

JABATAN KEHAKIMAN SYARIAH MALAYSIA: A STUDY ON THE
ORGANIZATION AND FUNCTIONS

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ORGANIZATION AND FUNCTIONS

Perpustakaan
Kolej Universiti Islam Malaysia

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P 010260

Academic project report submitted in fulfillment for the degree
BACHELOR OF
SYARIAH AND JUDICIARY
WITH HONOURS

Faculty Syariah and Law
KOLEJ UNIVERSITI ISLAM MALAYSIA
Kuala Lumpur

GIFT / DONATION SUMBANGAN IKHLAS WITH BEST COMPLIMENTS	
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ACC. NO	000019359

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AUTHOR DECLARATION

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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

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ACKNOWLEDGEMENTS

In the name of Allah, most graceful and most compassionate

My Gratitude to Allah and His Messenger Muhammad SAW, His family and His Companions.

Appreciation is due to Prof. Dr. Abd. Samad Musa, Dean of Syariah and Law faculty as supervisor of this research project for his continued support and guidance during the research, and to Dato' Sheikh Ghazali bin Ab. Rahman, Director of DJSJ, Tn. Hj. Abd. Walid bin Abu Hassan, Senior Officer on DSJM, Pn. Rathanah librarian of DJSJ for their co-operation and Pn. Rodhiyah Ali for her advice.

Special appreciation also goes to my beloved family for their help and support, the KUIM Language Unit and unforgettable to my colleagues for their support and ideas in the preparation of this work

And lastly with my humble thanks to Allah for the good health which enables me to complete this research. May Allah Bless You All

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February 2004.

ABSTRAK

Kajian ini menggunakan pendekatan kajian perpustakaan sebagai medium utama untuk mendapatkan maklumat disamping beberapa kaedah lain antaranya temuramah pegawai-pegawai yang berkaitan. Kajian ini akan membincangkan peranan Jabatan Kehakiman Syariah Malaysia (JKSM) dalam menyeragamkan Mahkamah Syariah di Malaysia. Objektif utama adalah untuk mengkaji peranan, fungsi dan organisasi JKSM khususnya dalam menyeragamkan Mahkamah Syariah di Malaysia. Hasil kajian telah menunjukkan bahawa JKSM sememangnya agensi kerajaan yang berkeelayakan untuk melaksanakan segala usaha dalam menyatukan Mahkamah Syariah. Dapatan dari hasil kajian telah menunjukkan sejak penubuhan JKSM sedikit demi sedikit perubahan telah dilakukan terhadap pentadbiran Mahkamah Syariah antaranya pelaksanaan E-Syariah yang dilaksanakan dalam dua peringkat melibatkan JKSM sebagai agensi pusat dengan semua Mahkamah Syariah Negeri dan daerah serta penggunaan Skim Gunasama Pegawai Syariah.

ABSTRACT

This research uses the library research approach as the main medium to get information and the other approach used is the interview with the DJSM officers. This research discusses about the role of DSJM to restructure the Syariah Court in Malaysia. The main objective is to study the roles, functions and organization of DJSM to structure the Syariah Court. The information gathered from the research shows that the DJSM is an effective government body and is required to execute all the efforts to restructure the Syariah Court. The result from this research shows that after the establishment of DJSM, a few changes of the framework have been done relating to organization of the Syariah Court such as the introduction of E-Syariah which is carried out in two levels, namely DJSM as the main agency with all the Syariah Courts at national and district levels and the implementation of the Syariah Officers Joint Services.

ملخص البحث

يستخدم هذا البحث المنهج المكتبي لحصول على المعلومات إضافة الى طرق أخرى كالمقابلات الشخصية مع المسؤولين. يتحدث هذا البحث عن دور مؤسسة القضاء الشرعية بماليزيا. ويهدف هذا البحث إلى دراسة دور المؤسسة في تنظيم المحاكم الشرعية في ماليزيا. والنتيجة من هذا البحث هي مؤسسة القضاء الشرعية بماليزيا هي المؤسسة الحكومية القادرة على توحيد المحاكم الشرعية في ماليزيا ومنذ نشأتها، هناك جهود كثيرة بذلتها الحكومة للمحاكم والمؤسسة الشرعية مثل ما يسمى بـ E-Syariah والقوانين الشرعية الإلكترونية التي تقام في مرحلتين وتكون مؤسسة القضاء الشرعية بماليزيا المركز الرئيسي لمحاكم الشرعية الموجودة في جميع محافظات ماليزيا وذلك باستعمال وحدة المشاركة بين الموظفين في المحكمة الشرعية بماليزيا.

