

UPDATE: Researching Islamic Law – Malaysian Sources

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1. Introduction

Prior to 1887, it was not known that Islamic law had existed in Malaysia. The same year, a rectangle-shaped stone was found in Kuala Berang, Terangganu inscribed with a code of Islamic law. The stone was dated back to the year 1303, hundreds of years before the Law of Malacca Code was first introduced. Islamic law was established in Malaysia by the fourteenth century. During the colonial period, the British did not interfere with religion in the country. Islam was adopted as the religion of the state, with the Constitution providing that the leader in each state must be a Muslim. Yet, the Constitution also guarantees full religious freedom to members of all faiths.

Except for Putrajaya, the new administrative capital of Malaysia, each state in Malaysia, including the Federal Territories (Kuala Lumpur and Labuan) has its own religious Council. The function of this Council is to advise the ruler, or the king in non-ruler states, on Muslim and Islamic matters. All these Councils are established by state law. The Federal Constitution also provides that a State Legislature has power to enact laws relating to, inter alia, personal and family law for Muslims, Muslim Waqf, Zakat, Fitrah, Baitul Mal, Mosques, the creation and punishment of offences by Muslims against precepts of Islam, Muslim Courts, the control and propagation of doctrines and beliefs among Muslims, and the determination of matters of Islamic law.

The Syariah (Muslim) courts established by State authorities have jurisdiction only over Muslims, and have no jurisdiction over criminal offences, unless specifically conferred by federal law. Most of the Islamic Law that has been enacted in the States of Malaysia has developed into an independent legal system, substantially different from the strict Islamic Law of the Syariah, except perhaps in family law. In 1988, a major constitutional amendment was passed which resolved any questions of power or jurisdiction which might arise between the Syariah Court and the Civil Court. This amendment inserted Article 121(1A) which states that no court has jurisdiction in any matter under the jurisdiction of the Syariah Court; in effect, the Civil court has no influence on the jurisdiction of Syariah Court.

Problems occasionally arise in the implementation of Islamic criminal law. The enactment and application of the Syariah Criminal Code in each State does not distinguish between the three types of crimes in Islamic law, which are Hudood, Qisas and Tazir; rather, they are all combined, which often causes confusion. In order to gain the confidence of the public, the Syariah Courts, their Judges and Officers have to show that Islamic Law is not only the best law in theory, but also the best in practical application; hence, the aforementioned confusion is a serious concern. In Malaysia, most of the books on Islamic law are written in the Malay language rather than the English language and contain many Arabic terms that describe the law.

2. Scope of Islamic Law

Islamic law is not a legal *system*, but a legal *tradition*, much like the common or civil law tradition. A legal tradition is a set of related beliefs, attitudes, and practices regarding the necessary components of a legal system, including the scope and purposes of the law, the manner in which law is created or discovered, the identity and function of legal actors, and the manner in which law is learned, implemented, developed and adapted.

Islam has its own personal, civil, criminal, mercantile, evidentiary, constitutional, and international law. In Malaysia, Islamic law and customary law were the law of the land long before English law became prominent, as under the current system. According to the Federal Constitution, Islamic law is a matter falling within the State List, meaning that the State Legislature is empowered to enact the law. Exceptions to this are the Federal Territories of Kuala Lumpur, Labuan, and Putrajaya, in which Islamic law is enacted by the Federal Parliament. Malaysia maintains two parallel justice systems: the Syariah Court System in each of the thirteen states, and the Civil Court System for the whole Federation. Each state in Malaysia has its own Syariah court system, which deals with matters relating to Islamic law in which the permitted litigants are all Muslim.

All matters pertaining to Islamic law shall only be heard in the Syariah court; all other cases are heard in the civil courts. The Constitution has empowered the State Legislature to promulgate Islamic law and personal and family law for all persons professing the religion of Islam (except with regard to matters included in the Federal List) such as succession, betrothal, marriage, divorce, maintenance, adoption, guardianship, trusts, Islamic religious revenue and mosques. Civil and Criminal law are within the Federal Government's jurisdiction, except for criminal offences, which involve Muslims as listed in the State List. The rules of Syariah are set by various sultans, who serve as heads of the Islamic religion in their respective states. Because Islamic law is administered by the respective states, there is a lack of uniformity in the administration of Islamic law in Malaysia.

