

WOMEN SYARIE LAWYERS: DEVELOPMENT, PROSPECTS
AND CHALLENGES A CASE STUDY IN
NEGERI SEMBILAN

BAHIYAH BINTI AHMAD

KOLEJ UNIVERSITI ISLAM MALAYSIA

SUMBANGAN

**WOMEN SYARIE LAWYERS: DEVELOPMENT, PROSPECTS
AND CHALLENGES
A CASE STUDY IN NEGERI SEMBILAN**

Bahiyah binti Ahmad
(Matric No. 1030307)

Academic Project Report Submitted In Partial Fulfillment for the
BACHELOR OF SYARIAH AND JUDICIARY

**PERPUSTAKAAN
UNIVERSITI SAINS ISLAM MALAYSIA**

Faculty of Syariah and Law
KOLEJ UNIVERSITI ISLAM MALAYSIA
NILAI

Perpustakaan USIM



1000032670

May 2006


PERPUSTAKAAN UNIVERSITI SAINS ISLAM MALAYSIA	
GIFT / DONATION SUMBANGAN IKHLAS WITH BEST COMPLIMENTS	
FROM	FSU
DATE	22/11/07
ACC. NO	

AUTHOR DECLARATION

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

I hereby declare that the work in this academic project is my own except for quotations and summaries which have been duly acknowledged.

Date: 11 May 2006

Signature : 
Name : Bahiyah binti Ahmad
Matrix No. : 1030307
Address : F 647 Kg. Singkir Laut
08110 Bedong
Kedah Darul Aman

ACKNOWLEDGEMENTS

بِسْمِ اللَّهِ وَالْحَمْدُ لِلَّهِ وَالصَّلَاةُ وَالسَّلَامُ عَلَى رَسُولِ اللَّهِ وَعَلَى آلِهِ وَأَصْحَابِهِ أَجْمَعِينَ

All praise and grateful is to the One whom all Dignity, Honour, Glory are due. Who begets not, nor is He begotten.

Peace and blessing of Allah be upon all the Prophet and Messengers, especially on Muhammad S.A.W. and all who follow him in righteous until the Day of Recompense.

My deepest appreciation is due to En. Abdul Hamid bin Abdul Murad, supervisor of this research project for his continued support and guidance during realising this research and my deepest appreciation also to my English teacher, En. Abdullah Fauzi for his commitments in helping me to complete my research project.

My special thanks go to The Registrar of Syariah High Court of Negeri Sembilan, En. Abdul Razak Mat Nayan, the Honorable Secretary of Persatuan Peguam Syarie Malaysia (PGSM), Prof Madya Hj. Noor Awang Hamad. Women Syarie Lawyers of Negeri Sembilan, Pn. Zalina binti Abd Malek, Pn. Halijah binti Syariff, and Pn. Siti Harlina binti Mohd. Shahrani; the interviewees of this research project.

My heartfelt gratitudes to my beloved father En. Ahmad bin Hamid and my beloved mother Pn. Zainab binti Man, all my brothers, my peers, and to those who helped me directly or indirectly in making this research a success.

To my soul mates, Wan Nurul A'milin and Munaliza Nor, thank you so much for your supports.

May Allah bless all of you with His Merciful, Compassionate, Love, and Protection and will give all of you the best reward from Him here and hereafter. Amin.

ABSTRAK

Kajian ini bertujuan mengetahui profesion Peguam Syarie Wanita dari sudut perkembangan, prospek, dan cabaran dengan pengfokusan ke atas beberapa orang Peguam Syarie Wanita di Negeri Sembilan. Di samping itu, persepsi pelajar-pelajar yang berlatar belakangkan pendidikan Undang-Undang Syariah terhadap Peguam Syarie Wanita juga turut dikaji. Mereka terdiri daripada pelajar-pelajar KUIM dan UIAM. Dua wakil kumpulan ini dipilih bertujuan supaya perbandingan terhadap pandangan-pandangan mereka dapat dibuat. Tujuan yang seterusnya adalah untuk meneliti langkah-langkah terkini yang di ambil oleh pihak-pihak berwajib untuk membantu meningkatkan profession Peguam Syarie di negara ini. Kaedah kajian yang digunakan termasuklah interview, kajian melalui borang kaji selidik, dan kajian perpustakaan. Dapatan kajian menunjukkan semua responden berfikiran dan berpandangan positif terhadap Peguam Syarie Wanita. Hakikatnya, Peguam Syarie Wanita mempunyai potensi dan imej yang tersendiri yang telah menyumbang dalam meningkatkan profession Perguaman Syarie di Malaysia.

ABSTRACT

The purpose of this research is to study about the profession of Women Syarie Lawyers in regard to their development, prospects and challenges with the focus on the Women Syarie Lawyers in the state of Negeri Sembilan. Besides, it is also to know the perceptions of students with Syariah Law background toward Women Syarie Lawyers. Two representative samples of students from Islamic University College of Malaysia (IUCM) and International Islamic University of Malaysia (IIUM) with Syariah Law background have been chosen in order to make a comparative study of their views. The developmental steps those have been taken by the authorities in enhance the profession have also been observed. The methods of interviews, surveys, and library research are used. Hence, the findings from all the representative groups have shown the positive thinking and perception of Women Syarie Lawyers in this country. In fact, Women Syarie Lawyers have their own potentials and images that have contributed to the enhancement of the Syariah Legal Profession in Malaysia.

ملخص البحث

يهدف هذا البحث إلى معرفة أحوال المحاميات الشرعية من الناحية التطوير والنظرة والتحديات التي تواجهها. لقد اختصت الباحثة بعض المحاميات في سرمبان, نكري سمبلن كعينية البحث . وبجانب ذلك , يهدف هذا البحث أيضا إلى معرفة نظرة طلاب المتخصصين في الشريعة والقانون عنهن. لقد حاولت الباحثة مقارنة آراء المجموعتين تجاههن وهما طلاب من الجامعة العلوم الإسلامية بماليزيا والجامعة العالمية الإسلامية بماليزيا. يهدف هذا البحث أيضا إلى معرفة الخطوات التي اجرت بها المؤسسة أو الهيئة المعينة والمختصة في رفع حرمتهن. لقد سلكت الباحثة ثلاث قواعد خلال تكميل هذا البحث وهي المقابلات وتوزيع الاستبيانات والدراسة المكتبية. وتوصلت الباحثة إلى نتيجة وهي أن جميع الفرق لهم نظرة إيجابية لهؤلاء المحاميات الشرعية الماليزيا خاصة للمحاميات في نكري سمبلن. وفي الحقيقة, لقد كانت لهؤلاء المحاميات الشرعية قابليات خاصة, وبهذه الصفة استطعن أن يسهمهن سهما عظيما في تطوير عملهن في ميدان القانون الشرعي في هذه البلاد.

