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THE TRAINING, APPOINTMENT, AND SUPERVISION OF ISLAMIC JUDGES IN MALAYSIA

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Abstract: Shari'a court judges and the decisions they make clearly have an effect on the interpretation and application of Islamic law in contemporary Muslim societies, and the educational background of those who staff these courts obviously informs the way they understand, interpret, and apply the law. To date, however, little research has been done on the educational processes by which judges who serve on Islamic courts are trained to think about Islamic law. Likewise, the means by which Islamic court judges are appointed and regulated has received little scholarly attention. This article offers a descriptive overview of the training, work, and professional regulation of Shari'a (or "Syariah") court judges in contemporary Malaysia, presented in a clear format structured to highlight key aspects of how these judges are trained, accredited, and organized. In doing so, this article not only presents new empirical data on an increasingly important class of legal professionals, but also facilitates comparative reflections on their work in relation to that of their colleagues practicing before Shari'a courts in the neighboring countries of Indonesia and Singapore.^{††}

I. INTRODUCTION

Malaysia has a federal structure comprised of thirteen states and the Federal Territories of Kuala Lumpur, Labuan, and Putrajaya. Lawmaking in the federation is divided between the central government and the governments of the states.¹ The constitution assigns legislative authority over most subjects to the federal government, but it also grants the states the power to legislate in certain defined areas, including on matters of Islamic law.²

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^{††} In accordance with the policies of the *Pacific Rim Law & Policy Journal*, foreign words that have entered common English usage will not be italicized. Foreign words that are not in common usage will be italicized. Arabic words will not use diacritical marks such as macrons. However, apostrophes and reverse apostrophes will be employed to signal the letters *hamza* and *'ayn*, respectively. "Syariah," the Malaysian equivalent of "Shari'a," is generally used in this article.

¹ PERLEMBAGAAN MALAYSIA [CONSTITUTION] Aug. 27, 1957, sched. 9, list I (Federal List), list II (State List).

² *Id.* sched. 9, list II (State List).

The distribution of lawmaking power is mirrored in the structure of the Malaysian judiciary. Questions of federal law are heard by a nation-wide system of “civil courts” whose pedigree is traceable to common law courts created by the British colonial authorities.³ In addition to the system of civil courts, each of the states and federal territories maintain a system of Syariah courts with jurisdiction over matters governed by Islamic law as enacted by the states.⁴ During the colonial era and for three decades following independence, decisions of the state Syariah courts were subject to review in the civil courts.⁵ A constitutional amendment approved in 1988 declared that the civil courts “shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts.”⁶ With this change, each of the fourteen Syariah court systems is a self-contained and autonomous structure.

The administration of Islamic law was placed under the jurisdiction of the states.⁷ The 1957 Federal Constitution, which is the highest law of the federation, provides that matters pertaining to Islamic law are within the legislative power of the state’s legislature in which each state will have its own statutes and Syariah courts.⁸ The country is divided into thirteen states and a fourteenth unit called the Federal Territories (containing the territories of Kuala Lumpur, Labuan, and Putrajaya) which is under federal jurisdiction.⁹ The courts’ structures are outlined in the Administration of Islamic Law Enactments of the respective states and the 1993 Administration of Islamic Law Act for the Federal Territories, which provide for three principal authorities with three separate functions: the Majlis Agama Islam (Council of the Muslim Religion, or “Majlis”), the Mufti, and the Syariah courts.¹⁰ Each authority is accountable to the ruler of each state.¹¹ For the purpose of this study, reference is made to statutory law in the Federal Territories where the provisions are in *pari materia* with those of the states.

³ *Id.* art. 74, sched. 9, list I (Federal List).

⁴ *Id.* sched. 9, list II (State List).

⁵ *See, e.g.*, Myriam v. Mohamed Ariff, 1 MLJ 265 (1971) (asserting authority to review decisions of Syariah trial courts); *accord* Tengku Mariam & Anor v. Commissioner for Religious Affairs, Terengganu & Ors [1969] 1 MLJ 265.

⁶ PERLEMBAGAAN MALAYSIA [CONSTITUTION] Aug. 27, 1957, art. 121(1A).

⁷ *Id.* sched. 9, list II (State List).

⁸ *Id.*

⁹ *Id.* sched. 9, list I (Federal List).

¹⁰ Administration of Islamic Law (Federal Territories) Act 1993, Act 505 of 1993, § 4 (establishing the Majlis), § 32 (providing for appointment of *mufti*), § 40 (constituting Syariah courts).

¹¹ Prior to the amendment, both the office of the Mufti and the Syariah courts were subject to the Majlis and accountable to the head of the Islamic Religious Department.

