

## DYNAMICS OF THE ISLAMIC JUSTICE SYSTEM IN MALAYSIA: AN ANALYSIS OF THE DIFFERENCES IN STATE-LEVEL SHARI'AH COURTS

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### ABSTRAK

Malaysia adalah negara dengan mayoritas penduduk beragama Islam, namun tidak menerapkan hukum Islam secara menyeluruh atau menggunakan sistem hukum khilafah al-Islamiyah. Sistem hukum di negara ini berada di bawah kendali pemerintah federal, yang memiliki wewenang tertinggi dalam menentukan arah dan kebijakan hukum nasional. Meski demikian, yurisdiksi terkait hukum syariah tetap menjadi bagian dari lembaga peradilan syariah. Dalam sistem federalisme yang diterapkan, setiap wilayah memiliki kebijakan sendiri dalam mengelola mahkamah syariahnya. Penelitian ini dilakukan menggunakan metode penelitian pustaka (library research) dengan pendekatan kualitatif. Sumber data yang digunakan meliputi buku, jurnal, dan artikel dalam bahasa Indonesia maupun Inggris. Data yang terkumpul dianalisis melalui metode analisis isi pustaka (content analysis). Hasil penelitian menunjukkan bahwa Perbedaan wewenang Mahkamah Syariah di Malaysia tercermin dari beragamnya rujukan enakmen yang digunakan oleh setiap negara bagian. Hal ini terjadi karena, dalam sistem federal, pemerintah negara bagian memiliki kewenangan yang lebih luas untuk mengelola dan mengatur urusan hukum di wilayahnya masing-masing.

**Kata Kunci:** Sistem Hukum, Peradilan Islam Di Malaysia, Mahkamah Syari'ah

### ABSTRACT

Malaysia is a Muslim-majority country, but it does not apply Islamic law as a whole or use the khilafah al-Islamiyah legal system. The country's legal system is under the control of the federal government, which has ultimate authority in determining the direction and policy of national law. However, jurisdiction over sharia law remains with the sharia judiciary. In the federalism system applied, each region has its own policy in managing its sharia court. This research was conducted using the library research method with a qualitative approach. The data sources used include books, journals, and articles in Indonesian and English. The collected data were analyzed through content analysis method. The results showed that the difference in the authority of the Syariah Court in Malaysia is reflected in the variety of enactment references used by each state. This is because, in a federal system, state governments have broader authority to manage and regulate legal affairs in their respective regions.

**Keywords:** Legal System, Islamic Courts In Malaysia, Sharia Courts

### INTRODUCTION

Malaysia is a Muslim - majority country, but it does not apply Islamic law as a whole or use the khilafah al-Islamiyah

legal system. Ultimate control over legal policy rests with the federal government, which acts as the main authority in determining the direction and policy of

state law. In fact, the jurisdiction of sharia judicial institutions is also under the supervision of the federal government.<sup>1</sup>

Malaysia is one of the countries that has a significant role in the Islamic world. The process of Islamization in this country took place through a long journey that involved deep historical search and struggle. Although Malaysia has a smaller population compared to Indonesia, and almost half of the population are non-Muslims, the majority of whom come from Chinese and Indian ethnicities, Malaysia has managed to appear in the international arena with a strong Islamic identity, including in the aspect of legal policies that are full of Islamic values.

After 1948, the states in the Malaysian federation began to establish a Department of Religious Affairs, where every Muslim was required to abide by Islamic law as well as the jurisdiction of sharia courts presided over by religious judges. After gaining independence on August 13, 1957, Malaysia established Islam as the official state religion, while the Islamic legal legacy of the Malacca legislation was retained. However, the Malaysian government also guarantees the existence and freedom of religion for followers of other religions. By implication, all citizens, including non-Muslims, are required to respect and uphold the Malaysian constitution.<sup>2</sup>