CONTENT PAGE

CONTENT	Page
AUTHOR DECLARATION	i
ACKNOWLEDGEMENTS	ii
ABSTRAK	iii
ABSTRACT	ix
<i>MULAKHKHAS AL-BAHTH</i>	x
CONTENT PAGE	vi
LIST OF TABLES	vii
LIST OF FIGURES	viii
LIST OF STATUES	ix
LIST OF APPENDICES	x
GLOSSARY	xi
ABBREVIATION	xii
<i>CHAPTER 1: INTRODUCTION</i>	
BACKGROUND OF RESEARCH	1
LITERATURE REVIEW	3
CONCLUSION AND SUGGESTION	13
<i>CHAPTER 2: THE CONCEPTS OF PROFESSION OF SYARIE LAWYER</i>	
DEFINITION OF THE SYARIE LAWYER	15
THE SYARIE LAWYER IN ISLAM	
THE SYARIE LAWYER IN THE SYARIAH COURTS OF MALAYSIA	19
THE PROCEDURES FOR THE PRESENCE OF THE SYARIE LAWYER IN SYARIAH COURTS	21
THE APPOINTMENT AND QUALIFICATION OF SYARIE LAWYERS IN MALAYSIA	23
THE ROLES AND RESPONSIBILITIES OF SYARIE LAWYERS	29
<i>CHAPTER 3: WOMEN SYARIE LAWYERS IN NEGERI SEMBILAN</i>	
INTRODUCTION	33
METHODS OF INTERVIEWS	33
DISCUSSION	35
<i>CHAPTER 4: SURVEY OF THE SYARIAH & LAW STUDENTS' VIEWS OF WOMEN SYARIE LAWYERS IN MALAYSIA IN GENERAL</i>	
BACKGROUND OF SURVEY	45
METHODS OF SURVEY	46
RESULT OF SURVEY	47
FINDINGS	61
CONCLUSION	64
<i>CHAPTER 5: CONCLUSION AND RECOMMENDATION</i>	
CONCLUSION	65
RECOMMENDATION	70
BIBILIOGRAPHY	72
APPENDICES	74

List of Tables

	Page
Table 1: Respondents' Background	47
Table 2: The Analysis of the Respondents' View on Women Syarie Lawyers: Frequency and Percentage Represented	48-54

List of Figures

		Page
Figure 1	Bar Chart Showing the Respondents' Understanding and Familiarity with the Profession of Woman Syarie Lawyer	56
Figure 2	Bar Chart Showing the Respondents Those Who Tend To Be A Syarie Lawyer if They Were Given A Chance	56
Figure 3	Bar Chart Showing the Respondents Those Who Choose the Profession of Syarie Lawyer as Their Future Career	57
Figure 4	Bar Chart Showing the Respondents' Views towards the Number of Syarie Lawyers in Malaysia	57
Figure 5	Bar Chart Showing the Respondents' Views towards the Professional Services of Women Syarie Lawyers	58
Figure 6	Graph Showing the Respondents' Preference in Taking the Services of Women Syarie Lawyers	58
Figure 7 & 8	Bar Chart & Graph Showing the Respondents' Views towards the Suitability of this Profession for Women	59
Figure 9	Graph Showing the Respondents' Views towards the Services of Women Syarie Lawyers & Men Syarie Lawyers	60
Figure 10	Graph Showing the Respondents' Views towards the Rights Discrimination on the Syarie Lawyers.	60

List of Statues

	Page
The Administration of Islamic Law Act of Federal Territories (1993)	16,20,24
The Administration of Islamic Law Enactment of Selangor (1989)	20
The Administration of Islamic Law Enactment of Negeri Sembilan (1991)	27
The Administration of Muslim Law Enactment 1952 of Selangor	5
Syariah Court Civil Procedure (State of Selangor) Enactment 2003	15,21
Syariah Court Criminal Procedure (State of Selangor) Enactment 2003	22
Legal Profession Act 1976	9,12
Peguam Syarie Rules of (State of Selangor) 1991	26
Peguam Syarie Rules of (Federal Territories) 1993	24

List of Appendices

	Page
APPENDIX A: Interviews Questions	74
APPENDIX B: List Of Questionnaires	78
APPENDIX C: Interviewees' Backgrounds	81

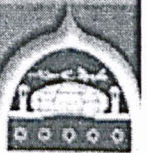
Glossary

<i>Fasakh</i>	Divorce
<i>Hadhanah</i>	Custody and Guardianship
Ibadah	Worship to God
Legal Aid Bureau	A Government Department under the jurisdiction of the Attorney-General's Chambers
<i>Murtad</i>	Who Renounce from Islam
<i>Suluh</i>	Reconciliation outside the Court
<i>Wakalah al khusumah</i>	Representative the Parties in Disputes
<i>Wakalah</i>	Representative

Abbreviation

DAIJ	Diploma of Administration and Islamic Judiciary
DIJAP	Diploma of Islamic Judiciary and Advocacy Practice
DSLPL	Diploma of Syariah law and Practice
IIUM	International Islamic University of Malaysia (<i>English Version</i>) / <i>Universiti Islam Antarabangsa Malaysia (Malay Version)</i>
IUCM	Islamic University College of Malaysia (<i>English Version</i>) / Kolej <i>Universiti Islam Malaysia (Malay Version)</i>
JKSM	Jabatan Kehakiman Syariah Malaysia
PGSM	Persatuan Peguam Syarie Malaysia (<i>Malay Version</i>) / Association of Syarie Lawyers Malaysia (<i>English Version</i>)
S.W.T	Subhanahu Wa Ta ‘ala
s.a.w	salla Allah ‘alayh wa sallam
ed.	editor
n.a	no author
n.d	no date
p.	page
vol.	volume

Kolej Universiti Islam Malaysia



Chapter

1

KUIM

Chapter 1

INTRODUCTION

1.1 BACKGROUND OF RESEARCH

To be a Woman Syarie Lawyer is one of the career prospects in Malaysia. However, the existence of this profession is rather unknown to the public in this country. Women Syarie Lawyers are not obtrusively highlighted in the mass media as compared to Women Civil Lawyers such as *Sisters in Islam* and others. Where are Women Syarie Lawyers? Is this profession very elitist and exclusive and is kept secret to the public? Or is this profession left neglected in the eyes of Syariah graduates as it is not competitive in the career world today?