II. BACKGROUND

The current structure of the Islamic judiciary in Malaysia is the result of a nationwide restructuring that began in the 1980s. Over the course of the 1980s and 1990s, each of the states and the Federal Territories enacted legislation governing the jurisdiction's Islamic judiciary. These acts established a three-tiered Syariah court structure that mirrors the structure of Malaysia's system of civil courts.¹² The lowest court in the hierarchy is the Syariah subordinate court. This is the court of first instance for most matters and consists of a single judge called a Syariah subordinate court judge.¹³ The Syariah high court has supervisory and revisionary jurisdiction over all Syariah subordinate courts, either through its own motion or upon the application by an interested party.¹⁴

Like the subordinate court, the high court consists of a single judge with the title "Syariah Judge."¹⁵ The Syariah Court of Appeal is comprised of a panel of three judges consisting of the Chief Syariah Judge and two judges selected from standing panels.¹⁶ The Court of Appeal hears appeals from both of the lower courts in both criminal and civil cases.¹⁷ Decisions by the Syariah Court of Appeal are final.

In each of the states the Syariah judiciary is headed by the chief Syariah judge of the respective state.¹⁸ The chief Syariah judge is directly responsible to either the sultan of the respective state or to the Yang di-Pertuan Agong (in the case of states which are not governed by sultans).¹⁹ Supervisory authority at the federal level is assigned to the Department of Syariah Judiciary.²⁰ The Department also seeks to promote coordination and uniformity in the administration of Islamic law throughout the country.²¹ The Department does not, however, have any binding power over the individual states, which retain ultimate authority over their own systems.

¹² Ahmad Mohamed Ibrahim, *The Introduction of Islamic Values in the Malaysian Legal System*, 41 *Jurnal IKIM* [Journal of the Institute of Islamic Understanding Malaysia] 27 (1994).

¹³ Administration of Islamic Law (Federal Territories) Act 1993, Act 505 of 1993, § 47(1).

¹⁴ *Id.* § 51.

¹⁵ *Id.* § 46(1).

¹⁶ *Id.* § 42/41.

¹⁷ *See, e.g., id.* § 48; Enakmen Pentadbiran Agama Islam (Negeri Selangor) 2003 [Administration of the Religion of Islam (State of Selangor) Enactment 2003], Enactment 1 of 2003, §§ 56-59.

¹⁸ Enakmen Pentadbiran Agama Islam (Negeri Selangor) 2003 [Administration of the Religion of Islam (State of Selangor) Enactment 2003], Enactment 1 of 2003, §§ 56-59.

¹⁹ Administration of Islamic Law (Federal Territories) Act 1993, Act 505 of 1993, §§ 3, 43-44 (describing *Yang di-Pertuan Agong* as "Head of the religion of Islam in the Federal Territories").

²⁰ Department of Syariah Judiciary Malaysia, JKSM Profile, <http://www.esyariah.gov.my/> (last visited Oct. 9, 2011).

²¹ *Id.*

III. EDUCATIONAL QUALIFICATIONS FOR APPOINTMENT AS A JUDGE

A. *What Academic Degrees Qualify a Person for Appointment as a Judge?*

The qualifications for judges on the Syariah courts and the procedures for appointment of judges are set forth in the statutes on the administration of Islamic law for the Federal Territories and each of the various states. Although the details differ from one jurisdiction to another, the discussion here will focus primarily on the Federal Territories as representative of the general pattern elsewhere.²²

The formal power to appoint Syariah judges belongs to the traditional head of religion in those states that have hereditary rulers, and to the head of state in those that do not.²³ In the Federal Territories, the formal appointment of Syariah judges is by the head of state of Malaysia, the Yang di-Pertuan Agong, who is elected from among the hereditary rulers.²⁴ In the Federal Territories, for example, the Chief Syariah Judge, Syariah high court judges, and the Syariah Court of Appeal judges are appointed by the Yang di-Pertuan Agong on the advice of the minister responsible for Islamic affairs, after consulting the Majlis.²⁵ Syariah subordinate court judges are appointed by the Yang di-Pertuan Agong on the recommendation of the Chief Syariah Judge. In the state of Selangor, the sultan appoints judges to the Syariah High Court on the advice of the Majlis and after consulting with the Chief Syariah Judge.²⁶

The Administration of Islamic Law Act that governs the appointment of Syariah court judges in the Federal Territories does not expressly require any educational qualifications for judges. In practice, however, appointment to the Syariah courts there and in other parts of Malaysia is open only to

²² See Donald L. Horowitz, *Qur'an and the Common Law: Islamic Law Reform and the Theory of Legal Change*, 42 AM. J. COMP. L. 233 (1994); Kikue Hamayotsu, *Politics of Syariah Reform: The Making of the State Religio-Legal Apparatus*, in MALAYSIA: ISLAM, SOCIETY AND POLITICS (Virginia Hooker & Norani Othman eds., 2003) (both noting that there is substantial similarity across states and federal territories in regulation of Syariah law procedures).

²³ Nine states—Johor, Kedah, Kelantan, Negeri Sembilan, Pahang, Perak, Perlis, Selangor and Terengganu—have hereditary rulers. In all but two of these states the hereditary ruler holds the title of “Sultan.” In Negeri Sembilan the ruler is called the “Yang di-Pertuan Besar,” and in Perlis the ruler is the Raja. Malacca, Penang, Sabah and Sarawak do not have hereditary rulers. Their head of state is referred to as “Yang di-Pertuan Negeri.”

²⁴ Administration of Islamic Law (Federal Territories) Act 1993, Act 505 of 1993, §§41-44.