Malaysia's federal state can be said to be managed by a ruling group that tends to hold nationalist-formalist views. In this system, Islamic law is placed in a "special space" at the state level, while the public

judiciary has a broader scope, operating at both the federal and state levels. This condition is inseparable from Malaysia's historical background as a former Portuguese and Dutch colony, followed by British influence in the late 18th century. This colonial history influenced the development of law in Malaysia, including the application and adaptation of laws inherited by the colonizers.<sup>3</sup>

## METHODOLOGY

This research falls into the category of normative legal research, namely the study of positive legal rules and legal principles by evaluating relevant laws and regulations. Normative legal research aims to analyze legal principles and rules.<sup>4</sup> According to Arief Sidharta, normative legal research is a type of research commonly conducted in the development of legal science, which in Western countries is often referred to as legal dogmatics. This research is descriptive, which aims to provide detailed and accurate data about humans, circumstances, or certain phenomena. Descriptive research analyzes data deductively, based on general theories or concepts applied to explain data or identify relationships between one data and other data.

The data used in this research is secondary data, obtained from literature studies. The data includes primary legal materials (legal materials that have binding properties), secondary legal materials (materials that explain primary legal

<sup>1</sup> Sahabudin Siska Erlina, "Hukum Tata Negara Islam Dan Malaysia," *Awig Awig* 1, no. 1 (2021), [https://www.jurnal.elkatarie.ac.id/index.php/awig\\_awig/article/view/213](https://www.jurnal.elkatarie.ac.id/index.php/awig_awig/article/view/213).

<sup>2</sup> Siska Erlina, "Penataan Negara dalam Mengatur Hukum Tata Negara Indonesia Dan Malaysia," *November* 2, no. 2 (2022).

<sup>3</sup> Basar Dikuraisyin, "SISTEM HUKUM DAN PERADILAN ISLAM DI MALAYSIA," *Jurnal Keislaman Terateks* 1, no. 3 (2017): 1–11.

<sup>4</sup> Muhammad Syahrur M.H S. T., *PENGANTAR METODOLOGI PENELITIAN HUKUM: KAJIAN PENELITIAN NORMATIF, EMPIRIS, PENULISAN PROPOSAL, LAPORAN SKRIPSI DAN TESIS* (CV. DOTPLUS Publisher, 2022).

materials), and tertiary legal materials (materials that provide additional direction or explanation of primary and secondary legal materials, such as legal dictionaries and language dictionaries). The collected data is analyzed using qualitative juridical analysis methods. Qualitative juridical analysis is an analysis of information obtained from laws and regulations and scientific writings in the field of law.<sup>5</sup>

## RESULTS AND DISCUSSION

### Malaysia Country Profile

Malaysia is a federal constitutional monarchy located in Southeast Asia. Malaysia's head of state is known as the Yang di-Pertuan Agong, who is elected in rotation every five years from the nine Sultans of the Malay States. The Sultans eligible to become or elect the Yang di-Pertuan Agong are the Sultan of Johor, Sultan of Kedah, Sultan of Kelantan, Yang di-Pertuan Besar of Negeri Sembilan, Sultan of Pahang, Sultan of Perak, Raja of Perlis, Sultan of Selangor, and Sultan of Terengganu. Meanwhile, the head of the Malaysian government is the Prime Minister, who is elected through general elections every five years.<sup>6</sup> Administratively, Malaysia consists of 13 states and 3 union territories as a form of federation.

Malaysia has an area of 329,847 km<sup>2</sup> and is divided into two regions separated by the South China Sea: West Malaysia on

Peninsular Malaysia (part of the Asian continent) and East Malaysia on Borneo Island. West Malaysia is bordered by Thailand to the north, the Strait of Malacca to the west, and the South China Sea to the east. In the south, West Malaysia is separated from Singapore by the Straits of Johor. In East Malaysia, the region is bordered by Brunei Darussalam to the north and Indonesia to the south. To the east of the region are the Sulu Sea and Sulawesi Sea, while to the north is the South China Sea. The capital of Malaysia is Kuala Lumpur, while the center of the federal government is in Putrajaya.<sup>7</sup>