As this profession will also give impact to Islam itself, so it is important to study and to make some research regarding this issue. In this academic project, the researcher tries to reveal what are the development, prospects and challenges on the Women Syarie Lawyers' profession. As a woman Syarie Law student in the Islamic College University of Malaysia (IUCM) it is very important for the researcher to know the exact scenarios and facts that exist in this profession because this field is actually the researcher's major of study.

Syarie Lawyer is not a new profession as it almost existed in the time of Prophet Muhammad s.a.w and the Companions. As Islam does not prohibit women and men to be involved in this profession, both have been involved in it. The significance of the research is to reveal the involvement of Muslim women as Women Syarie Lawyers because Islam has given the 'big gift' and chance for them to practice in this field. Finally, the aim of the research is hopefully to enhance the profession of Syarie Lawyers in this country.

1.1.1 Objectives Of Research

There are several objectives that the researcher has tried to reach throughout this research and they are;

1. To know who are Syarie Lawyers, their facts and issues.
2. To find out the development, prospects and challenges of Syarie Lawyers' profession in Malaysia.
3. To know the development, prospects and challenges of Women Syarie Lawyers' profession in the state of Negeri Sembilan.
4. To study the perception of students with Syariah Law background about the profession of Women Syarie Lawyers.
5. To find out the percentage of students with Syariah Law background who are interested in choosing this profession as their future careers.
6. To study the developmental steps for the advancement of the profession those have been taken by the authorities.

1.1.2 Scope of Research

The scope of this research is to study about the profession of Women Syarie Lawyers in regard to their development, prospects and challenges. The researcher has focused this research on Women Syarie Lawyers in the state of Negeri Sembilan as a representative sample of study. Below are the researcher's representative samples in getting the information needed in completing this research. They are:

1. Three Women Syarie Lawyers in the State of Negeri Sembilan
2. The Registrar of the Syariah High Court of Negeri Sembilan
3. An Officer from Association of Syarie Lawyers Malaysia/*Persatuan Peguam Syarie Malaysia* (PGSM)
4. 40 final year students with Syariah Law background from Islamic University College of Malaysia (IUCM) and International Islamic University of Malaysia (IIUM)

1.1.3 Methods of Research

Generally this research has used both of qualitative and quantitative research design methodologies. Three methods that have been used are interviews, surveys, and library research.

The interviewees who involved in this research are three Women Syarie Lawyers in the state of Negeri Sembilan, the Registrar of the Syariah High Court of Negeri Sembilan, and the Honorable Secretary from PGSM.

For surveys representative samples, 40 final year university students with Syariah Law background have been chosen from Islamic University College of Malaysia (IUCM) and International Islamic University of Malaysia (IIUM)

While through library research, the researcher has tried to get as many as the literature reviews from related reference books, journals, working papers, articles, newspaper cuttings, and law reports.

1.2 LITERATURE REVIEW

1.2.1 The Development of the Profession of Syarie Lawyer

As stated in Syariah law Journal-IIUM, before 1990, at a rough estimate, Malaysia had about 2000 practicing lawyers of which about 15% are Muslims. At a rough count, there are not more than 100 lawyers (mostly Muslims) who practised in the Syariah Courts. Besides these practicing lawyers, legal officers of the Legal Aid Bureau (a Government Department under the jurisdiction of the Attorney-General's Chambers) also appeared in Syariah Courts.¹

¹ n.a. 1990 "The Education and Training of Syariah Judges and Lawyers in Malaysia". *Syariah law Journal Islamic International University of Malaysia*. Vol. 6. p. 55-59.

The absence of Muslim lawyers in Syariah Courts at that time was a matter of regret and great concern to the Muslim community. Among the reasons for their reluctance to appear in the Syariah Courts are:

1) Financial Consideration

Syariah cases are less attractive financially despite involving substantial research and preparation.

2) Ignorance of Syariah Law & Procedure

Some lawyers readily admit that they have no background knowledge of Islamic Law and they fear that they may not be able to do justice to their clients.

3) Prejudice

Some lawyers have a prejudiced view of the Syariah Courts and their procedures. They notice the peculiar nature of the relationship between the Syariah Judges and Syariah Prosecutors and feel that the Syariah Courts are at times not acting really independent of the prosecution.²

According to Hj. Noor bin Awang Hamat the development of Syarie Lawyers was still in its infancy despite having been in Malaysia for almost 30 years old. The development of this profession has been slow as it is inter-related with the development of the Syariah Legal System in Malaysia and also the Syariah Courts.

Recently in 2005, the number of Syarie Lawyers registered under the PGSM is just about one thousand, the number is still small compared to the twelve thousand advocates and solicitors registered under the Malaysian Bar Council. Nevertheless, the number of Syarie Lawyers is increasing year by year.³

² n.a. 1990 "The Education and Training of Syariah Judges and Lawyers in Malaysia". *Syariah law Journal Islamic International University of Malaysia*. Vol. 6. p. 55-59.

³ Prof. Madya Hj. Noor Bin Awang Hamat. 2005. "Industri Guaman Syarie: Prospek dan Halatuju". (Paper). *Convention of Judiciary and Syariah Legal 2005*. Hotel Pan Pacific, KLIA. Kuala Lumpur. 13-14 September 2005.

At present, by increasing the awareness among Muslims in this country on their rights under Hukum Syara', the numbers of claims made in the Syariah Courts have multiplied. Therefore, the profession of Syarie Lawyer has attracted a large number of legal practitioners both from the Syariah and Civil academic backgrounds to involve in this profession.⁴

1.2.2 The Prospects of Syarie Lawyers Profession

Although the prospects of Syarie Lawyers profession are not very clear to us, according to Hj. Noor bin Awang Hamat the number of Syarie Lawyers was increasing year by year.⁵

At present, they were four categories of Syarie Lawyers who can appear before the Syariah Courts such as stated in section 55(1) of the Administration of Muslim Law Enactment 1952 (Selangor); First, any legal officer of the Federal Government; Second, any advocate and solicitor who possess on the valid certificate of practice produced under the Legal Professions Act 1976; Third, any person deemed to be qualified (for example: an academician); Fourth, any person qualified to be a Syarie Lawyer.

The variety of categories above mirrors the lack of uniformity in procedures for the admission of Syarie Lawyers. The third category especially, causes a conflict of interest in the sense that an academician (Syariah Law) can also be admitted as a Syarie Lawyer.

This should be strictly prohibited to avoid any conflict of interest. The Rules of Syarie Lawyers therefore recommended a provision that no qualified person shall without

⁴ Mohd Naim Mokhtar & Noor Inayah Yaakub.1999. "Syarie Lawyers in Malaysia: Now and Future". *Malaysian Law Journal* 2001. p 303-312

⁵ Prof. Madya Hj. Noor Bin Awang Hamat.2005. "Industri Guaman Syarie: Prospek dan Halatuju". (Paper). *Convention of Judiciary and Syariah Legal 2005*. Hotel Pan Pacific, KLIA. Kuala Lumpur.13-14 September 2005.

special leave in writing of the proposed Syarie Lawyers' Council, hold any office or engage in any employment of any kind as a kind Syarie Lawyer whether full time or otherwise.