²⁵ *Id.* §§ 41-43.

²⁶ Enakmen Pentadbiran Agama Islam (Negeri Selangor) 2003 [Administration of the Religion of Islam (State of Selangor) Enactment 2003], Enactment 1 of 2003, § 38.

those who have obtained at least a bachelor's degree.²⁷ This is because judges are appointed from the ranks of the civil service, and the basic educational qualification required for appointment as a Syariah officer within the civil service is a bachelor's degree.²⁸ This degree may be obtained from any recognized institution of higher education either in Malaysia or abroad.²⁹ In addition to the required bachelor's degree, however, candidates for a position on the Syariah court must obtain a professional qualification in the form of either a postgraduate professional diploma from the International Islamic University or another recognized institution, or a double degree in both law and Syariah, called an "LL.B. in Syariah."³⁰

The qualifications for appointment as a Syariah judge in the Federal Territories are contained in the Administration of Islamic Law Act passed in 1993. Under the Act, appointment to the Syariah high court requires, in addition to Malaysian citizenship, that the person 1) have at least ten years' experience as either a judge of a Syariah subordinate court, a *kathi (qadi)*, a registrar, or a Syariah prosecutor, and 2) be "learned in Islamic law."³¹ With respect to judges of the Syariah subordinate court, the Act states simply that the appointee should be from among "members of the general public service of the Federation."³² Similarly, in the State of Selangor, appointees to the Syariah court must have at least ten years experience as a Syariah lawyer (*peguam syarie*), a prosecutor, a registrar, or a member of the Syariah courts, and be learned in Islamic legislation.³³ Syariah subordinate court judges are appointed from the general public service or the Syariah Judicial Legal Service.³⁴

B. *What Institutions Offer Degrees That Qualify a Person to Act as a Judge?*

The first professional diploma program for Syariah officers was created in the 1980s under the leadership of Professor Ahmad Ibrahim in the

²⁷ Surat Pekeliling Perkhidmatan Bilangan [Judicial and Legal Service Circular], No. 4 of 2002, available at http://www.eghrmis.gov.my/wp_content2/pekeliling/PP02/PP02Bil04/pp0204.pdf.

²⁸ See Syariah Judicial and Legal Service Scheme, Pekeliling Bilangan 9 Tahun 1991, JPA(S)256/21/Klt. 2(191).

²⁹ Most of them graduated from the University of Al Azhar in Egypt, public universities, selected private universities in Jordan, and selected higher education institutions in Indonesia.

³⁰ Judicial and Legal Service Circular, *supra* note 27.

³¹ Administration of Islamic Law (Federal Territories) Act 1993, Act 505 of 1993, § 43.

³² *Id.* § 44.

³³ Enakmen Pentadbiran Agama Islam (Negeri Selangor) 2003 [Administration of the Religion of Islam (State of Selangor) Enactment 2003], Enactment 1 of 2003, § 58.

³⁴ Administration of Islamic Law (State of Selangor) Act 1989, Act 2 of 1989, § 38.

Kulliyyah of Laws at the International Islamic University of Malaysia (“IIUM”), which offers a bachelor’s degree in Syariah.³⁵ The program was established in order to provide professional training to serving officers of the Syariah courts. In the years since IIUM established its program, other Malaysian universities have also developed professional qualification courses for Syariah court judges.³⁶ The universities currently offering such programs include the National University of Malaysia (UKM), the Academy of Islamic Studies, the University of Malaya, and the Law Faculty of Mara University of Technology.

While most Syariah judges have completed a diploma program, it is also possible to qualify for the position of Syariah judge through law programs that integrate both secular and Islamic training. One such program is IIUM’s LL.B. course.³⁷ The LL.B. curriculum is designed in such a way that civil law subjects are taught parallel to Islamic law subjects, providing students with training in both disciplines. In addition to IIUM, the Faculty of Syariah and Law at the Islamic Science University of Malaysia (“USIM”) offers its law degree as a double major program that can be completed in five years.³⁸ Like IIUM, the students in the USIM program study the Syariah and civil law simultaneously.

C. *Are the Institutions That Train Judges State or Private Institutions?*

To date, the institutions that offer programs leading to the professional qualification to serve as a Syariah court judge are all public universities located in Malaysia. Each institution designs its own curriculum, and the curricula therefore vary slightly. The programs must, however, fulfill the requirements established by the Malaysian Qualification Agency, a body that oversees all academic programs in public and private educational institutions.³⁹ The Agency imposes certain compulsory courses as minimum requirements for professional qualification programs, and the standards the

³⁵ *Bachelor of Law Shariah (Hons.) LL.B.S. Programme Description*, INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA, [hereinafter IIUM] <http://www.iium.edu.my/aikol/programmes-courses/undergraduate-programmes/bachelor-law-shariah-llbs> (last visited Oct. 12, 2011).

³⁶ See, e.g., *General Information: Programmes Offered*, ACADEMY OF ISLAMIC STUDIES, UNIVERSITY OF MALAYA, http://apium.um.edu.my/programs/under/under_home.html (last visited Oct. 12, 2011).