In 2022, Malaysia's population reached 33,871,431, with the majority of the population practicing Islam (61.3%). The country's official language is Bahasa Malaysia, which has its roots in Malay. The largest ethnic group in Malaysia is the Bumiputera, which includes the Malay, Orang Asli, Dayak, and Anak Negeri tribes, with a percentage of about 62%. Other ethnic groups include Chinese (20.6%) and Indians (6.2%). Malaysia's population growth rate in 2021 was recorded at around 1.06%.<sup>8</sup>

### The Islamic Religious Justice System in Malaysia

Malaysia's legal system has long historical roots, dating back to 1511 when Malacca was ruled by the Portuguese for 130 years. In 1641, power passed to the Dutch until 1824, when the British took

<sup>5</sup> Hikmatur Ridha Zarli, Asasriwarni Asasriwarni, dan Zulfan Zulfan, "Penerapan Hukum Islam Dalam Sistem Peradilan Di Negara Kuwait," *Journal of Law, Administration, and Social Science* 4, no. 2 (2024): 286–93.

<sup>6</sup> dickson, "Profil Negara Malaysia," *Ilmu Pengetahuan Umum* (blog), 11 Januari 2023, <https://www.ilmupengetahuanumum.com/profil-negara-malaysia/>.

<sup>7</sup> Siti Maryam, "Studi komparatif wasiat wajibah di Negara Republik Indonesia dan

Malaysia (Selangor)" (bachelorThesis, Jakarta: Fakultas Syariah dan Hukum UIN Syarif Hidayatullah, 2016), <https://repository.uinjkt.ac.id/dspace/handle/123456789/42284>.

<sup>8</sup> "Dinamika Penduduk Negara | PDF | Perjalanan," Scribd, diakses 28 Desember 2024, <https://id.scribd.com/document/671016963/dinamika-penduduk-negara>.

over under the Anglo-Dutch Treaty of 1824. British rule in what is now Malaysia brought about major influences, including the introduction and application of English common law. As a former British colony, Malaysia has retained the Common Law tradition, which stands between the Islamic and customary law systems.<sup>9</sup>

In general, Malaysia adopted the Common Law System purely, without mixing it with other legal systems. This system was first introduced in the Land of Malays through the Civil Law Act in 1878. In addition to civil law, the British also introduced criminal law, civil and criminal procedure, and contract law. These were all principles of Common Law that had been codified and adopted from India, which was then a British colony.<sup>10</sup>

One of the interesting aspects of Malaysia's legal system is its diversity, which includes the recognition of Islamic law and the laws of other religions, as well as constitutional guarantees to both. In addition, there is judicial dualism in dealing with cases of violations of Islamic norms and civil norms. This is affirmed in Article 3(1) of the Constitution of Persekutuan Malaysia, which states, "Islam is the religion of the Persekutuan; however, other religions may be practiced safely and peacefully in all parts of the Persekutuan."

As a former British colony, Malaysia retains the tradition of the English common law system. This tradition coexists with the Islamic legal system, which is implemented through the Syariah courts, as well as the customary laws practiced by the various indigenous

groups. As a multi-ethnic, multicultural and multi-religious country, Malaysia's national legal system reflects a heterogeneous society, influenced by both local traditions and external elements.<sup>11</sup>

### Court Structure and Authority

Overall, the Malaysian legal system is federal in nature, with the federal courts being the place of execution for both federal and state laws. However, Syariah courts are only available at the state level and function to implement the Islamic Law system. As a federated state, jurisdiction and legal authority is shared between the federal and state governments. Although Islam is designated as the religion of the federation, the management of Islamic religious affairs falls under the authority of the states.

The federal government regulates most aspects of the law, including civil and criminal law. Family law for non-Muslims falls under the authority of the federal government and is processed through civil courts, while family law for Muslims falls under the responsibility of the state governments and under the jurisdiction of Sharia courts. Other aspects of law such as criminal, civil, contractual, agrarian and damages are the authority of the federal government and apply to the entire population, both Muslim and non-Muslim.