1.2.3 The Challenges of Syarie Lawyers

The challenges faced by Syarie Lawyers can be categorized into two divisions: one is challenges from the profession and the other is challenges from outside the profession.

The challenges from the profession faced by Syarie Lawyers are upholding the truth, upholding the command of Allah, encouraging others to uphold the command of Allah, to be honest to client and to prepare themselves with the knowledge needed.

The challenges from outside the profession are to enhance and establish the profession of Syarie Lawyer in the Malaysia Legal System by establishing the Syariah Bar Council and to provide adequate governing laws for this profession.

1) *Prepare Himself with the Knowledge Needed*

To be a Syarie Lawyer, law students need to appreciate the general nature of both Islamic and Civil Laws and legal theory of both historical and social context of law.

The Ahmad Ibrahim Faculty of Law of IIUM, for example stresses on academic knowledge and legal analysis and inculcates both legal skills. This includes oral advocacy in Syariah and Civil Courts, communications and dispute resolution, legal writing, legal research, professional management and also computer for law. Moreover these would help inculcate general skills and prepare the law students for their specific academic discipline.

Definitely, these skills are paramount especially in an age where there is tremendous growth of practices of Islamic insurance (*takaful*), Interest Free Islamic Banking, the

systems of *al mudharabah* and *al wadiah* by most of the financial institutions and banking sectors throughout the country.⁶

According to Prof Dato' Dr. Mahmud Saedon Awang Othman, among the knowledge that the Syarie Lawyers should have is knowledge in Syariah. They should have vast knowledge of Syariah and Law of Procedures that are implemented in the Syariah Courts such as the Syariah Court Civil Procedure and Syariah Court Criminal Procedure.

Most of the Syarie Lawyers are rarely represented in criminal cases as they lacked of knowledge on the criminal law and its procedural. Lastly, they should know the interconnected laws such as the laws that are related to their duties like the Administration of Islamic Laws Act or Enactment, the Federal Constitution Act, and others.⁷

2) *Upholding the Truth*

A lawyer owes an overriding duty to uphold the truth. Therefore if the client asked his lawyer "What shall I say if I am asked such and such question? The lawyer must always say "You must tell the truth whether it hurts your case or not".⁸ It is compulsory for them to uphold justice although it is against their or their clients' interest.⁹

There is a general belief that to be a successful lawyer one has to twist facts and sometimes present facts which are not wholly true. That is, without using untruth no

⁶ Mohd Naim Mokhtar & Noor Inayah Yaakub.1999. "Syarie Lawyers in Malaysia: Now and Future". *Malaysian Law Journal* 2001. p. 303-312

⁷ Prof. Dato' Dr. Mahmud Saedon Awang Othman. 1997. "Peguam Syarie: Cabaran dan Penyelesaiannya":*Al Ahkam*. Vol 5. p. 14-40

⁸ Syed Ahmad Shihabuddin Abdurrahman Syed Elwi Al Sagoff. 1989. "The Practice of Law: Challenges For A Muslim Lawyer". *International Islamic University Law Journal*. Vol 1(1). p 171-185

⁹ Prof. Dato' Dr. Mahmud Saedon Awang Othman. 1997. "Peguam Syarie: Cabaran dan Penyelesaiannya": *Al Ahkam*. Vol 5. p. 14-40

one would be a successful lawyer. So it is the duty of every Muslim lawyer to strive and dispel the misconception. He should always uphold the truth, no matter if it is against himself or his parents or relatives or whether it is against the rich or the poor.

Evidence that points to apparent guilt has a strange habit of disintegrating time and again in the law courts. Honestly directed cross examination very frequently destroys the value of the accusation and demonstrates sometimes that the accused man is anything but guilty. A lawyer therefore should be very cautious in coming to an opinion on the guilt or innocence of his client until he has seen and heard the witnesses.¹⁰

3) *Upholding the Commands of Allah S.W.T*

There are some differences in challenges facing a Syarie Lawyer and a Civil Lawyer. Although both are responsible for upholding justice, but the justice for the Syarie Lawyer is what is equivalent to the Syariah itself which leans on the *Al-Quran*, the *Sunnah*, the *Ijma'* and *Qiyas*.

A Syarie Lawyer in whatever conditions and circumstances should hold firm to the commands of Allah S.W.T and the *Sunnah*. They should never be sacrificed, whether in the search for justice, for any other cause whatsoever, unless they have been allowed by the Syariah.

In the situation whether a Syarie Lawyer should accept or refuse in cases of lending money related to interest, or the interest being the only matter of claim, should he refuse the case or should he accept it? If he refuses, will he be acting contrary to the practice and ethics of the legal profession? If he does take the case, what remains of his obedience and relationship with Allah S.W.T?

Or, in the example of *solat*, although a Syarie Lawyer might has a busy schedule in courts and attending to clients, his *solat* should not be neglected.

¹⁰ Syed Ahmad Shihabuddin Abdurrahman Syed Elwi Al Sagoff.1989. "The Practice of Law: Challenges For A Muslim Lawyer".*International Islamic University Law Journal*. Vol 1(1). p 171-185

However under the Legal Profession Act 1976, a lawyer has the right to refuse such a case although such application was not against the law in force.¹¹ So it is a chance for Muslim lawyer to practice the best he can without ignoring the command of Allah.

If a Muslim lawyer sincerely upholds the commandments of Allah S.W.T in his legal practice and personal life, then he shall be an example to the public of the uprightness and honesty of Muslim lawyers.¹²

4) *Encouraging Others to Uphold the Commands of Allah S.W.T*

Clients come to seek legal advice from the lawyer. Often the clients are afraid of the legal consequences that follow, be it criminal or civil, and seek the help of lawyers to relieve them of these consequences. In the clients' predicament, they look for technicalities to escape the arms of the law.

For instance a client who is in debt and unable to find funds to pay the full sum would transfer whatever assets he has to his wife or other relatives, in such circumstances, a Muslim lawyer should not hesitate to advise his client that though he be rid of the burden in this life, being a genuine debt, he would be answerable to it in the life hereafter.

A Muslim lawyer should try to encourage his client to conduct himself in accordance with the commands of Allah S.W.T. although he may not compel his client to do so. If his client agrees, then he should endeavor to help his client the best way he can.