³⁷ See IIUM, *supra* note 35.

³⁸ See *List of Programme*, ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA, http://www.usim.edu.my/usimweb/en/index.php?option=com_content&view=article&id=110&Itemid=174 (last visited Oct. 12, 2011).

³⁹ For information on the Malaysia Qualifications Agency see the official website of Malaysian Qualifications Agency, <http://www.mqa.gov.my/> (last visited Oct. 24, 2011).

agency establishes are closely monitored by the Department of Syariah Judiciary of Malaysia (Jabatan Kehakiman Syariah Malaysia or “JKSM”).⁴⁰

D. What Is the Content of Educational Programs for Islamic Judges?

There are several universities with programs that provide qualifications for appointment as a Syariah judge, and the curriculum of the different programs varies slightly from one university to another. For instance, institutions such as the National University of Malaysia and the University of Malaya produce graduates with bachelor’s degrees in Syariah, where most of the curriculum is comprised of Islamic subjects. The discussion here will focus on three programs offered by the International Islamic University of Malaysia: the Diploma in Law and Administration of Islamic Judiciary (“DAIJ”), the LL.M. in Administration of Islamic Law (“LL.M.-AOIL”), and the LL.B. Syariah double degree program.⁴¹

E. How Long Is the Course of Study?

The DAIJ is offered on both a full-time and part-time basis to individuals who have obtained a bachelors degree in Syariah.⁴² Completion of the program takes one year for students enrolled full time and eighteen months (three semesters) for students enrolled part time.⁴³

The LL.B. Syariah degree is only offered to IIUM graduates who have completed four years of the LL.B. program in the Syariah stream.⁴⁴ Completion of the LL.B. requires one additional year.

Like the DAIJ program, the LL.M.-AOIL is offered on both a full-time and part-time basis.⁴⁵ The course requires one year for students

⁴⁰ MALAYSIA QUALIFICATIONS AGENCY, PROGRAMME STANDARDS: LAW AND SYARIAH (2008), available at [http://www.mqa.gov.my/garispenduan/Law and Syariah_201006.pdf](http://www.mqa.gov.my/garispenduan/Law%20and%20Syariah_201006.pdf).

⁴¹ IIUM, *supra* note 35, *Programmes and Courses*, http://www.iium.edu.my/programmes-courses#pg_law (last visited Oct. 12, 2011) (click on “undergraduate” and “postgraduate” links. Then click the “law” link to view Syariah degrees).

⁴² IIUM, *supra* note 35, *Diploma in Law and Administration of Islamic Judiciary: Programme Description*, <http://www.iium.edu.my/hmhlawcentre/programmes-courses/postgraduate-programme/diploma-law-administration-islamic-judiciary-> (last visited Oct. 12, 2011).

⁴³ IIUM, *supra* note 35.

⁴⁴ IIUM, *supra* note 35, *Bachelor of Law Shariah (Hons.) LL.B.S.: Programme Description*, <http://www.iium.edu.my/aikol/programmes-courses/undergraduate-programmes/bachelor-law-shariah-llbs> (last visited Oct. 12, 2011) (stating that “[s]tudents who have successfully completed the LL.B. programme and who have demonstrated advanced proficiency in Arabic are eligible to transfer all their credit hours from the first degree to enroll in this programme” and that “[i]n this programme, students are required to take additional credit hours of Shari’ah courses, which will be conducted in Arabic”).

⁴⁵ IIUM, *supra* note 35, *LL.M. in Administration of Islamic Law: Programme Description*, <http://www.iium.edu.my/hmhlawcentre/programmes-courses/postgraduate-programme/llm-administration-islamic-law> (last visited Oct. 12, 2011).

enrolled full time and three semesters for students who attend part time while working in the Syariah service.⁴⁶

F. *What Language Abilities Are Required for the Awarding of a Degree, and What Are the Languages of Instruction?*

Students in all three programs offered by IIUM are expected to express themselves well in Bahasa Malaysia—the national language, Arabic, and English.⁴⁷ The medium of instruction for the DAIJ program is Bahasa Malaysia.⁴⁸ The fifth year of instruction in the LL.B. Syariah program focuses on the study of Islamic law texts, and the medium of instruction is Arabic.⁴⁹ The LL.M. program is offered to both Malaysian and foreign students, and is taught in English.

G. *What Subjects Are Included in the Curriculum?*

Most of the subjects offered in all three programs are Islamic law subjects, as the main purpose is to serve the needs of the Syariah courts.⁵⁰ The difference in emphasis in the three programs reflects the fact that they were designed for students entering the respective programs with differing educational backgrounds.

The curriculum for the DAIJ emphasizes Islamic law as applied in the Malaysian legal system. Students are required to take courses on procedural law, including Syariah civil court procedure, Syariah criminal procedure and Syariah evidence.⁵¹ This is because students in the diploma program would not have been exposed to these subjects in their undergraduate Islamic studies programs. A course on the Malaysian legal system is also compulsory. This is to serve the needs of students who have graduated from Middle Eastern universities and have not been exposed to Malaysian law.