3. Sources of Islamic Law

The [Quran](#) is the primary source of Islamic law, as it contains all the fundamental directives and instructions of God. The [Sunnah](#) is the second source of Islamic law. Sunnah is an Arabic word, which means "Method," and it refers to the statements, actions, and agreements of the Prophet Muhammad. Its authority is derived from the text of the Quran. The Quran and the Sunnah are complementary—the laws described in the Quran are general in nature, and the Sunnah makes them specific and particular. The Sunnah explains the instructions of the Quran. The Quranic injunction is sometimes implicit; the Sunnah makes it explicit by providing essential ingredients and details. Ijma (consensus of scholars) and Qiyas (laws derived through analogical deduction) are the secondary or dependent sources of Islamic law. For more information, see [Islamic Law](#) and [E-Hadith](#).

4. Where to Find Islamic Law

State legislation is not widely available on the internet, so it is not easy to find Islamic legislation of the individual states. However, Islamic law that affects the Federal territories is available from several sources, such as [Common LII](#), [Lexis Malaysia](#) (subscription required) and the [AGC website](#).^[1] Please note, AGC website may not be accessible in all jurisdictions. As such, the authors have compiled the laws listed under section 4.1. and made them available in [Legislation AGC LOM via Dropbox](#) (up to date as of June 2021) and in [Legislation AGC LOM via Google Drive](#) (up to date as of June 2021). The authors are committed to keep both drives up to date.

4.1. Legislation

Since Islamic law is regulated by state legislative assemblies, the law is published within the [respective state gazettes](#), except for the Federal Territories of Kuala Lumpur, Labuan, and Putrajaya, in which the Islamic law is enacted by the Parliament and is published in the Federal Gazettes.

Islamic Family Law

- [Islamic Family Law \(Federal Territories\) Act 1984, Act 303](#): Enacts certain provisions of the Islamic Family Law regarding marriage, divorce, maintenance, guardianship and other matters connected with family life. Extension and modification in its application to Federal Territory Putrajaya – PU (A) 250/2002.

Islamic Procedural Law

- [Administration of Islamic Law \(Federal Territories\) Act 1993, Act 505](#): Provides for the enforcement and administration of Islamic law, the constitution and organization of Syariah Courts and related matters in the Federal Territories.
- [Syariah Criminal Procedure \(Federal Territories\) Act 1997, Act 560](#): An Act to make provision relating to Syariah criminal procedure for Syariah Courts. Extension and modification in its application to Federal Territory Putrajaya – PU (A) 248/2002.
- [Syariah Court Civil Procedure \(Federal Territories\) Act 1999, Act 585](#): Makes provisions relating to civil procedure for the Syariah Court. Extension and modification in its application to Federal Territory Putrajaya – PU (A) 252/2002.
- [Syariah Court Evidence \(Federal Territories\) Act 1997, Act 561](#): Defines the law of evidence for the Syariah Court. Extension and modification in its application to Federal Territory Putrajaya – PU (A) 259/2002.

Islamic Criminal Law

- [Syariah Criminal Offences \(Federal Territories\) Act 1997, Act 559](#): Provides for Syariah criminal offences and matters relating thereto. Extension and modification in its application to Federal Territory Putrajaya – PU (A) 251/2002.
- [Syariah Courts \(Criminal Jurisdiction\) Act 1965, Act 355](#): Confers jurisdiction upon Courts constituted under any State law for the purpose of dealing with offences under Islamic law. Originally enacted as Muslim Courts (Criminal Jurisdiction) Enactment.

Islamic Financial Law

- [Islamic Financial Services Act 2013 Act 759](#): An Act to provide for the regulation and supervision of Islamic financial institutions, payment systems and other relevant entities and the oversight of the Islamic money market and Islamic foreign exchange market to promote financial stability and compliance with Shariah and for related, consequential or incidental matters.
- [Islamic Financial Services Board Act, 2002, Act 623](#): Enables Bank Negara Malaysia to become a member of the Islamic Financial Services Board by signing and accepting the Agreement establishing the Board, and confers certain powers, immunities, and privileges upon the Board and its constituent organs for matters to which it is connected.
- [Islamic Development Bank Act, 1975, Act 153](#): Gives effect to an international agreement for the establishment and operation of the Islamic Development Bank and enables Malaysia to be a Member thereof.
- [Loans \(Islamic Development Bank\) Act 1977 Act 187](#): An Act to provide for the raising of loans from the Islamic Development Bank by the Government of the Federation and for matters connected therewith.
- [Labuan Islamic Financial Services and Securities Act 2010 Act 705](#): An Act to provide for the licensing and regulation of Islamic financial services and securities in Labuan and for other matters related thereto.
- [International Islamic Liquidity Management Corporation Act 2011 Act 721](#): An Act to enable Bank Negara Malaysia to become a member of the International Islamic Liquidity Management Corporation, to give effect to the agreement establishing the International Islamic Liquidity Management Corporation, to confer certain powers, privileges, and immunities upon the International Islamic Liquidity Management Corporation and its subsidiaries and to provide for matters connected therewith.
- [International Islamic Trade Finance Corporation Act 2007 Act 669](#): An Act to give effect to an international agreement for the establishment and operation of the International Islamic Trade Finance Corporation and to enable the Government of Malaysia to be a member thereof and to make provisions for matters connected therewith.