Despite being a federated state, Malaysia has a judicial system with a single hierarchy that oversees the application of

<sup>9</sup> "ISLAM INDONESIA," t.t.

<sup>10</sup> "638-1067-1-SM," t.t.

<sup>11</sup> Tim Peneliti, "LAPORAN HASIL PENELITIAN TERAPAN KAJIAN STRATEGIS NASIONAL," t.t.

federal and state laws. The structure of the judicial hierarchy is as follows:<sup>12</sup>

#### 1. Federal Court (Supreme Court)

The Federal Court is the highest court in Malaysia and serves as the final court of appeal. Since September 1, 2003, the Federal Court is located at the Palace of Justice, Putrajaya. Under the Constitution (Amendment) Act 1994 (Act A885), the name of this court was changed to the Supreme Court.

Under Article 121(2) of the Federal Constitution, the Federal Court consists of the Chief Justice of the Federal Court (who acts as president of the court), the President of the High Court, two Chief Justices of the High Court, and up to eight other judges, including such additional judges as the Yang di-Pertuan Agong may appoint under his constitutional powers.

The Federal Court has original jurisdiction equivalent to that of the High Court and exclusive original jurisdiction provided for in Article 128(1) of the Federal Constitution, which includes:

- a. Determining whether a law made by the Dewan Rakyat or a state legislature is invalid because it falls outside their respective legislative powers.
- b. Resolving disputes relating to constitutional issues between the federal government and the states or between states. In such disputes, the Federal Court may render judgment as provided for in the provisions of the law.

#### 2. High Court

The High Court was created in 1994 through the Constitution (Amendment) Act 1994 (Act A885) and

the Courts of Justice (Amendment) Act 1994 (Act A886). The establishment was aimed at providing an additional level of appeal and reducing the workload of the Federal Court. Since September 1, 2003, the main registry office of the High Court is at Istana Kehakiman, Putrajaya.

The High Court is presided over by the President of the High Court and consists of up to twenty-two other judges, unless otherwise determined by the Yang di-Pertuan Agong. A judge of the High Court may be appointed as a judge of the Court of Appeal if deemed necessary in the interest of justice by the President of the Court of Appeal, after consultation with the President of the relevant High Court. Hearings in the Court of Appeal are decided by three judges, or a greater number of judges in odd numbers as determined by the President of the Court of Appeal, with decisions based on a majority vote of the judges.

The Court of Appeal has primary jurisdiction to deal with appeals stemming from decisions of other High Courts or from its judges, except for decisions issued by clerk officers or other courts subject to federal law. In addition, the High Court has such other jurisdiction as is conferred by or under federal law. The High Court has appellate jurisdiction only and does not have original jurisdiction. The High Court consists of two parts with equal status and jurisdiction: The High Court in Malaya and the High Court in Sabah and Sarawak.

#### 3. Court Sessions (Sesyen Court)

The Sesyen Court has jurisdiction to hear all criminal cases, except offenses punishable by death or life imprisonment.

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<sup>12</sup>“STUDI\_HUKUM\_PERBANDINGAN\_SISTEM\_KETATANEGARA,” t.t.



In civil cases, the Sesyen Court is authorized to hear matters involving a value of claim not exceeding RM 100,000. In addition, the court can also hear and decide legal actions related to ownership of real property, leases, temporary benefits, or damages, provided that the value of the claim does not exceed RM 24,000.

#### 4. Magistrate Court (Mahkamah Majistret)

Mahkamah Majistret is a court that handles small-scale criminal and civil cases. It is presided over by a Majistret who is appointed by the Sultan, King, Yang Dipertuan Negeri, or Yang Dipertuan Besar upon the recommendation of the Chief Justice of the State.