In the example above, the Muslim lawyer could negotiate with the other party for payment by installment so that his client has more time to pay the whole debt. Allah

¹¹ Syed Ahmad Shihabuddin Abdurrahman Syed Elwi Al Sagoff.1989. "The Practice of Law: Challenges For A Muslim Lawyer".*International Islamic University Law Journal*. Vol 1(1). p 171-185

¹² Ibid. p. 171-185

S.W.T has enjoined us to encourage others towards good and to forbid them from evil.¹³

5) *Honesty to Client*

A lawyer owes a duty to give legal advice and the position of the law. If the client has a bad case or no case at all, he must tell his client so, whether his client likes it or not. He may then lose his client but this frankness will pay in the long run. His endeavor must always be to inspire confidence in a client about the honesty of his advice and legal practice.

If he feels that the matter is beyond his depth he should not hesitate to consult a senior and if the area of law concerned is beyond his expertise, he should refuse to accept the case. A good lawyer is one who is able to complete his client's case in the shortest time and at the least cost possible.

The cost of engaging a lawyer is another fact that irks the public. The high cost for legal service has given rise to the saying that "lawyers make a fortune out of the misfortunes of others".

A Muslim lawyer should not be unduly obsessed about his fees. He has a social responsibility to his client and to uphold the cause of justice. That should be his purpose and in doing so, his fees would come naturally. He should always be ready to take a case without payment if circumstances demand so and if he can, visit such clients in their homes and show some concern and sympathy for their plight.

Whenever he can, he should always keep his client out of court by settlement and the case is resolved with the least friction between the parties, remove from them the anxiety of protracted litigation and save cost.¹⁴

¹³ Syed Ahmad Shihabuddin Abdurrahman Syed Elwi Al Sagoff.1989. "The Practice of Law: Challenges For A Muslim Lawyer".*International Islamic University Law Journal*. Vol 1(1). p 171-185

¹⁴ Ibid. p 171-185

6) *To Establish a Syariah Bar Council*

The other challenges are to establish the body that govern or that should govern the profession of Syarie Lawyer and the law that should reform regarding it. For example it is essential to establish a Syariah Bar Council which is equivalent to the Malaysian Bar Council to be responsible for the admission, ethics and welfare of the Syarie Lawyers¹⁵

Muhamad bin Hj Burok who is president of *Association of Syarie Lawyers Malaysia (PGSM)* has suggested in his working paper to establish the Syariah Bar Council and has stated several objectives. They are:

- 1) To set the code of ethics among the member.
- 2) To provide a platform for the members to have a detailed discussions regarding Syariah law.
- 3) Whenever needed, the Syariah Bar Council can give their opinion regarding the legislation, administration, and practice of the Syariah law in Malaysia.
- 4) Represent, protect and help the members in the Syariah Bar Council. And lastly to help the public in all aspects that are related to Syariah law such as to establish a fund to promote the Syariah Legal Aid for the poor people and for those who cannot afford to be represented by a Syarie Lawyer.¹⁶

A Syarie Lawyer with the Syariah bachelor's degree is not acknowledged by the Malaysian Bar Council as part of the legal profession in this country but are only Syariah practitioners. As a result, Syarie Lawyers are said to be unqualified lawyer and are not permitted to practice their profession in the Civil Court. They are also prohibited from showing their names on the letterhead of their firm's formal letter.

¹⁵ Mohd Naim Mokhtar & Noor Inayah Yaakub.1999. "Syarie Lawyers in Malaysia: Now and Future". *Malaysian Law Journal* 2001. p 303-312

¹⁶ Hj. Muhamad bin Hj Burok. 2005. "Isu dan Permasalahan Guaman Syarie ke Arah Penubuhan Majlis Peguam Syarie". (Paper). *Convention of Judiciary and Syariah Legal 2005*. Hotel Pan Pacific, KLIA. Kuala Lumpur.13-14 September.

The reason given by the Malaysian Bar Council is that they are not bound by the Legal Profession Act 1976.¹⁷

7) *To Provide Adequate Governing Law for This Professions*

Other challenges are to provide adequate governing laws for this profession which are equivalent to the Legal Professions Act 1976 and the Legal Professions (Practice & Etiquette) Rules 1978.¹⁸ This is because, according to them, there is no specific and express provisions related to the responsible body that shall sit as disciplinary committee members for Syariah Lawyers.

Standardizing the qualification and admission of Syariah Lawyers between states is also another challenge to this profession. This is because the Syariah Lawyer who wants to practice in all the states of Malaysia must apply to all the states each with the difference requirements compared to the Civil Lawyer that only submits one application and it is applicable throughout Malaysia.

It is said that this problem arise as Islamic matters are put under the State list of the Malaysia in Federal Constitution Act and not under the Federal list of the same Act.¹⁹

According to Hj. Noor bin Awang Hamat this problem is also related to the political willingness of the government.²⁰

1.3 CONCLUSION AND SUGGESTION

¹⁷ Hj. Muhamad bin Hj Burok. 2005. "Isu dan Permasalahan Guaman Syariah ke Arah Penubuhan Majlis Peguam Syariah". (Paper). *Convention of Judiciary and Syariah Legal 2005*. Hotel Pan Pacific, KLIA. Kuala Lumpur.13-14 September.

¹⁸ Mohd Naim Mokhtar & Noor Inayah Yaakub.1999. "Syariah Lawyers in Malaysia: Now and Future". *Malaysian Law Journal 2001*. p 303-312

¹⁹ Hj. Muhamad bin Hj Burok. 2005. "Isu dan Permasalahan Guaman Syariah ke Arah Penubuhan Majlis Peguam Syariah". (Paper). *Convention of Judiciary and Syariah Legal 2005*. Hotel Pan Pacific, KLIA. Kuala Lumpur.13-14 September.

²⁰ Prof. Madya Hj. Noor Bin Awang Hamat.2005. "Industri Guaman Syariah: Prospek dan Halatuju". (Paper). *Convention of Judiciary and Syariah Legal 2005*. Hotel Pan Pacific, KLIA. Kuala Lumpur.13-14 September.