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Administration of the religion of Islam (State of Selangor) 2003
 Federal Constitution
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 Syariah Criminal (State of Selangor) Enactment 1995 Enactment no. 9 of 1995

GLOSORY

<i>Adab al-qadi</i>	ethical principles of <i>qadi</i>
<i>Al-Quran</i>	the Holy Book revealed by Allah to Prophet Muhammad SAW
<i>As-Sunnah</i>	the tradition of Prophet Muhammad SAW including his deeds, saying and approval
<i>Bahagian Hal-Ehawal Agama Islam, Jabatan Perdana Menteri(BAHEIS)</i>	Islamic Affair Division, Prime Minister's Department
<i>Bahasa Melayu</i>	Malay Language
<i>Dalil</i>	Proof
<i>Defendant</i>	the person in court of law who is accused of committing a crime, or who is sued by another person
<i>Guaman Syarie</i>	Syarie advocacy
<i>Hadanah</i>	custody of children
<i>'Iddah</i>	the period after marriage dissolved by death of her husband or divorced which a woman is prohibited from marrying
<i>Islamic Law</i>	the laws of Islam as provided for, administered and applied in Malaysia
<i>Jabatan Agama Islam</i>	Islamic Religious Department
<i>Jabatan Kehakiman Syariah Malaysia</i>	Department of Syariah Judiciary Malaysia
<i>Jabatan Kehakiman Syariah Negeri</i>	Department of Syariah Judiciary State
<i>Jabatan Kemajuan Islam Malaysia, Jabatan Perdana Menteri (JAKIM)</i>	Department of Islamic Advancement of Malaysia, Prime Minister's Department
<i>Jabatan Pendaftaran Negara</i>	Malaysia Register Department

<i>Jabatan Imigresen Malaysia</i>	Malaysia Immigrant Department
<i>Majlis Agama Islam (the Majlis)</i>	Islamic Religious Council
<i>Mufti</i>	Jurisconsult who is authorized to issue a <i>fatwa</i>
<i>Negeri</i>	State of Malaysia
<i>Pegum Syarie</i>	Syarie lawyer
<i>Polis Diraja Malaysia</i>	Malaysian Royal Police
<i>Qadi</i>	Judge
<i>Rulers</i>	The Malay Rulers in Malaysia, namely the <i>Sultan</i> , <i>Raja</i> and <i>Yang di-Pertuan Besar</i>
<i>SAW</i>	Peace Be Upon Him
<i>Shariah</i>	the collective name for all the laws ordained by Allah SWT for His servants through Prophet Muhammad SAW including the Islamic systems of ' <i>aqidah</i> , ' <i>akhlaq</i> , ' <i>ibadah</i> and ' <i>mu'malah</i>
<i>State(s)</i>	State(s) of Malaysia
<i>State List</i>	the Second List of the Ninth Schedule of the Federal Constitution
<i>Surah an-Nisa'</i>	Chapter Four of al-Quran
<i>Syariah Prosecutor</i>	prosecutor (s) in Syariah Court
<i>Syariah/Syarie judge</i>	judge presiding in Syariah Courts
<i>Undang-Undang</i>	
<i>Tubuh Negeri</i>	State's Constitution
<i>Wakalah</i>	representation

JABATAN KEHAKIMAN SYARIAH MALAYSIA: A STUDY ON THE ORGANISATION AND FUNCTIONS

1.0 INTRODUCTION

1.1 Problem Statement

Jabatan Kehakiman Syariah Malaysia or Department of Syariah Judiciary of Malaysia is located at Level 2 & 3, Block D7, Parcel D, Pusat Pentadbiran Kerajaan Persekutuan 62677 Putrajaya. The non-uniformity of Syariah Courts today is the main problem faced by the public and those who have cases at the Syariah Court. The cases include all the claims after divorce, matrimonial property, hadanah in mal cases and closed proximity, drunkenness, failure to fast as examples of criminal cases in the Syariah Court. For example, the case of Aida Melly who is a victim from the non-uniformity of Syariah Court procedure. Infact her case took 8 years before the dispute between her and her ex-husband could be settled.

The Department of Syariah Judiciary of Malaysia should find ways of how to overcome the problems faced by Muslims as a majority in a multi-racial nation. Besides that, the entire department must be given the responsibility to consider all the changes necessary for the purpose of uniformity of Syariah Courts in Malaysia. The latest news is the implementation of the e-Syariah concept but only 8 states have accepted it from 14 States in Malaysia.