⁴⁶ *Id.*

⁴⁷ The Syariah courts occasionally have to conduct proceedings in English. However, a court interpreter is made available when other languages are in use.

⁴⁸ IIUM, *supra* note 35; *Diploma in Law and Administration of Islamic Judiciary: Programme Description: Courses*, <http://www.iium.edu.my/hmhlawcentre/programmes-courses/postgraduate-programme/diploma-law-administration-islamic-judiciary-> (last visited Oct. 12, 2011).

⁴⁹ IIUM, *supra* note 35, *Bachelor of Law Shariah (Hons.) LL.B.S.: Programme Description*, <http://www.iium.edu.my/aikol/programmes-courses/undergraduate-programmes/bachelor-law-shariah-llbs> (last visited Oct. 12, 2011) (“In this programme, students are required to take additional credit hours of Shari’ah courses, which will be conducted in Arabic”).

⁵⁰ See AHMAD FAUZI ABDUL HAMID, ISLAMIC EDUCATION IN MALAYSIA 48 (2010), available at <http://www.rsis.edu.sg/publications/monographs/Monograph18.pdf>.

⁵¹ IIUM, *supra* note 35, *Programme Description: Courses*, <http://www.iium.edu.my/hmhlawcentre/programmes-courses/postgraduate-programme/diploma-law-administration-islamic-judiciary->.

The DAIJ program also includes courses on legal texts dealing with the treatment of matters relevant to the application of Islamic law in the *fiqh* (Islamic jurisprudence) literature, Islamic family law, management of Muslim estates, Islamic legal maxims, research methodology, and moot court.

Students entering the fifth year of the LL.B. Syariah program will have already completed four years of law studies, and the curriculum in the fifth year therefore focuses on Islamic law subjects at an advanced level.⁵² While the emphasis is on the reading of classical texts, the courses in the program also address issues relevant to the contemporary application of Islamic law in Malaysia. For example, the curriculum includes two semesters of Syariah evidence and procedure, Islamic banking and finance, and a course entitled “*Maqasid Syariah Fiqh al Zakat* (Philosophy of the Islamic Law of Obligatory Charitable Giving) and Contemporary Issues.” Other courses in this program cover the subjects of *siyasa shariyya* (governance in accordance with the Shari’a), *asbab al-ikhtilaf* (reasons for disagreement between scholars of Islamic law), *fiqh al-muqarana* (comparative Islamic jurisprudence), *ayat al-ahkam wa ahadith* (commentaries on the *hadith*), *usul al-fiqh* (theories and methods of Islamic legal interpretation), and legal texts.⁵³

Students entering the LL.M.-AOIL program will have received extensive training in Islamic law, and Islamic law topics in this program are therefore presented at an advanced level.⁵⁴ The program also includes courses on the contemporary administration of Islamic law in Malaysia such as legal method, alternative dispute resolution, legal writing, and a course on conflict of laws between Syariah and civil law in Malaysia.⁵⁵ The LL.M.-AOIL program also includes a course entitled “International Law and its Impact on Administration of Islamic Law.”⁵⁶ This course is designed to ensure that Syariah officers have a basic understanding of international instruments that bear on the administration of Islamic law in Malaysia.⁵⁷

⁵² See generally, IIUM, *supra* note 35, *Bachelor of Law Syariah (Hons.) LL.B.S.*, <http://www.iium.edu.my/aikol/programmes-courses/undergraduate-programmes/bachelor-law-shariah-llbs>; for the curricular requirements of the prerequisite LL.B. program, see *Bachelor of Law (Hons.) LL.B.*, <http://www.iium.edu.my/aikol/programmes-courses/undergraduate-programmes/bachelor-law-llb>.

⁵³ IIUM, *supra* note 35, *Bachelor of Law Syariah (Hons.) LL.B.S.: Programme Description*, <http://www.iium.edu.my/aikol/programmes-courses/undergraduate-programmes/bachelor-law-shariah-llbs> (last visited Oct. 12, 2011).

⁵⁴ See IIUM, *supra* note 35, *LL.M. in Administration of Islamic Law: Programme Description*, <http://www.iium.edu.my/hmhlawcentre/programmes-courses/postgraduate-programme/llm-administration-islamic-law> (last visited Oct. 12, 2011).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

All three IIUM programs that qualify graduates for the position of Syariah judge employ a mix of classical and contemporary materials.⁵⁸ Once again, however, there is a difference in emphasis among the programs based on the needs of the students. Because of its focus on contemporary application of Islamic law, the DAIJ program emphasizes the study of statutes and various scholarly treatments of doctrinal matters. The course on the management of Muslim estates, for example, includes, in addition to classical era materials, readings from works in English by Western and Malaysian scholars including Noel Coulson, David Powers, and Ahmad Ibrahim. In the LL.M.-AOIL program, students discuss various international conventions, textbooks, and statutory laws in Malaysia, such as the 1950 Federal Constitution, the Evidence Act, the 1950 Contract Act, the 1976 Law Reform (Marriage and Divorce) Act, and other laws applicable to non-Muslims. For the LL.B. Syariah program, most of the texts used for teaching are classical Islamic texts.