There are several steps suggested by Mohd Azam (1996) to help in enhancing the profession of Syarie Lawyer;

1. Syarie Lawyer (means the Syarie Lawyer with the bachelor of Syariah) should be permitted to practice and work in legal firms and conduct cases in the Civil Courts in Malaysia.
2. A Syarie Lawyer who works in a Civil Law firm, should be acknowledged and recognized by the Malaysian Bar Council to conduct cases in Civil Courts. The same applies to advocates and solicitors who work in Syariah legal firms. They also have to be acknowledged and recognized to conduct cases in the Civil Courts.
3. To establish a body, namely, Syariah Bar Council, with the members from Syarie Lawyers and Syarie Lawyers from advocates and solicitors with their special code of ethics.
4. The Malaysian Bar Council should provide the rule to control the ethics and morals of advocates and solicitors who are accepted as Syarie Lawyers.
5. There should also be a rule regarding the monetary trust of the Syarie Lawyers.
6. There should be a uniform rule in the admission conditions of Syarie Lawyers for all states.²¹

While Hj Muhamad bin Hj Burok had suggestes that to settle all the disputes, the Malaysia Legal System that consists of separate civil and Syariah Judiciaries systems should be combined into one system. This is because, the problems related to Syarie Lawyers are derived from the reasons that the Islamic matters have been put under the state list in the Federal Constitution Act of Malaysia.

²¹ Mohamed Azam Mohamed Adil. 1996. "Peguam Syarie: Masa Depan dan Cabarannya di Malaysia" *Jurnal KANUN Malaysia*. Vol. 8(1) March. p 1-18

The problem of Syarie Lawyers do not get priority attention from the government because it is under the state, while the problems related to Civil Lawyers get top priority from the government as they are under the Federal list, for which the government totally responsible.²²

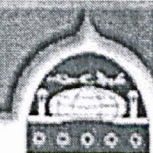
Another respected personality, Datuk Abdul Hamid Mohamad, a judge in the Federal Court of Malaysia, in his article, 'The Common Law in Malaysia', suggests that there should be a Syariah Committee that will function as a technical body to research the common law that is practiced in Malaysia, combine the Civil Law with the Syariah Law and implement the Syariah Law in the Civil Legal System which is good to practice. Both need to be harmonized practiced which is easier to the public.

There also should be no extreme views that the common law is the highest law, as the justice is not monopolized by common law. On the other hand, there should be no extreme views that the Syariah law is the law from Allah that does not accept any changes throughout the time. He added it is not possible to establish a "Malaysian Common Law" which harmonized Common Law with Syariah Law.²³

²² Hj. Muhamad bin Hj Burok. 2005. "Isu dan Permasalahan Guaman Syarie ke Arah Penubuhan Majlis Peguam Syarie". (Paper). *Convention of Judiciary and Syariah Legal 2005*. Hotel Pan Pacific, KLIA. Kuala Lumpur. 13-14 September.

²³ Datuk Abdul Hamid Mohamad. 2005. "Common Law Malaysia-Harmonikan Undang-Undang Sivil Dan Islam". *Utusan Malaysia*. 16 Disember 2005. p 18-19

Kolej Universiti Islam Malaysia



Chapter

2

KUIM

Chapter 2

THE CONCEPTS OF SYARIE LAWYER

2.1 DEFINITION OF SYARIE LAWYER

There are few definitions of the Syarie Lawyer in Malaysia. Mahmud Saedon defined a Syarie Lawyer as one who defends his client in the Syariah Court within the Syariah Court's jurisdiction. A Syarie Lawyer will give services to his clients to fulfil their requests and hopes. Their clients usually will demand the best services from a lawyer that they hire. The main purpose is to win the case for the client and even if the client is declared guilty, the punishment that will be imposed will be lighter.²⁴

Farid Suffian has interpreted a Syarie Lawyer as those who are practice in the Syariah Courts in Malaysia and is governed by the respective States' Peguam Syarie Rules.²⁵

Section 3: Interpretation of Syariah Court Civil Procedure (State of Selangor) Enactment 2003, gives the interpretations of Peguam Syarie as;

*“Peguam Syarie” has the meaning assigned thereto in the Administration Enactment.*²⁶

²⁴ Prof. Dato' Dr. Mahmud Saedon Awang Othman.1997. “Peguam Syarie: Cabaran dan Penyelesaiannya”.*Al Ahkam*. Vol 5. p. 14-40

²⁵ Farid Suffian et.al.2001.*Administration of Islamic Law in Malaysia*. Kuala Lumpur. Malayan Law Journal. p. 283

²⁶ Dewan Undangan Negeri Selangor. 2003. Syariah Court Civil Procedure Enactment 2003. (Revised 2005).

While, according to the First Part of Islamic Administration Act, Federal Territories 1993 (505 Act) a Syarie Lawyer is defined as;

“A person appointed as a Syarie Lawyer under section 59 under the Act.”²⁷

2.2 SYARIE LAWYER IN ISLAM

This profession is known in Arabic as *wakalah al khusumah*. However there is no specific authority on the practice of this profession in Al-Quran except on the general concept of *wakalah* (general representation).

Cited in the Al Quran are the right to appoint a representative for the arbitration in settling family disputes (Surah An-Nisa’ 4:35), representations in matter of transactions (Surah al Kahfi 18:19) and giving testimonies in the law of evidence (Surah an Nisa’ 4: 105)²⁸

﴿ إِنَّا أَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ لِتَحْكُمَ بَيْنَ النَّاسِ بِمَا أَرَاكَ اللَّهُ وَلَا تَكُنَ لِلْخَائِنِينَ

خَصِيمًا ﴿

We have sent down to you the Book in truth that you may judge between men, as guided by Allah; so be not used as and advocated by those who betray their trust. (Al-Quran. An-Nisa’ 4: 105)²⁹

²⁷ Malaysia. Akta Pentadbiran Undang-Undang Islam (Wilayah-Wilayah Persekutuan) 1993 (Akta 505)

²⁸ Jasri Jamal. n.d. “Perlantikan, Etika dan Tanggungjawab Peguam Syarie di Malaysia”. *Malaysia Law Journal*. <<http://www.mlj.com.my/free/articles/jasri.html>>

²⁹(All Quranic translations in this writing are based on Prof Dr. Syed Vickar Ahamed Holmdel. n.d. *Interpretation of the Meaning of the Glorious Quran*. Cairo, Egypt. Translations from other sources will be cited accordingly).