The uniformity is not only in procedure but also for the entire Syariah Courts system to be standardized in Malaysia. The different procedure used in the Syariah Courts is one of the main problems.

The cooperation between the Department of Syariah Judiciary of Malaysia and the Department of Syariah Judiciary of State is very important in order to change the system of Islamic Judiciary. What we need today is all the procedures and systems should be the same in all states in Malaysia even though the Syariah Court is under the Jurisdiction of the State

1.2 Research Aim

To make a research entitled “Jabatan Kehakiman Syariah Malaysia: the study on the organization and functions”.

1.3 Objectives Of Research

1.3.1 To study the organization of the DJSM Department.

1.3.2 To study the functions of this DJSM in restructuring the Syariah Courts

1.3.3 To identify the main problem faced by DJSM and the Syariah Courts.

1.4 Scope Of Research

The scope of study is the organization and functions of DJSM.

2.0 Research Methodology

The research methodology used to complete this thesis is the interview methodology and the library research. These methodologies are designed to obtain information about this topic and to collect data from DJSM websites and brochures connected with the administration of DJSM

3.0 Literature Review

Based on the available information, there has been no specific research on this particular topic done before.

CHAPTER 1

THE DEPARTMENT OF SYARIAH JUDICIARY MALAYSIA

1.0 INTRODUCTION

The aim of the establishment of the Department of Syariah Judiciary of Malaysia is for the restructuring the Syariah Courts in Malaysia. But the establishment of the Syariah Courts is under the State List. Article 4 (a) of Nine Schedule¹ provides for civil and criminal law and procedure and the administration of justice, including-

- a) Constitution and organization of all courts other than Syariah Courts;
- b) Jurisdiction and powers of all such courts;

From that Clause we understand that the establishment of the Syariah Court is done under State Legislative power. For further detail we look at clause 55 (1) of the Administration Of The Religion Of Islam (State Of Selangor) 2003 which provides;

His Royal Highness the Sultan, on the advice of the Majlis, may by notification in the Gazette constitute Syariah Subordinates Courts for the State of Selangor at such places as he considers fit.

In clause 55 (2) of the Administration Of The Religion Of Islam (State of Selangor) 2003 provides;

His Royal Highness the Sultan, on the advice of the Majlis may by notification in the Gazette constitute a Syariah High Court for the State of Selangor.

In Clause 55 (3) of the Administration Of The Religion Of Islam (State of Selangor) 2003 provides;

¹ Ninth Schedule of Federal Constitution, pg 264.

*His Royal Highness the Sultan, on advice of the Majlis, may by notification in the gazette constitutes a Syariah Appeal Court for the State of Selangor.*²

Those clauses show that the establishment of the Syariah Court comes under the State Legislative power with the consent of Sultan. For the states without a Sultan, such as Federal Territory, Putrajaya, Malacca, Penang, Sabah and Sarawak, there are provisions for conferring on the Yang Dipertuan Agong for the position of Head of Islamic religion in that State.³

The absence of the uniformity of Islamic law is the main problem⁴ in the Syariah Courts. The impact goes to society such as the case of Aida Melly Abdullah, the fact of the case is the plaintiff wanted to divorce but the decision of her application was postponed for 7 years for reasons, which are not clear. This is perhaps an example of the inefficiency of the administration of Islamic laws. Maybe there are many more persons who are in the same situation with Aida Melly Tan Abdullah⁵.

The Federal Constitution mentions Syariah Courts are in the State List, which provides⁶

“Except with respect to the Federal Territories, Islamic law and personal family law of person professing the religion of Islam. Including the Islamic law relating to succession, testate and interstate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, partitions and non charitable trusts; wakafs and the definition and regulation of charitable and religious trust, the appointment of trustee and 4 the incorporation of persons in respect of Islamic religious and charitable endowments, institutions, trust, charities, and charitable institutions operating wholly within the State: Malay Custom: Zakat, Fitrah and Bait-ul-Mal or similar Islamic religious revenue; mosque or any Islamic public place of worship, creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regards to matters included in the Federal List: the constitution organization and procedure of syariah courts, which

² Article 55 (1), (2), (3) of Administration of The Religion Of Islam (State Of Selangor) 2003, p.g 33-34.

³ Article 3 (3) Federal Constitution, International Law Book Services, pg 20.

⁴ Utusan Malaysia, 7/10/03.

⁵ The case was mentioned in early 1996.