In all three programs, preference is given to texts from the Shafi'i *madhhab*, which represents the formal *madhhab* (school of jurisprudence), followed in Malaysia.⁵⁹ The classical text that serves as the primary reference is al-Sharbini's (d. 1569) *Mughni al-muhtaj*. Texts from other *madhhabs* are also used for comparative purposes to make students aware of alternative opinions and sources.

In addition to classical texts, contemporary materials are widely used in teaching Islamic law subjects. One example is Wahba al-Zuhayli's *al-Fiqh al-Islami wa adillatuhu* and its translation into Bahasa Malaysia. Students are also required to refer to judgments in cases decided by Malaysian courts reported in *Jurnal Hukum* as well as cases in English reported in the *Shariah Law Report*, *Malayan Law Journal*, *Current Law Journal*, and *All Malaysian Reports*. Reference is also made to foreign case reporters such as *Pakistan Legal Digest* and *All India Reporter*.

H. How Are Students Tested?

Students in the DAIJ program are evaluated based on a combination of evaluations administered during the semester and the final examination. The relative weight given to the final exam and other evaluations depends on the course; for some courses the final exam comprises 40% and other evaluations 60%, while for other courses the final exam is 60% of the grade

⁵⁸ HAMID, *supra* note 50, at 30, 59.

⁵⁹ Abd Allah Ahmad Na'im, *Sharia and Islamic Family Law: Transition and Transformation*, in ISLAMIC FAMILY LAW IN A CHANGING WORLD: A GLOBAL RESOURCE BOOK 1, 5 (Abd Allah Ahmad Na'im ed., 2002).

and other evaluations constitute only 40%. Other than practical courses, the assessment includes problem-based assignments and tests. The final exam is pen and pencil, except for moot court classes, where students are grouped into research teams and are required to present their findings based on pre-set hypothetical questions in moot court sessions. Assessment is based on the students' preparation of relevant authorities, research work, clarity of presentation, and advocacy skill. Assessment tools used in the DAIJ program include assignments, tests, tutorials, oral presentations, performance in mock trial, client counseling exercises, legal advising exercises, and legal drafting.

For the LL.M.-AOIL, 60% of a student's grade is based on assignments and presentations during the semester and 40% of the grade is based on a written final exam. During the semester students are graded on oral presentations based on assigned topics or themes, participation in group discussions, critical analysis, and report writing and judgment drafting.

The evaluation of LL.B. Syariah students is based 40% on work done during the semester, which may include assignments, tests, and presentations. The remaining 60% of the grade is based on a written final examination.

I. Are Students Required to Carry out Original Research?

Students in the LL.M. program are required to write research papers that make an original contribution to the field. Data collection for master's-level research papers should incorporate fieldwork as one of the research methods. Students in the DAIJ program do not carry out original research but receive instruction in the preparation of research proposals and in writing briefs as a part of the moot court training.

J. Are Women Allowed to Serve as Islamic Court Judges?

One issue that has stirred controversy in Malaysia for many years is whether women can serve as Syariah court judges. In April 2006 the National Fatwa Committee addressed the issue in a ruling that declared the appointment of women as Syariah judges permissible.⁶⁰ The response to this *fatwa* has been slow, however. In 2007 several women were appointed as *suhl* officers (arbitrators) in the state of Kelantan, but the powers of *suhl*

⁶⁰ The rulings of the National Fatwa Committee are not automatically binding on the states. Rather, the National Committee's *fatwas* becoming binding at a state level only if the state has adopted the view and printed it in the state gazette. Administration of Islamic Law (Federal Territories) Act 1993, Act 505 of 1993, § 34.

officers are limited to hearing a limited category of specified cases and confirming divorces performed out of court.⁶¹ Then, in July 2010, Malaysia's first women Syariah judges were appointed when two women were named to the Syariah court in the Federal Territories after the Yang di-Pertuan Agong gave consent for the appointments.⁶² It is expected that more women will be appointed to the Syariah courts in the future.

IV. THE APPOINTMENT OF JUDGES

A. *What Is the Selection Process for Judges?*

As discussed earlier, the path to the position of Syariah subordinate court judge begins with appointment as a Syariah officer at civil service level LS41.⁶³ Typically the appointment will be to the position of *sulh* (mediation) officer, Syariah prosecutor, or research officer either in the Department of Syariah Judiciary of Malaysia or in the Syariah service of the respective states. The promotion to higher posts within the Syariah judiciary (e.g. civil service ranks LS44, LS48, LS52, LS54) will depend on fulfillment of the requirements discussed below and a recommendation from the Chief Syariah Judge or, in the Federal Territories, the Director General of JKSM.

B. *What Is the Subject Matter and Content of Tests for Appointment as a Judge?*

There is no formal qualifying exam for appointment to the Syariah courts in Malaysia.⁶⁴ As mentioned earlier, the power to appoint judges is vested in the various hereditary heads of religion.⁶⁵ The specific process for appointment is determined by the law of the individual jurisdictions.⁶⁶ In the Federal Territories, appointment to a position as a judge in a Syariah subordinate court judge is based upon the recommendation of the Chief Syariah Judge, while the appointment of judges to the Syariah High Court and appointment to the position of Chief Syariah Judge is made in

⁶¹ The appointment was not announced to the public and this information was obtained from the Chief Syariah Judge of Kelantan, Dato' Wira Daud b Mohammad on 19 July, 2010. See also FARID SUFIAN SHUAIB, POWERS AND JURISDICTIONS OF SYARIAH COURTS IN MALAYSIA 59 (2d ed. 2008).