﴿ وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا ﴾

﴿ إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا ﴾

If you fear a break up between the two of them, appoint (two) individuals, one from his family and the other from hers, If they wish for peace, Allah will cause their reconciliation. For Allah has full knowledge, and is well acquainted with all things. (Al-Quran. An-Nisa' 4: 35)

﴿ وَكَذَلِكَ بَعَثْنَاهُمْ لِيَتَسَاءَلُوا بَيْنَهُمْ قَالَ قَائِلٌ مِّنْهُمْ كَمْ لَبِثْتُمْ قَالُوا لَبِثْنَا يَوْمًا

أَوْ بَعْضَ يَوْمٍ قَالُوا رَبُّكُمْ أَعْلَمُ بِمَا لَبِثْتُمْ فَابْعَثُوا أَحَدَكُمْ بِوَرِقِكُمْ هَذِهِ إِلَى الْمَدِينَةِ

فَلْيَنْظُرْ أَيُّهَا أَزْكَى طَعَامًا فَلْيَأْتِكُمْ بِرِزْقٍ مِنْهُ وَلْيَتَلَطَّفْ وَلَا يُشْعِرَنَّ بِكُمْ أَحَدًا ﴾

Such being their condition, we woke them up (from their sleep). That they may question each other. One of them said, "How long have you stayed (here)?" They said, "We (might) have stayed a day, or part of a day. (At the end), they (all) said, "Allah (alone) knows best how long you have stayed here. Now then you send one of you with this money of yours to the town. Let him find out which is the best food (to eat) and bring some to you. So that (you may) satisfy your hunger with it. And let him act with care and courtesy. And let him not inform anyone about you. (Al-Quran. Al-Kahfi 18: 19)

However in the practice of the Companions of Muhammad Rasulullah SAW, it was shown that the lawyer could assist the court in arriving at justice.

It is related that in the year of the famine in Arabia, a woman who had been married informed the caliph Saidina Umar that she was pregnant as a result of *zina* (adultery) and asked him to impose the punishment of stoning on her. Saidina Ali looked into the case to find the reasons which caused the woman to commit the offence. He found that

the woman had sexual intercourse not willingly but because she was in a state of extreme hunger and thirst. (*Ibn Qayyim al Jauziyyah, Al-Turuq al Hukumiyyah: p.79*)

On another occasion, a woman came to see Saidina Umar, and at the time, Ka'ab was with the Caliph, she said: "Oh commander of the faithful, I have not seen a man better than my husband. He keeps awake the whole night in prayer and devotion and he fast the whole day and even though the weather is hot, he does not break his fast". Omar when he heard this gave thanks to Allah SWT as he thought that the woman was lucky to have such a husband.

Ka'ab however pointed out the fact that the woman was making a complaint against her husband and alleging that the husband had never slept with her. Saidina Umar was surprised and asked the woman if this was true and he told her she should not be shy but she should relate truly what happened. The woman then said: "I am still young and I have desires like other women". Saidina Umar then sent for the husband. He then asked Ka'ab to judge the case. Ka'ab at first refused, saying that Umar was more competent to do so. Saidina Umar however insisted and so Ka'ab gave his judgment as follows: "I am of the opinion that we should take the analogy of a man who has four wives and the woman who complained is his fourth wife.

The man is then entitled to perform his religious observances for three days and nights and one day and night will then be for the woman. Saidina Umar was well pleased with the judgment and later appointed Ka'ab as *Qadi* in Basrah. (*Dr. Ahmad Abdul Muniem Al Bahal, Tarikh Al-Qada fil Islam: p.110*)

In another case, there was a young lady who fell deeply in love with a young man but it appeared that the young man rejected her advances. This made the young lady very angry and she thought of a device to harm him. She broke an egg, threw away the yolk and poured the white over her dress and her upper legs. She then cried out and presented herself to Caliph Umar and accused the young man of molesting her and she said that there were traces of his semen on her dress and upper legs. The young man denied her accusation. Saidina Ali who was present was asked his opinion. Saidina Ali asked for some boiling water and he poured it on the dress. The liquid solidified and

became white, and when Saidina Ali tasted it, he found it tasted like egg. He therefore said it was not semen and as a result, the young woman acknowledged her plan and the young man was released. (*Ibn Qayyim al Jauziyyah, Al-Turuq al Hukumiyah: p.70*)

According to a majority of jurists, the roles played by the Companions in defending the accused in the above examples indicated the permissibility of this profession. Furthermore there is no report on the objection of any *Mazhab* on this practice as long as it is done within the ambit of Syariah. Therefore, the Syarie advocacy is permissible in Islam based on *Ijma'* of companions and of later jurists.³⁰

2.3 THE SYARIE LAWYER IN THE SYARIAH COURTS OF MALAYSIA

There is no adequate record on the existence of this profession in Malaysia before the promulgation of the respective states' Peguam Syarie Rules. However, inference may be made that this profession had been in existence prior to that based on the fact that the *Kadis* Court had been established and administered even before our independence from British colonization in 1957.³¹

Among the differences are the Rules of the Syarie Lawyer, the provisions on the Syarie Lawyer that are provided under Civil and Criminal Procedure of the Syariah Courts, application, appointment, ethics and dismissal of Syarie Lawyers which are under the Administration of Islamic Law Enactment of each state. In spite of these, the differences are not really obvious because some of these provisions are likely the same.

The basic ground for a Syarie Lawyers presence in a Syariah Court is stated in the Enactment of the Administration of Islamic law in each state. This enactment gives

³⁰ Farid Suffian et.al.2001.*Administration of Islamic Law in Malaysia*. Kuala Lumpur. Malayan Law Journal. p.289

³¹ Ibid. p.290

the permission to any Syarie Lawyer to present and represent for any of his clients in any Syariah Court in the state.

The Administration of Islamic law Act of the Federal Territory 1993 states that the permission is given to any Syarie Lawyer to practice in the Federal Territory thereof. This provision also applies to the Federal Territories of Labuan and Putrajaya.

Section 59 (1) of the Administration of Islamic law Act of Federal Territory 1993:

The Council can, after having been paid the fixed fee, accept any person who has sufficient knowledge of Hukum Syara' to be a Syarie Lawyer to represent any party in any trial before any Syariah Court.

This section states that any person who is not a Syarie Lawyer appointed by the Council cannot represent any party in any trial in any Syariah Court in the federal territories.

Yet, the provision of Selangor: Section 55 (1) of Administration of Islamic Law Enactment of Selangor 1989 states that:

The Majlis can appoint any legal officer of the Federal Territories who is a holder of the Legal Professions Act 1967 certificate, or any person who is competent to be a Syarie Lawyer to present and represent any party in any of the Syariah Courts.

This enactment clearly gave permission to advocates and solicitors who practice in Civil Courts to practice in the Syariah Court with only the condition that he has been appointed by the Islamic Religious Council of Selangor as a Syarie Lawyer.

2.4 THE PROCEDURES FOR THE PRESENCE OF THE SYARIE LAWYER IN SYARIAH COURTS

A Syarie Lawyer is bound to the procedures that are provided of his presence in any of the Syariah Courts. The basis of his presence is stated in the Syariah Court Civil Procedure of each state.

For instance In Selangor, under the Syariah Court Civil Procedure (State of Selangor) Enactment 2003³², it is states that there are several provisions related to Peguam Syarie.

They are: *Wakalah* Peguam Syarie, Change of Peguam Syarie, Discharge of Peguam Syarie, Discharge on application of Peguam Syarie and Death of Peguam Syarie.

