad Kamal Nik Mahmud, *The Importance of Understanding and Teaching Islamic Law in Asia*, Asian Journal of Comparative Law, Vol. 1, Issue 1, 2006. For further reading, see Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 2007, Second Revised Edition, Kuala Lumpur, Ilmiah Publisher.

...should contain minimum academic standard for Islamic practitioners worldwide, whilst at the same time allowing local variations in courses and course contents. *The professionalization of Islamic law education should also produce a class of Islamic law practitioners whose competence would be recognized anywhere in the world* (emphasis added).<sup>16</sup>

Having regard to the need for development of such practice, the Faculty of Shariah and Law (Islamic Science University of Malaysia), offers its law degree as a double major program – that there is a fusion of shariah and legal studies under one faculty. Whilst in other public law schools law degree is a four-year program, the Bachelor of Shariah and Law (with Honours) takes five-year primarily due to high concentration on both disciplines of knowledge. As the program outcomes<sup>17</sup> may demonstrate, at the end of the course students should be able:

- a) To gain the mastery of knowledge in both Syariah and Civil law at the ultimate level of understanding and of high capability to apply those knowledge into real life problems;
- b) To identify, analyze and suggest workable solution to the contemporary issues related to Syariah and civil law;
- c) To compare the principles and practices of Syariah and civil law, in which the aim towards harmonization of both legal system are feasible;
- d) To assess the suitability and flexibility of principles and practices subsisting in Syariah and Civil law with the local conditions;
- e) To understand the functions, roles, procedures and practices in Syariah and Civil law judicial and legal system;
- f) To be highly proficient in three major languages - Malay, Arabic and English and present reasoned arguments suitable to the level of audience;
- g) To utilize available sources and modern technology effectively in the provision of legal skills and practice, to demonstrate high teamwork spirit, good leadership values and is willing to improve knowledge and skills.
- h) To understand and practise professional responsibilities, ethics and etiquette, noble character according to Islamic guidelines.

Being the first of its kind ever designed in Malaysia, our shariah and law degree describes the importance of teaching shariah and law in preparing students in the judicial and legal profession (and other related profession). During the early stage of consultation, the appointed members of Program Advisory Panel generally supported the idea of having the degree to bridge the dichotomy of shariah and law into better understanding. To stimulate

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<sup>16</sup> Abdulmumini Adebayo Oba, *Islam, the West and Human Rights: Towards Reconciling the Divergences*. Paper presented at the International Conference on Harmonization of Shariah and Civil Law, International Islamic Law University Malaysia, Kuala Lumpur, 29-30 June 2005. See also in general about current trend of legal education in Asia, Cheng Han Tan (leading author), *Legal Education in Malaysia*, Asian Journal of Comparative Law, Vol. 1, Issue 1, 2006.

<sup>17</sup> The program outcomes are modified from Criteria and Standards for Programs in the Field of Shariah and Law Education, Quality Assurance Division, Department of Higher Education, November 2002. Starting December 2005, quality assurance practices and accreditation of national higher education is monitored and overseen by the Malaysian Qualifications Agency (in effect of the merger of National Accreditation Agency and Quality Assurance Division in December 2005).

interaction, both legal systems are taught in comparative manner either under single course or two different courses. Pure Shariah subjects are taught in Arabic by those specialized in Shariah studies, whereas Islamic-oriented law courses are taught in English. Amongst the Islamic law courses offered as follows:

<b>Courses</b>	<b>Synopsis</b>
Islamic Constitutional and Administrative Law	It deals with the constitutional principles in Islam, basic features of an Islamic State, historical analysis on Constitution of Madinah and its suitability in Islamic modern theory in Malaysian context and other countries like Saudi Arabia, Iran and Pakistan. It also looks into the definition of constitutional and administrative law, principles of <i>syura</i> (reaching decision through discussion) and fundamental human liberties, equality and social justice, supremacy of Shariah, obedience to the governor and people responsibility, prohibition to corruption of power, protection of minority and non-Muslims. It also looks into the role of political science and public law in forming system of administration.
Islamic Law of Banking and Takaful (Insurance)	The course describes the background of banking, guidelines and practices of Islamic banking. Discussion of Islamic banking introduces students to principles of transaction, contracts and Islamic banking products including deposit service, financing services, trade financing (letter of credit based on the concept of <i>wakalah</i> , <i>musharakah</i> , and corporate financing (syndicate financing, securitization and Islamic bonds). Special features of Islamic banking and conventional banking are compared. Students are also introduced to the concept of Islamic insurance, its management system in the Malaysian context, security and mutual responsibility, variety of products (under family insurance and general insurance), application of interest concept. It will also examine the comparison between Islamic insurance (takaful) and conventional insurance from aspects of interests, gambling, risks, uncertainties and exploitation. References are made to the Islamic Banks Act 1983, Takaful Act 1984.
Islamic Law of Tort	The course relates with civil responsibility of a person over others. It introduces the concepts, jurisdiction and development of Islamic law of tort. Discussion covers liability on the property injury, personal injury, occupier's liability, professional negligence in economic standpoints, construction and medical profession, trespass of land and defamation. It also explains the role of <i>hisbah</i> , available and remedies from Islamic viewpoints such as compensation and damages.
Islamic Land Law	It introduces students to the laws related to land from Islamic perspectives. As such, it examines on the historical background of Islamic land law, development of Islamic law and civil law in respect of land law, applicable customary laws, administration of land in Malaysia, the legal position of reserved land and

	conformity of the legal provisions in the National Land Code 1965 to the Islamic principles – leasehold, recognition of land reversion, land dealing and transaction, special provision on <i>waqf</i> (charitable trust) and preemption rights.
Islamic Law of Property	This course introduces legal aspects, administration of property in Malaysia with reference to inheritance, wills, gifts, matrimonial property, nominee property and saving property. It specifically discusses how inheritance and wills are governed amongst Muslims and applicable in Malaysia including law of probate and administration of property, customary practice. It further focuses on administration of <i>zakat</i> (almsgiving) and <i>Baitul Mal</i> (Islamic Treasury Institution) and their role in developing economic capacity amongst Muslim in Malaysia.

Equipped with eight (8) generic skills outlined by the Malaysian Ministry of Higher Education and partial adoption of Clinical Legal Education (CLE) into curriculum, the Faculty is committed to lead more integrated and analytical approach. Following the newly established Committee of Excellence in Teaching and Learning, teaching methodology of all Islamic law and civil law courses are currently under review. It is certainly a daunting task to academics as mentioned by Nik Ahmad Kamal because:

They are a rare species, and although the number is increasing, most of them are young and inexperienced. Given a few more years, the experience and confidence will make them major player in the process of harmonization and integration of Islamic and civil jurisprudence.<sup>18</sup>

### **Reflection for Future Roadmap**

The real truth is the judicial and legal profession in Malaysia is still heavily subscribed to the civil law. Nevertheless, liberalization of trade in the global market is creating high prospects and potentials for Islamic law to flourish. Islamic legal education, in turn, must be reflected to keep abreast with this emerging trend. The legal fraternity also need to be equally supportive to the mission of education – graduates are not only meant to serve industry; rather of preparing graduates of world class standard in terms of their knowledge and adaptability to any kind of environment. In the Malaysian context, tripartite and interlinked relationship – law schools, professional bodies and government, is important so that policy or direction pertaining to legal education will be a shared goal.

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<sup>18</sup> Nik Ahmad Kamal Nik Mahmud, *The Importance of Understanding and Teaching Islamic Law in Asia*, Asian Journal of Comparative Law, Vol. 1, Issue 1, 2006: 11.