⁶² Marina Mahathir, *Malaysia Moving Forward in Matters of Islam and Women*, COMMON GROUND NEWS SERVICE, <http://www.commongroundnews.org/article.php?id=28311>. See also Simon Montlake, *Islamic Court Makeover in Malaysia: Two Women Appointed to Sharia Court Bench*, CHRISTIAN SCIENCE MONITOR July 29, 2010, available at <http://www.csmonitor.com/World/Asia-Pacific/2010/0729/Islamic-court-makeover-in-Malaysia-Two-women-appointed-to-sharia-court-bench>.

⁶³ LS41 is the first level for a civil servant with a degree in Law or Syariah.

⁶⁴ Administration of Islamic Law (Federal Territories) Act 1993, Act 505 of 1993, § 43.

⁶⁵ *Id.* § 44.

⁶⁶ FARID, *supra* note 61, at 57.

consultation with the Majlis Agama Islam and the head of the Islamic bureaucracy.⁶⁷

C. *What Training Is Provided to Candidates Prior to Appointment?*

Syariah officers employed in non-judicial positions under the category of LS41 are required to take a variety of courses before being promoted to a higher civil service level and the position of judge. Topics addressed in these courses include Islamic law as applied in Malaysia, management of *sulh* arbitration proceedings, advocacy skills, judgment writing, enforcement of court orders, the division of shares within Islamic inheritance and wealth management, practice directions, Syariah legal ethics, legal writing, counseling, Arabic and English language courses, selected civil law subjects, and *tafaqquh*⁶⁸ classes.

For officers in the federal system, the government also sponsors enrollment in degree programs at the master's or Ph.D. level. These opportunities may not be available for Syariah officers in the state systems.

D. *Are Candidates Required to Complete a Period of Probation or Other Pre-Appointment Service?*

Promotion within the Syariah service, including appointment to a post as a Syariah judge, requires successful completion of the requirements for advancement within the civil service. Admission to the civil service requires completion of a period of probation of between one and three years, attendance at induction courses, and passing competency exams.⁶⁹ There are additional course requirements for advancement. Syariah officers who have been promoted to LS44 are required to attend advanced level of courses on Syariah laws, research methodology, child psychology, *adab al-qadi* (covering numerous aspects of the Islamic legal system), mediation, languages, Islamic banking, international laws, and *tafaqquh* classes. For longer courses of training, these officers are sometimes attached to the judicial department in Middle Eastern countries such as Egypt, or western countries such as Britain. These requirements are in addition to the

⁶⁷ Administration of Islamic Law (Federal Territories) Act 1993, Act 505 of 1993, §§ 43, 44.

⁶⁸ “*Tafaqquh*” refers here to guided study of al-Sharbini’s *Mughni al-muhtaj* by prominent local lecturers. Materials from the Training Department, Department of Syariah Judiciary of Malaysia (on file with author).

⁶⁹ Y. MANSOOR MARICAN, PUBLIC PERSONNEL ADMINISTRATION IN MALAYSIA 9 (1979), available at http://books.google.com/books/about/Public_personnel_administration_in_Malay.html?id=nzhq0rm65J0C.

requirement, discussed earlier, that appointment as a Syariah judge requires completion of one of the diploma courses summarized above.

Officers who have been promoted to LS52-54 attend short courses that incorporate more complicated legal matters handled in Syariah courts. These courses are tailored to the specific needs of Syariah high court judges and include, among others, courses on the management of cases involving interim and ex parte orders, child psychology, management of revision and appeal cases, reciprocal orders, enforcement of committal orders, wealth management, DNA profiling, Islamic banking, and human rights. Officers holding positions at these higher civil service levels also participate in specialized judicial training programs abroad, attend international seminars on issues related to law and the judiciary, and complete a period of work placement abroad.

V. THE PROFILE OF THE ISLAMIC JUDICIARY

The number of Syariah court judges nation-wide currently stands at 140. Of these, 94 are Syariah subordinate court judges, 32 are Syariah high court judges, and there are 14 are Syariah Chief Judges, one in each of the 13 states and the federal territory. It should be noted that there are plans to increase the number of Syariah high court judges and Syariah subordinate court judges as a result of the upgrading of certain districts and infrastructure improvements providing greater accessibility in rural areas.

As discussed above, Malaysia's first female Syariah court judges were appointed in July 2010.⁷⁰ At that time, two women were named to the Syariah court in the Federal Territories after the Yang di-Pertuan Agong gave consent for their appointments.⁷¹ It is expected that more women will be appointed to the Syariah courts in the future.⁷²

A. *The Supervision and Regulation of the Islamic Judiciary*

The administration of Islamic law is a state rather than a federal power, and ultimate authority over the judiciary is vested in the sultans or other traditional rulers within the respective states.⁷³ In order to promote uniformity in the application of Islamic law, however, seven of the country's

⁷⁰ Montlake, *supra* note 62.