⁶ Federal Constitution, 9th Schedule, list ii.

shall have jurisdiction only over persons professing the religion of Islam and in respect only of any of the matters included in this paragraph, but shall not have jurisdiction in respect of offences except in so far as conferred, by federal law; the control of propagating doctrines and beliefs among person professing the religion of Islam; the determination of matters of Islamic law doctrine and Malay custom.

It can be seen that the jurisdiction given to the States and the Syariah Courts is limited. With regard to the subject included, there are many Federal laws, which extend the scope and application to the State laws. For example, in the field of succession, testate and interstate, account has to be taken of the Probate and Administration Act⁷ and the Small Estates (Distribution) Act⁸ with the result that the Kadhis are in effect only given the function of certifying the share to be allotted to the beneficiaries under Islamic law. In the field of criminal law in particular, the jurisdiction of the Syariah Courts is very limited. It has jurisdiction only over persons professing the religion of Islam and it has only such jurisdiction in respect of offences as conferred by Federal Law.⁹

The Muslim Court (Criminal Jurisdiction) Act 1965¹⁰ provided that such jurisdiction should not be exercised in respect of any offence punishable with imprisonment for a term not exceeding six months or any fine exceeding RM 1000 or with both. In 1984, the Act¹¹ was amended and the jurisdiction of the Syariah Court has been extended by giving them jurisdiction to deal with cases punishable with imprisonment up to three years, or fine up to RM 5000 or whipping up to six strokes or the combination of all these.¹²

The most significant change has been made by the enactment of the amendment to Article 121 of the Federal Constitution which has modified the provision that the judicial power of the federation shall be vested only in civil courts and has also provided that the High Courts and the Subordinate Court to it shall have

⁷ No. 97 of 1959 (revised 1972) numbered Act 97)

⁸ No. 98 of 1955 (revised 1972) numbered Act 98)

⁹ Federal Constitution, 9th Schedule List ii (1)

¹⁰ Act 23 of 1965, now revised and known as the Syariah Court (Criminal Jurisdiction) Act 1965 (Act 355)

¹¹ Muslim Courts Criminal Jurisdiction (Amendment) Act 1984.

¹² Article of Recent Developments in the Syariah Law in Malaysia, under [www//jksm.mmu.my](http://www/jksm.mmu.my)

no jurisdiction in any matter which comes within the jurisdiction of the Syariah Court.¹³

Today, the Department of the Syariah Judiciary of Malaysia plays an important role to ensure that the Syariah Court administration is unified to serve justice for each party. It is responsible to materialize our ambition to look for the standardization of Syariah Courts as stated in the Holy Quran;

*“ Allah has commanded you to render back your trust to those to whom they are due and when you judge between mankind that you judge with justice. Verily how excellent is the teaching, which he gives you. For Allah is He who hears and sees all things ”.*¹⁴

¹³ Federal Constitution, article 121 (1A).

¹⁴ Surah An-Nisa' (4): 58

1.1 THE BACKGROUND OF DSJM

July 1996- The Malaysia Cabinet Meeting agreed to the proposal on restructuring the Syariah Courts on the following objectives inter alia: -

- i. Setting up the Department of Syariah Judiciary of Malaysia headed by a Chief Syarie Judge.
- ii. Setting up the organizational structure of the Department.
- iii. Appointing four Appeal Court Judges to hear appeal cases from different states.
- iv. Maintaining the current structure of Syariah Court throughout states including appeal with the consent of the ruler.

1.2 BASIS FOR SETTING UP

- i. To attain uniformity of laws and its enforcement. In order to achieve this there is a need to set up federal department to improve quality of services by Syariah Officers.
- ii. To amend the Federal Constitution to accelerate the process of unifying the laws.
- iii. To solve backlog cases since 1992 to 1995 (63,306 cases) due to insufficient number of judges in various states, which do not have sufficient budget.
- iv. To solve backlog in appeal cases in various states.
- v. To solve the problem of shortage of judges and postponed appeal cases in High Court and Appeal Court Judge can be used by other states (by rotation).

1.3 FORMATION OF DSJM

It was officially launched in a ceremony held on 15 December 1998 at the Islamic Center Kuala Lumpur, Malaysia. It has the following vision, mission, objectives and functions.

1.4 MOTTO

Syariah is the basis of justice

1.5 VISION

To ensure a competent central agency that will make the standardization of Syariah Law becomes a reality.

1.6 MISSION

To standardize Islamic Laws provisions for the nation including handling all appeal cases effectively and systematically.