In practice, the Majistret Court is divided into two classes of court:

First Class Majistret Court : Authorized to hear criminal cases that carry a maximum sentence of 10 years imprisonment, a fine of up to RM 10,000, and/or a maximum of 12 strokes of the cane, or a combination of these penalties.

Second Class Majistret Court : Handles civil cases where the fine is not more than RM 3,000, as well as criminal cases with a maximum sentence of 12 months imprisonment or a fine not exceeding RM 1,000.

#### 5. Penghulu Court

Penghulu Courts are the lowest level of public courts in Malaysia, which are only found in Peninsular Malaysia (West Malaysia). It is presided over by a penghulu in a particular mukim (village or area). The Penghulu Court is authorized to hear civil cases with a value of no more than RM 50 and criminal cases with a maximum fine of RM 25.

In addition to these courts, there are other judicial and quasi-judicial bodies with specialized jurisdictions. For example, the Special Court for Malay Rulers, the Juvenile Court, and the Intellectual Property Court. Meanwhile, quasi-judicial bodies such as the Industrial Court, Consumer Claims Tribunal, Homebuyer Claims Tribunal, and Syariah Court are established through special legislation to deal with additional matters or certain technical disputes. Unlike the regular courts, these quasi-judicial bodies are generally not presided over by lawyers and are not required to follow strict rules of evidence and procedure.

#### 6. Juvenile Court (Juvenile Court)

The Juvenile Court is authorized to hear cases involving offenders under the age of 18. It is presided over by a First Class Magistrate, who is accompanied by two community advisors. In this court, the record of a child's offense will not be entered in the official record, nor will they be sent to prison. Generally, children found guilty will be placed in a remedial school until the age of 21 or released on bail. Juvenile Court proceedings are closed and not accessible to the public.

#### 7. Syariah Court (Mahkamah Syariah)

Syariah Courts are established under the Islamic Religious Administration regulations in the Malay states. These courts are authorized to handle cases governed by Islamic law, which applies only to Muslims in civil and criminal matters. Criminal powers include offenses such as khalwat, adultery, heresy, and breach of the obligation to fast. The Syariah Court consists of:

a. Mahkamah Kadi or Lower Sharia Court, which handles cases with minor penalties;

b. Mahkamah Kadi Besar or High Sharia Court, which deals with offenses carrying more severe penalties;

c. Mahkamah Lembaga Rayuan or Sharia Rayuan Court, which serves as an appellate court.

These courts also have jurisdiction over Muslims' personal and family matters, such as engagement, marriage, divorce, guardianship, adoption, legitimation, succession, as well as alms and waqf issues. Jurisdiction in criminal law is limited to offenses committed by Muslims in accordance with Sharia law, where offenders can be sentenced to a maximum of three years' imprisonment, a fine of up to 5,000 ringgit, a maximum of six lashes of the cane, or a combination of these penalties.

#### 8. Company Court (Company Court)

The Companies Court was established under the Companies Act 1967. It is headed by a president appointed by the Yang di-Pertuan Agong, together with a panel appointed by the Minister of Human Resources. The Court handles company disputes relating to terms of employment and termination of employment (PHK). Decisions issued by the Companies Court are final and cannot be appealed, challenged, re-examined or referred to another court.

#### 9. Bumi Putra Court (Mahkamah Anak Negeri)

The Mahkamah Anak Negeri is a court that handles the administration of customary law for indigenous people in Sabah and Sarawak. In Sarawak, there are three types of Anak Negeri Courts, namely

the Regional Anak Negeri Court, the Regional Pegawai Anak Negeri Court, and the Kampung Chief Court. In Sabah, the authority of the Anak Negeri Court is exercised by the Pegawai Daerah, with appeals from decisions of the Pegawai Daerah Court going to the Rayuan Bumi Putra Court. This court has the authority to hear cases involving violations of customary law by indigenous people. The Regional Anak Negeri Court has the authority to impose fines of up to RM1000, while the Kampung Chief Court can only impose fines of up to RM50.