4.2. Law Reports

Syariah law reports are published by the [Malaysian Current Law Journal](#) (CLJ) (subscription based database). CLJ reported decisions from the Syariah Courts in Malaysia from 2004 to 2015.

[Shariah Law Reports](#): From October 2004 to present, a quarterly journal on the Syariah published by Lexis-Nexis (subscription-based database)

4.3. Case Law and Court Information

- [Arahan Amalan Mahkamah Syariah – Practice Directions of Syariah Court](#) (in Malay)
- [Syariah Court Procedures & Processes](#) (in Malay).
- [Department of Syariah Malaysia - Portal E-Syariah](#)
- [Jabatan Kemajuan Islam Malaysia](#)

Selected Courts Within Malaysia

- [Johor Syariah Courts](#)
- [Kedah Syariah Courts](#)
- [Kelantan Syariah Courts](#)
- [Malacca Syariah Courts](#)
- [Negeri Sembilan Syariah Courts](#)
- [Penang Syariah Courts](#)
- [Perak Syariah Courts](#)
- [Sabah Syariah Courts](#)
- [Sarawak Syariah Courts](#)
- [Selangor Syariah Courts](#)
- [Terengganu Syariah Courts](#)
- [Jabatan Kemajuan Islam Malaysia](#)

4.4. Introductory Works on Islamic Law

[Halsbury's Laws of Malaysia – Syariah Law \(Vol. 14\)](#): This is the first work of its kind ever to be published in Malaysia, and is the result of the combined efforts, knowledge, expertise, and practical experience of Syariah law experts and academics. It covers a wide range of topics such as conflict of laws between Syariah and civil courts; Islamic banking and its operations; Islamic family law, including betrothal, marriage, divorce and its ancillary orders; arbitration by Hakam; legitimacy and maintenance of children, Islamic criminal law and procedure; and Islamic law of evidence and Syariah civil procedure including contempt of court and appeals. It also contains provisions of the individual State Enactments, a wealth of Syariah cases, which have been reported in the Malayan Law Journal and the Jurnal Hukum, relevant Quranic citations, as well as references to the Sunnah and Hadith. This title is the definitive and indispensable companion for all Syariah lawyers, academics, and students, as well as for the public.

4.5. Books on Islamic Law

List of Textbook Titles, Statutes and Online Databases on Islamic Law in Malaysia - Published by:

- [International Law Book Services](#) (ILBS)
- [Lexis Nexis Malaysia](#)

- [Current Law Journal](#)

Selected Islamic Law Books:

- [Islamic Law in Malaysia: Issues, Developments and Challenges](#) by Mohamed Azam Mohamed Adil, Kuala Lumpur, CLJ Publication (2018)
- [Emerging Issues in Islamic Finance Law and Practice in Malaysia](#), eds. Umar A. Oseni, M. Kabir Hassan, Rusni Hassan, Emerald Publishing Limited (2019)
- [Islamic Family Law in Malaysia](#) by eds. Najibah Mohd Zin, Nora Abdul Hak, Azizah Mohd & 5 Ors, Kuala Lumpur, Sweet & Maxwell (2018)
 - [Islamic Law in Malaysia: Issues and Developments](#) by Mohammad Hashim Kamali, Kuala Lumpur, Ilmiah Publisher (2000).
 - [Powers and Jurisdiction of Syariah Courts in Malaysia](#), 2d ed., by Farid Sufian Shuaib, Kuala Lumpur, LexisNexis Malaysia (2008).
 - [Administration of Islamic Law in Malaysia: Text and Material](#) by Farid Sufian Shuaib, Tajul Aris Ahmad Bustami & Mohad Hisham Mohd Kamal, Kuala Lumpur, Malayan Law Journal (2001)
- [The Administration of Islamic Law](#), by Ahmad Ibrahim, Abdul Monir Yaacob – Kuala Lumpur: Institute of Islamic Understanding Malaysia (IKIM), 1997.
 - [An Introduction to Islamic Law of Evidence](#), by Mahmud Saedon A. Othman, translated by Raden Ahmad Shauki R. Hisam – Kuala Lumpur: The Open Press, 2000.
- [Undang-Undang Islam di Mahkamah-Mahkamah Syariah di Malaysia](#), by **Ahmad Hidayat Buang**, Kuala Lumpur, Jabatan Syariah dan Undang-Undang, Akademi Pengajian Islam, Universiti Malaya, 1998.
- [Pelaksanaan Undang-Undang Islam Dalam Mahkamah Syariah dan Mahkamah Sivil di Malaysia](#), by A. Monir Yaacob, Kuala Lumpur: Institut Kefahaman Islam Malaysia [i.e. Malaysia], [1995].