1.7 OBJECTIVES

- i. To formulate unified Islamic Laws relating to the Administration of Syariah courts which are applicable to all states,
- ii. To ensure that all states will use common services scheme to syariah officers,
- iii. To ensure that the Appeal Court cases be disposed of judiciously, effectively and expeditiously,
- iv. To get benefit from the wide use of information technology with a view to expedite administration.

1.8 CLIENT CHARTER

- i. Standardize comprehensive the Administration of Islamic Laws effectively and systematically within 5 years
- ii. Implement admission of syariah officers from the state to the common service scheme systematically within 6 months after the date of agreement
- iii. Supervise and dispose of civil or criminal appeal cases within 3 months after they have provided all conditions that have been complied with
- iv. Produce professional, competent and efficient syariah judges and officers within 5 years after the formation of the department
- v. Administer appointment of news officer to any vacant posts within 1 month upon receipt of it application
- vi. Provide SISPEN System for all officers within 6 months from the date of acceptance of syariah officer with syariah officer common service scheme in order to achieve efficient and systematic planning of human resource
- vii. Create Wide Area Network within 3 years to facilitate smooth administration.

CHAPTER TWO

THE ADMINISTRATION OF DSJM

2.0 INTRODUCTION

In the previous chapter the author discussed about the historical background, mission, objectives and the client charter of DSJM. In this chapter, the author will discuss the organization DSJM and other important components in its administration.

All organizations have their own organizational chart. The difference is clear if compared to the government and private sector. The difference is the government sector only has one level of organization but the private sector usually has two levels, they are the board of directors, board of management and lastly the staff of the company.

The purpose of the organization is to show the power of the organization and to ensure the quality of the work is the best, most efficient and gives the best impact. The quality movement has greatly influenced strategic process in recent years. Strategic process refers to the step an organization uses in the development of its strategic plans.¹⁵

The strategic plans are very important either to the government or private sector as the first information about a department or company. From the missions, and objectives, the organizational chart will tell us how the department or company carries out their duties and what are the limitations of its jurisdictions as a government sector such as Department of Syariah Judiciary of Malaysia (DSJM) has its limitation and can't be carried out outside its jurisdiction. The power of DSJM relates only to the Syariah Courts and not to the civil courts, that means its jurisdiction is only connected to the Syariah Courts and those who practise the Islamic religion.

¹⁵ S. Thomas Foster, *Managing Quality An Integrative Approach*, Prentice Hall, pg 13.

2.1 THE ADMINISTRATION OF DSJM

The director of DSJM is Y. A. A Dato' Sheikh Ghazali Bin Hj. Abd Rahman. He was born on 31 December 1938, at Kampung Kepala Bukit, Tobiar, Pendang, Kedah and received his first education at Sekolah Melayu Tobiar, Pendang on 1946-1951 and continued his studies at secondary level at Maktab Mahmud, Alor Star, on 1951-1961. Kaheerah University was his choice at bachelor level and he received the degree in Islamic judiciary.

He started work in the government sector on 15 June 1969 as a religious and Arabic teacher at Maktab Mahmud Alor Star and he was appointed as Kadhi in Alor Star district until 1972. After that, as Kadhi, Padang Terap district and was appointed as Religious Information Officer Negeri Kedah, until August 1980 and today as Chief Director of DSJM.

The Syariah Court gets the attention from the Federal Government and DSJM was established to make changes to the framework of the Syariah Court. The set up was divided into specific division and tasks to achieve the goals of DSJM.

The important division or components in the administration of DSJM are two, namely development/policy division and judiciary division¹⁶. The development division is divided into six other important sub-divisions namely: -

- i. Human Resource and Management Division
- ii. Training Division
- iii. Appeal Case Registration Division
- iv. Research Division
- v. Resource Division
- vi. Information Technology and Communication (ICT) Division

¹⁶ DJSM profile, published by DJSM.

The main purpose of the judiciary division is to listen and settle the appeal cases from Syariah Courts in Malaysia. Each division plays the main role to ensure the objectives of the establishment will be achieved. For further details, each section will be discussed in next pages including the objectives, functions and the organizational chart for each division.

2.2 Human Resource and Management Department Division

The most important department in DSJM is the human resource and management Department because this division is the main port of the organization, without this division the organization cannot do its duty. The main role is to get the person who is qualified to fill the vacancies in other divisions.

It is not impossible for the human resource to have a big responsibility to examine how the organization enables employees to develop and utilize the full potential, aligned with the organization's objectives. The department also examines the organization in effort to build and maintain a work environment and employee support climate conducive to perform with excellence, full participation, and personal organization.¹⁷

The government will give high priority to the human resource development in the allocation of expenditures under the public sector programmer¹⁸, the purpose to improve the quality of jobs to their workers and reduce the pressure in the work place.