#### Source of Law

In Malaysia, there are four main sources of law, namely written law, common law, Islamic law and customary law. Written law includes the constitution at both the federal and state levels, legislation passed by the federal parliament and state legislatures, and supplementary regulations and statutes. Customary law includes English common law and rules of rights that have been developed by Malaysian courts, which allow for differences with the written law and adjustments to local conditions as deemed appropriate. Some statutes codify much of the common law, such as the Contract Act of 1950, the Sale of Goods Act, and the Special Relief Act.<sup>13</sup>

Malaysian courts follow the principle of stare decisis, where the court follows the decision of the previous court. The decision of the high court is binding on the lower court level. Appellate court decisions are binding on the high court as well as lower levels of courts and federal

<sup>13</sup> Herlin Wijayati dkk., "JURNAL PERBANDINGAN HUKUM TATA NEGARA," t.t.

court decisions are binding on the appellate court and lower courts..<sup>14</sup>

Islamic law in Malaysia derives from the Holy Qur'an, hadith, the consensus of classical Islamic jurists, as well as the views of scholars, both ancient and modern, and also from customs. In the context of racial diversity in Malaysia, Islamic law is only applied to Muslims, particularly in the realm of civil law such as marriage, divorce, guardianship and inheritance.

Customary law in West Malaysia is rooted in ancient Malay customary traditions, the influence of Hindu law, and Islamic law. Meanwhile, in East Malaysia, customary law includes Malay customs that apply to non-Malay natives as well as Hindu and Chinese customs that have been codified in law. This customary law falls under the jurisdiction of the Native Courts.

## Codification of Family Law in Malaysia

### Marriage Registration

In Malaysia, marriage registration not only serves as an administrative tool, but is also an obligation regulated by law. This is reflected in Part II of the Marriage Chapter in Section 22 regarding the recording of marriage registers (1, 2, and 3) in the Islamic Family Law (Wilayah-Wilayah Persekutuan) Act 1984 (Act 303). Malaysian law expressly imposes sanctions on individuals who do not register their marriages.

This provision is also set out in the Enakmen of the Islamic Family Law (Negeri Pulau Penang) 2004, particularly

in Part IV on penalties and other provisions relating to marriage contracts and marriage registration, as contained in Section 40(2). The gist of the section is that violations of the marriage registration rules are subject to a maximum fine of RM1,000, imprisonment of up to six months, or both.

Based on this regulation, Malaysia requires marriage registration as part of family law. Although in Islamic law unregistered marriages are still considered valid, Malaysian law provides sanctions in the form of fines, imprisonment, or a combination of both for those who violate the registration requirements.<sup>15</sup>

### Marriage Age Restrictions

As mentioned earlier, each state in Malaysia has specific family laws, known as enactments or statutes. The provisions relating to the age limit for marriage are contained in the Muslim Family (Wilayah-Wilayah Persekutuan) Act 1984 (Act 303), specifically in Section 8 which sets out the minimum age for marriage. In Act A902 it is stated:

No marriage shall be solemnized under this Act if the man is less than eighteen years of age or the woman is less than sixteen years of age unless the Sharie Judge has authorized it in writing in the case of certain circumstances.

In Wilayah Persekutuan, the age limit is stipulated in Malaysian Muslim Family Act 1984 Section 8, which sets the minimum age for males at 18 years and for females at 16 years. If the age limit is

<sup>14</sup> "damy+kelembagaan," t.t.

<sup>15</sup> Muhammad Ihsanul Arif and Muhammad Adib Al Farisi, "PERBANDINGAN PEMBAHARUAN HUKUM KELUARGA ISLAM NEGARA PENGANUT MAZHAB

SYAFI'I (MALAYSIA DAN YAMAN)," *Al-Ahwal Al-Syakhsiyyah: Jurnal Hukum Keluarga Dan Peradilan Islam* 4, no. 1 (March 31, 2023): 57–70, <https://doi.org/10.15575/as.v4i1.24242>.



breached, the couple must obtain written permission from the competent authority.