4.6. Periodical Articles on Islamic Law

Collections of Articles on Islamic Law:

- [Article Collections – International Islamic University Malaysia](#)
- [Academy of Islamic Studies, University of Malaya](#)
- [Journal of Contemporary Islamic Law](#), National University of Malaysia.
- [JStor \(Subscription based\)](#)
- [Article Collections](#) - Islamic Science University of Malaysia

Selected Islamic Law Articles:

- [Recent Developments in Syariah Law in Malaysia](#)
- Farid Sufian Shuaib, [Strengthening Administrative Institutions of Islamic Law in Malaysia: An Overview](#), 16 *Shariah Journal* 443 (Special Edition 2008)
- Raihana Abdullah, [A Study of Islamic Family Law in Malaysia: A Select Bibliography](#), 35 *Int'l Journal of Legal Information* 514 (Winter 2007)

Law Journals:

- [Journal Hukum](#), from 1980 to present. (Subscription required)
- [The IUM Law Journal](#), from 1989 to present.
- [Jurnal Syariah](#)
- [Syariah Law Report](#) (subscription under Lexis-Nexis)
- [Malaysian Journal of Syariah and Law](#)
- [Journal of Contemporary Islamic Law](#)
- [The Malaysian Journal of Islamic Sciences](#)

4.7. Internet Resources on Islamic Law

- [Jabatan Kehakiman Syariah Malaysia - Department of Syariah Judiciary Malaysia](#)
- [Federal Territories Islamic Legal Council](#)
- [Persatuan Peguam Syarie Malaysia \(PGSM\) – Syarie Lawyers Association of Malaysia](#)
- [Syariah and Harmonisation of Law Division \(Profile and Various Units\) in Attorney General's Chambers Malaysia \[2\]](#)

4.8. Locating Islamic Law Materials in the Libraries

- [National Library of Malaysia](#)
- [International Islamic University Malaysia Library](#)
- [University of Malaya Library](#)
- [National University of Malaysia Library](#)
- [Islamic Science University of Malaysia Library](#)
- [The Abu Yusuf Yaquub Al Khindi Library \[3\]](#)
- [MARA University of Technology Library](#)

5. Islamic Law Study in Malaysia

There are currently seven law schools in public universities in Malaysia as listed below in alphabetical order:

- [International Islamic University of Malaysia](#)
- [Islamic Science University of Malaysia](#)
- [MARA University of Technology](#)
- [National University of Malaysia](#)
- [Northern University of Malaysia](#)
- [Sultan Zainal Abidin University](#)
- [University of Malaya](#)

6. Islamic Legal Profession

Although there is no restriction for non-Muslims to study Islamic law in Malaysian universities, a non-Muslim lawyer however cannot practice in the Syariah courts. The Islamic Council of each state acts as a governing body to regulate Islamic legal practice and license Islamic law graduates as 'Syarie' lawyers. In a [landmark case](#) decided by the Malaysian Federal Court, a non-Muslim lawyer lost in her bid to challenge the requirement of the Islamic Council that a Syariah lawyer must be a Muslim. The lawyer who holds a diploma in Syarie Law and Practice (DSL/P) conferred by the International Islamic University Malaysia failed to get an order to compel the Federal Territory Islamic Religious Council to accept her application to be a Syariah lawyer.

More information on the Islamic legal profession:

- How to be a Syarie lawyer in Malaysia?
- [Department of Islamic Law – International Islamic University Malaysia](#)
- [Postgraduate Diploma in Syariah Law & Practice](#), MARA University of Technology
- [Postgraduate Diploma](#), National University of Malaysia

[1] This website may not be accessible in some jurisdictions.

[2] This website may not be accessible in some jurisdictions.

[3] This website may not be accessible in some jurisdictions.