The DSJM Human resource and management can be divided into three parts, firstly the organizational development. The role of this part to monitor and manage the vacancies in the department, to up date and survey the changing of posts, research the utilization of the worker and long and short term human resource planning to grow together with the effective achievements of the department.

¹⁷ S. Thomas Foster, *Managing Quality An Integrative Approach*, Prentice Hall, pg 73.

¹⁸ Information Malaysia 2002 Yearbook, Berita Publishing Sdn. Bhd, Kuala Lumpur 2002 pg 522

The purpose of the second division of DSJM is personal management. The main role is to plan the needs of the human resource in parallel with the expansion of technology such as the internet system, information and communication technology and world wide web without limitations. The vacancies in the department must be filled with the qualification required, if not the bad impact goes to the department. For example someone does not attain the required level in his job but still gets the job or some one who is declared by the court as bankrupt cannot apply for a job in the government¹⁹ sector but still gets the job. Today the main requirement to apply a job is free from criminal records supported with the curriculum vitae and academic achievement. If the person has a criminal record he or she can create danger to other workers and give rise to company or department conflicts, such as the main suspect of rape and murder in the Nurul Huda case, Johor. The guard with 8 previous convictions was still hired by a security firm and as a consequence raped and murdered Nurul Huda.²⁰

In getting the employee for any job, he must be free from previous convictions as it is very important that the employer must pay attention to the applicant because if the employer makes a bad judgement, the job seeker will create trouble to the company or department later.

It's the responsibility of the human resource and management department to set up the counseling, code ethics and motivation²¹ to reduce stress and control the worker from something that is not good and gives trouble to the department. Through the counseling process²² and code ethics can build the good worker parallel with the goals of the company or department.

The good management can build the confidence of the customer to use the services that he or she needs such as the Syariah Court must solve the backlog cases²³ to give back the society's confidence to Syariah Court as the better place to solve the family disputes. In the context of DSJM, the body with power to restructure again, the

¹⁹ Bankruptcy Act 1967.

²⁰ The Malay Mail, front page, Monday/January 19,2004.

²¹ Richard Pettinger, *Effective Employee Relations*, Kogan Page pp 296.

²² Judith A. Lewis and Friends, *Community Counseling*, Thomson Brooks/Cole, pp 127.

²³ [www//jksm.mmu.my](http://www/jksm.mmu.my)

Syariah Court must do something to gain back the confidence as a good Islamic institution not only in the name but based on the quality services and their work. For example the achievement of the client charter as a measure to strengthen or weaken the company or department and the examination that comes from the clients who use their services.

The duty of the human resource and management department is to maintain the personnel welfare and social workers²⁴ through the welfare body established by the department such Army Welfare Body (BAKAT), the main role is to ensure the welfare of the army and their families.

The last division under the human resource and management department of DSJM is finance. The purpose of this department is to supervise the estimated budget from the government and to ensure it is used in the correct way. The responsibility of this department is to pay in the salary and allowance to their workers according to the their level in the department. The payment of bills is the responsibility of this department for each month either electricity, telephone, water and Internet bills.

To ensure all these achieve their goals, the organizational chart can help to clearly show the various departments and responsibility for each small unit in this division. The chart starts with the higher posts and lastly the workers in the lower level.

2.3 TRAINING DIVISION

The second department is the training center division. By looking at the organizational chart it is divided into two main aspects, firstly judiciary-training unit and secondly career support unit. Although each part has different responsibilities but the goals are the main objective.

The responsibility of the judiciary-training units is to manage and execute the training curriculum and courses taken by the Syariah Court officers in our country. To

²⁴ Bradford W. Sheafor and Friends, Techniques And Guidelines For Social Work Practice, Six Edition, pg 68.

be trained as a qualified lawyer, one must have a diploma in judiciary. Nowadays the universities offering the second diploma are National University of Malaysia²⁵ through Judicial And Legal Training Institute (ILKAP)²⁶ and International Islamic University of Malaysia²⁷ through Diploma of Syariah and Law Practice (DSLPL) and Diploma of Administration Islamic Judiciary (DAIJ). The diploma course is specific in judicial training as an accommodation to enter the job market as professional workers. As a requirement to work with DSJM the fresh graduate must have a second diploma besides a degree in Syariah to obtain the job.

The other responsibilities of this division to train the new staff about their work such as secretary, personnel assistant and enforcement officers.²⁸ They will be trained with the current jobs after the appointment as a government worker to be successful in work.