In addition, Section 37 makes it a crime to force an individual to marry or to prevent an individual who has reached the legal age from marrying. Violation of this provision is punishable by a fine of up to RM 1,000, imprisonment of up to six months, or a combination of both.

### **Polygamy**

The rules regarding polygamy in Malaysia have been standardized since 1984 through the Family Law in each state, regulated under Section 23. This provision is enforced in all Malaysian states with stricter requirements and procedures for husbands who wish to apply for permission to practice polygamy. Additionally, the state of Selangor amended Section 23 of 1984 by enacting the Selangor Islamic Family Law 2003. In the amendment, the requirements for polygamy permits were tightened by mandating approval from the Syariah Court.

### **Divorce**

In family law in Malaysia, the pronouncement of talaq outside of court and without official permission can be subject to a penalty of RM 1,000, imprisonment for up to 6 months, or a combination of both.

### **Differences in the application of Sharia courts to states in Malaysia**

In every state in Malaysia, there is a Syariah Court established based on the Islamic Religious Enactment applicable in each respective state. The early formation of the Syariah Court began with the administration of the Islamic

Scholars Council (MUIS), which at that time was known as the Qadhi Court. In addition to the Qadhi Court, MUIS also manages the Islamic Religious Office, which is similar to the Office of Religious Affairs (KUA), and the Mufti Unit, which is akin to the Indonesian Ulema Council (MUI). The separation of the Shariah judiciary institutions into independent entities began with the establishment of the Shariah Judiciary Department of Sabah in 1996.<sup>16</sup>

The Syariah Court functions as a judicial institution that handles cases related to Muslims, including imposing penalties for violations in the fields of civil and criminal religious matters according to the established jurisdiction. The main objective of the Syariah Court is to uphold the implementation of Islamic law based on the Quran and as-Sunnah so that every Muslim can fulfill Allah's commands. In addition, this court also plays a role in the administration of Islamic law to ensure the welfare of the community, nurturing Muslim families to live according to the Sharia, and preventing the disintegration and collapse of households. This court also serves as a reference center for consultation and resolution of family issues for Muslims.

The Syariah Court has the authority to enforce the rules and regulations of Islamic Administrative Law in every state and region in Malaysia. Its jurisdiction includes matters such as marriage, divorce, family affairs, and the resolution of small estate cases. The function of the Syariah Court is separate from the Religious Affairs

<sup>16</sup> Desi Fitri, "Unifikasi Sistem Peradilan Di Tunisia," *As-Sakinah: Jurnal Hukum Keluarga*

*Islam* 2, no. 1 (2024): 1–12.

Office, which is responsible for other religious administrative matters such as zakat, Baitulmal, preaching, education, mosque management, and various other issues related to the Muslim community according to the jurisdiction of each state.

The structure of the Syariah Court in Malaysia consists of three levels: the Syariah Lower Court, the Syariah High Court, and the Syariah Appeal Court. The Syariah Lower Court is tasked with handling cases as stipulated by state enactments, hearing and deciding those cases, preparing court reports and documents, and managing cases at the district level. Meanwhile, the High Syariah Court has the authority to handle cases allocated to it, issue rulings in civil and criminal matters, resolve and verify faraid cases, handle appeals, and, in some states, compile court journals for publication.

The Syariah Appeal Court has the authority to handle appeal cases, including overturning sentences imposed by the Syariah Court, reducing sentences, ordering retrials, and accepting appeals from respondents sentenced to imprisonment or fines of no less than RM 25.00, provided the appeal is submitted according to the applicable procedures. Each appeal case will be examined by at least three judges from the Syariah Appeal Panel, who are selected and appointed by KDYMM Sultan, with the Chief Judge serving as the Chairman of the Syariah Appeal Panel.