⁷¹ *Id.*

⁷² *Id.*

⁷³ HAMID, *supra* note 50, at 48 (noting that the sultans have jurisdiction "in the various Malay states to oversee Islamic and Malay affairs").

fourteen units⁷⁴ have signed memoranda of understanding (“MoU”) whereby they agreed to be regulated by the JKSM, which is under the Prime Minister’s Department. Decisions on matters relating to the administration of Islamic law are made collectively by representatives of the various jurisdictions. The person who represents the states in the JKSM is typically the chief Syariah judge. Decisions taken by the Department are then enforced at the state level.

The JKSM is also responsible for recruiting Syariah officers for the participating jurisdictions. Syariah officers recruited by the Department are then transferable within the states that have an MoU with the JKSM.

Judges in states without such agreements are governed by the State Council of Muslim Religion (Majlis Agama Islam Negeri) in their respective states.

Since 2000, the national Department of Syariah Judiciary has issued periodic practice directives (*arahan amalan*) with the aim of promoting uniformity in the administration of justice in the various states. These directives have the endorsement of the Chief Syariah Judge for Malaysia, who chairs the Directives Committee and is also the Director General of the JKSM. It is up to the states whether to enforce the directives, but the directives deal primarily with procedural issues and therefore raise few objections. In the event of a conflict, statutory law prevails over practice directives.

B. Is There a Code of Ethics for Islamic Judges?

In May of 2001, the Department of Syariah Judiciary issued a practice directive containing a code of conduct for Syariah judges.⁷⁵ As with other practice directives from the Department, the code is not formally binding in the states, but it does carry the weight of an endorsement from the Chief Syariah Judge.⁷⁶ The code consists of seven sections prescribing professional standards relating both to the performance of judicial functions in the courtroom and to appropriate conduct outside the judicial setting.⁷⁷ The standards relating to the conduct of judges in processing cases include being just and treating the parties with respect, encouraging the parties to reach amicable settlements, treating all parties equally, resolving cases and

⁷⁴ The seven states that have signed an MoU of this type are the Federal Territories, Selangor, Johor, Negeri Sembilan, Sabah, Malacca, and Penang. The states that have not entered into such agreements are Terengganu, Sarawak, Pahang, Kedah, Perlis, Perak, and Kelantan.

⁷⁵ *Arahan-Amalan* [Practice Directive] Directive 1 of 2001, JKSM/100-24/5.

⁷⁶ *Id.*

⁷⁷ *Id.*

preparing judgments within a reasonable time, and abiding by the orders or instructions of the Chief Syariah Judge within the respective states. With respect to the conduct of Syariah judges outside the workplace, the code stipulates that judges are to uphold the good name and reputation of the judiciary, refrain from accepting gifts, avoid public contacts that could interfere with the performance of the judicial function, refrain from stating an opinion on matters that come before the courts, not accept remuneration or gifts from other agencies unless approved by the Chief Syariah Judge of Malaysia, and to avoid involvement in politics.⁷⁸

C. *What Are the Mechanisms for Discipline?*

As with the administration of Islamic law generally, the enforcement of judicial ethics is the responsibility of the individual states. As a result, there is no uniform system for enforcing ethical standards for Syariah lawyers.

The enforcement of the code of conduct for Syariah judges in Malaysia's Federal Territories is governed by the Civil Service Rules and Regulations issued in 1993.⁷⁹ These regulations authorize the Commissioner for Civil Servants (Suruhanjaya Perkhidmatan Awam) to enforce rules of professional conduct for civil servants, including Syariah judges.⁸⁰ Violation of the code of conduct for Syariah judges can result in disciplinary action under these regulations.⁸¹ Judges found to have violated the code are subject to penalties that include admonition, payment of compensation, withdrawal of emolument, delay in a scheduled salary increase or promotion, rank demotion, or removal from the office.⁸²

Rules for the State of Selangor stipulate that a Syariah judge may be removed from office on grounds of misbehavior or lose his legal capacity to perform as a judge upon representation made by the Chief Syariah Judge to His Royal Highness the Sultan.⁸³

VI. CONCLUSION

The Syariah judiciary in Malaysia has made significant advances in recent years. There have been extensive improvements in physical

⁷⁸ *Id.*

⁷⁹ Peraturan-peraturan Pegawai Awam (Kelakuan dan Tatatertib) [Civil Servant Rules and Regulations (Conduct and Discipline)] 1993 [P.U. (A) 395 of 1993].

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ Administration of Islamic Law (State of Selangor) Enactment 1989, Enactment 2 of 1989, §39.

infrastructure, the structure of the courts, and the opportunities for training and professional development of judges. The establishment of the Department of Syariah Judiciary at the federal level has both helped promote uniformity among the states (both in states with MoU and states without MoU) and improved the quality of services provided by the courts. It is hoped that the future development of Islamic law will include an active international collaboration among Muslim countries in their efforts to continually improve the administration of Islamic justice.