2.4 CASE REGISTRATION DIVISION

The third important division in DSJM administration is the appeal case registration. The division is divided into two small units namely mal proceeding and record unit and criminal preceding and record unit.

The main responsibility of this division is to handle all the appeal cases of criminal and mal from State Syariah Courts to record and monitor the monthly and annual report.

²⁵ Established on 18 May 1970, Universiti Kebangsaan Malaysia always beckons quality scholars from far and wide. Starting with only three faculties, i.e. Arts, Science and Islamic Studies. UKM has been partly corporatised on 18 March 1998.

²⁶ The objective of Judicial and Legal Training Institute is to enhance the knowledge, expertise, quality and the performance of officers in public services who are engaged in judicial, legal and law enforcement work in order to establish a services that sanctioned, fair, efficient.

²⁷ The IIUM was founded in 1983 by the government of Malaysia and co-sponsored by the Organization of Islamic Conference and a few Muslim countries.

²⁸ Interview was held on 28 January 2004 with En. Muhammad Fuad, JKSM officer during the exhibition of Karnival Mahasiswa Pengajian Syariah Dan Undang-Undang, Peringkat Kebangsaan (KAMUS 01) organized by Jabatan Syariah Dan Undang-Undang, Universiti Malaya.

The important thing before the court mentions the case is the filing of memorandum of wakalah²⁹ by a Syarie lawyer. If failing to do so, the court may reject the case and it would not be heard until the Syarie lawyer files for the wakalah.

An effort by DSJM is to present the Joint Services Scheme to solve the matters parallel with the lack of Syarie lawyers and today Selangor, Malacca and Perlis have consented to adopt this scheme.³⁰ The advantage of this scheme is that all states can use the Syarie officers to take action as a Syarie Lawyer.

2.5 RESEARCH DIVISION

In research division there are three small units namely first research unit, second research unit and third research unit. Every part has different duties to gain the objective of the DSJM.

The main role of the first research unit is to execute research in static cases especially in Syariah Court cases. Nowadays the Syariah Court has a backlog of cases since 1992 to 1995 (63,306 cases) due to insufficient number of judges in various states, which do not have sufficient budgets (DJSJ website: December 29, 2003).

The backlog of cases must be clarified to prevent the confusion³¹ faced by society who believes the capabilities of the Syariah Court as a place to solve family matters among the Muslims. It's the responsibility of the Syariah Court to give the clarification to the problems faced by them.

The court holds the reason of judgment is very important to the court when the parties make appeals for the cases. From that judgment is whether the previous judge makes the right or wrong decision such as the nullity of marriage in Thailand.

²⁹ Section 28 of Syariah Civil Procedure Code Enactment 1991.

³⁰ Farid Sufian Shuaib and Friends, Administration Of Islamic Law In Malaysia, Text and Material, Malayan Law Journal, pp 209.

³¹ Utusan Malaysia, January 5, 2004 pg 6.

The main role for the second research unit is to conduct research in the fields of law through the acts or enactments with Islamic law to develop and obey. The research produced is used by the Resource Center department and to who may need it.

Among these division's responsibilities is to conduct new research that was not done before such as the issue of females as judges in the Syaria Court. In this issue, the female judge is only on female matters according to Islamic rules and not in other traits such as criminal and mal disputes. The major research needs to point out the strengths, weaknesses and how to solve that problem, as we know the Syaria Court is under the State Legislative³² power and we know that not all the Sultans agree the proposal to restructure the Syaria Court.

The main role of the third research division is the translation from the Arabic books (Turath) into Malay pertaining to Islamic judicial to be use by the Resource Center department and those who are in needs.

The Arabic translated books into Malay are very important because not all the researchers have the basic knowledge in Arabic and sometimes some have the Arabic basis but don't understand clearly what was the main idea written by the Muslim scholars.

There is a story as a proof that the Prophet Muhammad SAW was the Head of the Islamic State of Madina and, at the same time headed the judiciary. As a judge, the prophet settled disputes based on the revelation, upheld justice and fought oppression. The prophet heard various categories of cases including inheritance, matrimonial, custody, qisas and hudud. (Farid Sufian Shuaib: 2001)

³² Article 4, of Ninth Schedule, Federal Constitution.

2.6 RESOURCE CENTER DIVISION

The Resource Center division has two small units, they are the law library unit and documentation and publications. Each part has their own responsibility to achieve the objectives of the department.

The main purpose of the law library unit is to develop the law library system on DSJM. The completed library with many choices of books is very important and can influence the researcher to make a research according to the sources that are in the completed library.