Section 34. Wakalah Peguam Syarie.

- (1) The Wakalah of a Peguam Syarie shall be pronounced by the person who appoints, and accepted by the Peguam Syarie so appointed, before the Court or the Registrar.*
- (2) Where a Peguam Syarie has accepted his appointment under subsection (1), he shall, before taking any step in the proceedings, file a wakalah in Form MS 5*

35. Service on Peguam Syarie.

Where a Peguam Syarie represents more than one party in any proceedings, service of a single copy of any proceedings, service of a single copy of any document on the Peguam Syarie shall be sufficient service on all such parties.

³² Dewan Undangan Negeri Selangor. 2003. Syariah Court Civil Procedure Enactment 2003. (Revised 2005).

36. *Change of Peguam Syarie.*

(1) *Where a party desires to change his Peguam Syarie, he shall file a notice of change in Form MS 6 and serve a copy of the notice on all parties.*

(2) *Section 34 shall apply in relation to a change of Peguam Syarie as it applies in relation to the appointment of the Peguam Syarie.*

37. *Discharge of Peguam Syarie.*

Where a party desires to discharge his Peguam Syarie, he shall file a notice of change in Form MS 7 and serve a copy of the notice on all parties.

38. *Discharge on application of Peguam Syarie*

Where a Peguam Syarie representing a party applies to be discharged, he shall file a notice of withdrawal in Form MS 8 and serve a copy of the notice on the party he represented.

39. *Death of Peguam syarie*

The wakalah of a Peguam Syarie shall determine on the death of the Peguam Syarie or the other party he represented.

Even so, the Syariah Criminal Procedure Enactment 2003 (Selangor) has not stated clearly the specific provisions in regard to the roles of the Syarie Lawyer. Despite this, some of the provisions such as sec 184 and section 104 mentioned indirectly about the roles of Syarie Lawyer.

Syariah Criminal Procedure (State of Selangor) Enactment 2003:³³

Section 184: Employment of Peguam Syarie.

(1) *With the approval of the Majlis, a Syarie Lawyer may be appointed by the Chief Syariah Prosecutor to conduct any presentation, or to appear on any appeal on behalf of the Chief Syariah Prosecutor*

³³ Dewan Undangan Negeri Selangor. 2003. Syariah Court Criminal Procedure Enactment 2003. (Revised 2005).

(2) A Syarie Lawyer appointed under subsection (1) shall be paid out of public funds such remuneration as may be sanctioned by the Majlis, and while conducting such prosecution or appeal the Syarie Lawyer shall be deemed to be a public servant.

Section 104: Right of accused to be defended.

Every person accused before any Court may of right be defended by a Peguam Syarie.

Syarie Lawyer is obligated to defend the accused person according to the trial procedures which are stated in the Syariah Criminal Procedures Act or Enactment. The procedures that obligate a Syarie Lawyer to follow include before, during and after a trial.

For instance, the procedures during the trial allowed the Syarie Lawyer or accused to cross examine all the witnesses on behalf of the prosecution in front of the Syariah judges. The purpose of the cross examination is to inspect the true fact from the witness, and make the case doubtful in order to release the innocent person.

A Syarie Lawyer also needs to prepare the appeal petition of his client to the Registrar of the Syariah High Court within 10 days after the date of the judgment.

In fact, the request of Syarie Lawyer is more needed in many of the civil cases compared to criminal cases.³⁴

³⁴Jasri Jamal. n.d. "Perlantikan, Etika dan Tanggungjawab Peguam Syarie di Malaysia". *Malaysia Law Journal*. <<http://www.mlj.com.my/free/articles/jasri.html>>

2.5 THE APPOINTMENT AND QUALIFICATION OF SYARIE LAWYERS IN MALAYSIA

A Syarie Lawyer, being one who is related to Islamic matter therefore under the state's legislative, as a result, the appointment and application of a Syarie Lawyer differ from one state to another in Malaysia. The differences give both positive and negative impacts to this profession.

The researcher will focus the conditions of the appointment and qualification of a person to be accepted as a Syarie Lawyer in several states in Malaysia such as the Federal Territories, Selangor and Negeri Sembilan. While in other states, the researcher will highlight some of the obvious differences in the appointment and qualification of a Syarie Lawyer in those states.

Federal Territories of Kuala Lumpur, Putrajaya and Labuan

The Syarie Lawyers in the Federal territories of Kuala Lumpur, Labuan and Putrajaya are under the Malaysian government jurisdiction. According to section 59(2) (b) of the Administration of Islamic Law Act (Federal Territories) 1993 (Act 505):

The Council with the consent of the Yang Di Pertuan Agong may make a rule namely Rules (Practices and Ethics) Syarie Lawyer (Federal Territories) 2000.

This rule is derived from the previous Rules of Syarie Lawyer 1993 of the Federal Territories. The conditions that qualified someone to be accepted as a Syarie Lawyer in the Federal territories thereof are:

- (i) *Is a Muslim and has passed the final examinations which led to the certificate of a bachelor's degree in Syariah from any university or any Islamic educational institution recognized by the Government of Malaysia; or*

- (ii) *Is a Muslim member of the judicial and legal service of the Federation.*
- (iii) *Is a Muslim advocate and solicitor enrolled under the Legal Profession Act 1976; or*
- (iv) *Has served as a Syariah Judge or as a Kadi with any state government in Malaysia for a period of not less than seven years.*
- (b) *Has attained the age of twenty one years.*
- (c) *Is of good behavior; and:*
 - (i) *He has never been convicted in Malaysia or in any other place of any criminal offence;*
 - (ii) *Has never been adjudged a bankrupt;*
- (d) *Is a Malaysian citizen; and*
- (e) *As an advocate and solicitor, has passed the Examination of Syarie Lawyer Certificate.*

The new addition to this Rule is that a person who wishes to be a Syarie Lawyer must complete the professional training in Islamic Judiciary and Advocacy that is recognized, sufficient and well versed in *Hukum Syara'*. This new condition is most welcome to equip a Syarie Lawyer in his services.³⁵

The professional training can be defined as the Diploma of Islamic Judiciary and Advocacy Practice (DIJAP) offered by Islamic University College of Malaysia (IUCM), Diploma of Syariah law and Practice (DSLPP) and Diploma of Administration and Islamic Judiciary (DAIJ) offered by International Islamic University of Malaysia (IIUM).

³⁵ Sheikh Salim Sheikh Salleh et.al.2003. "Penerimaan Masuk Sebagai Peguam Syarie di Malaysia". (Research Seminar KUIM 2003). Islamic University College of Malaysia.p 15-39.