The Syariah Court exercises the jurisdiction established in the Malaysian Constitution. The amendment of Article 121(1A) of the Federal Constitution in

1988 granted the Syariah Court a jurisdiction separate from the civil courts, making it free from the intervention of the general courts and equivalent to the civil courts. Regulations regarding the jurisdiction of the Syariah Court are governed by state enactments, while the Enactments and Islamic Family Law Act in Malaysia further regulate specific aspects of its jurisdiction.

### Enakmen dan Akta Kekeluargaan Islam di Malaysia

No.	Country	Deed/Entry Name	Referral Number
1.	Johor	Enakmen of Islamic Family Law (Negeri Johor) 2003 (En. 17/03)	5/1990
2.	Negeri Sembilan	Enakmen of the Islamic Family Law of Negeri Sembilan	7/1983
3.	Pahang	Enakmen of the Islamic Family Law of Pahang	3/2005
4.	Perak	Enakmen of the Islamic Family Law Perak of Perak	13/1991
5.	Selangor	Enakmen of the Islamic Family Law of Selangor	4/1984
6.	Kedah	Enakmen of the Islamic Family Law of Kedah	1/1984
7.	Kelantan	Enakmen of the Islamic Family Law of Kelantan	1/1983
8.	Melaka	Enakmen of the Islamic Family Law of Melaka	8/1983
9.	Sabah	Enakmen of the Islamic	15/1992

		Family Law of Sabah	
10.	Serawak	Ordinan Serawak Islamic Family Law	5/ 1991
11.	Pulau Pinang	Enakmen of the Islamic Family Law of Pulau Pinang	2/1985
12.	Perlis	Enakmen of the Islamic Family Law of Perlis	4/ 1992
13.	Terengganu	Enakmen Undang-undang Pentadbiran Keluarga Islam (En. 12/85)	12/1985

The existence and dynamics of the political and legal framework of the Syariah Court in Malaysia have a long history rooted in the era of the Islamic Sultanate, the British colonial period, and the post-independence period that continues to this day. Efforts to unify and standardize the Sharia Courts under the control of the central Malaysian government continue to face obstacles, especially from the state governments that oppose such measures. This happens because, in Malaysia's federal governance system, state governments have greater authority to manage their internal affairs, including policies related to the Syariah Courts.

Although the Malaysian constitution establishes Islam as the official religion, the development of the Syariah Court in each state highly depends on the commitment of the state government to uphold and implement Islamic values in politics and governance. If a state gives significant attention to the implementation of Islam,

then its Sharia Court tends to develop rapidly; conversely, if the attention is minimal, the development of the Sharia Court will stagnate.

The central government of Malaysia is currently striving to standardize the Syariah judicial system by placing the Syariah Courts under central authority, similar to the structure in Indonesia which culminates in the Supreme Court. However, the hierarchy of the Syariah Courts in Malaysia has not yet reached the national level (Federal Court). The highest court in this system is only the Syariah Court of Appeal, which is located in the capital of each state.

## CONCLUSION

Malaysia is a country with a majority of Muslims (53%), followed by Buddhists (19.2%), Christians (9.1%), Hindus (6.3%), and adherents of traditional Chinese religions (2.6%). A small minority follow religions such as Animism, folk beliefs, and Sikhism. As a federal state, Malaysia has a two-tiered system of government, namely the federal government and state governments.

As a former British colony, Malaysia adopted the British common law tradition, which goes hand in hand with the Islamic legal system administered by the Syariah Court, as well as the customary laws of the various indigenous ethnic groups. In this federated system, authority is shared between the federal and state governments. Family issues are dealt with by the Syariah Court, but remain within the scope of federal provisions and jurisdiction, including at the appeal stage.

Malaysia has various types of courts, including the High Court, Court of

Appeal, Federal Court, Sessions Court, Magistrates Court, Syariah Court, as well as the Native Court. The different powers of the Syariah Court in Malaysia are reflected in the various enactments references used by each state. This is because, under the federal system, state governments have broader authority to manage and regulate legal affairs in their respective territories

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