The library system with the up-to-date system is very important to be efficient to obtain information and borrow the books. The nice library has the books in various languages especially the main languages such as English, Arabic, and Malay but sometimes we need to do references in Latin or other languages spoken in the world.

The other purpose of the DSJM library is to supervise the State Syariah Court library. Each Syariah Court must have a library as the main source of reference in Islamic matters either in Arabic or English. It is important to the state syarie officer to conduct research about his work and the collection of paper work presented can help the individual and groups conduct a research.

The other purpose is to collect the grounds of judgement of appeal cases. The judgement is very important for a judge to make corrections either the passed decision is true or not. As usual the Syariah Court, need the past judgements for use in next court trials.

The Resource Center division has a documentation and publishing unit as support component to this division. The main purpose of this division is to publish the learned books relating to Islamic judiciary. The publishing is either in Arabic, English or Malay to make it easier for others to make references.

The Islamic judiciary principles discuss how to be a good judge, what the judge can and can't do in the discharge of his duty in court trials such as the judge is strictly prohibited to enter business³³ because when a judge enters a business, he can't focus on what he does during the court trials. Imam Shafie told the judge is prohibited from buying and selling at the market as it may cause him to be a biased³⁴ to his friends. In order to protect the status and dignity of the judiciary, it is appropriate for the judge to avoid being involved in business. More often than not, doing justice may be affected by personal interest. Furthermore the business environment allows those with selfish interest to influence the judge.³⁵

The other aspect in this unit is the publishing of the magazines bulletin and annual report for each year and the brochure for the public pertaining to the services in Syariah Court. This publication can give the information to the public about the Syariah Court because the brochure is in Malay, so they don't have any problems to understand it. The published information, like something that is strictly prohibited for the judge, can prevent the judge from entering the business. The published Judges Code of Ethics 1994 can give guidelines to the judges to carry out their responsibilities as judges.

2.7 INFORMATION TECHNOLOGY & COMMUNICATION CENTER (ICT) DIVISION

In this division there are two small units namely the information development unit and technical unit. The main purpose of the information development unit is to frame and develop the computer system for DSJM and state Syariah Court. As usual the linkage today is through the computer system such as the internet as a good platform in the technological era. The linkage is safe, cheap and easy to use as even in

³³ Dr. Abdul Karim Zaidan, *Nizam al-Qada' Fi Syariah Islamiah*, Muassah al-Risalah, 3rd printed, pp 35

³⁴ *Ibid*, pg 35.

³⁵ Mahmud Saedon Awang Othman & Nik Ahmad Kamal Nik Mahmod, *Adab al-Qadi in Daily Activates of Qadi 1992 2(1) IIUM Law Jurnal 51*, pg 54.

minutes, we can get the information that we want directly and quickly without the need to go to other places.

The other responsibility of this unit is to frame and process the information and the data pertaining to the state Syariah Court. The information and data are very important as reference to the state Syariah Court for efficiency in the trials. The exchanging of information from other courts will be faster without limitations everywhere and every time during work time.

Another responsibility of this unit is to frame and supervise the information and data pertaining to the cases in the state Syariah Court. The data pertaining to the cases in trials can help the officers to solve the claim and others.

The other role of this unit is to frame and supervise the information pertaining to the Act and State Syariah Enactment and put it on the DSJM website. Furthermore, the website can help to achieve the goal pertaining to the gathering of information about the act and enactment.

For the technical unit, the main responsibility is to frame and develop the computer system for DSJM and State's Syariah Court. The frame, development and format from DSJM as the main department are to restructure again the Syariah Court through the specific type, which will be discussed in the next chapter.

The other aspect of this unit is in giving the technical services in the DSJM computer system. The technical services is very important to prevent any problem about the computer and the good virus detection can help and ensure the safety of information on the website. The bad impact is if the virus enters the computer system as the virus can damage any information pertaining to the web.

The other responsibility is to set up and supervise the DSJM and State's Syariah Court websites. The job is to supervise and set up the websites for each state. There is a need for staff with skills in information technology and can accepts any change in the technology because the computer technology develops very fast. If one is lost and the website will be left behind.

The knowledge about computers is very important to do the jobs as without the knowledge we might waste the money, time, energy. The specific courses are important to ensure all staff has computer knowledge suitable in the technological era. The budget to build the linkage system is more than a hundred thousand, thus we must use with optimum and efficiency to achieve the goal for restructuring the Syariah Court.

2.8 THE JUDICIARY DIVISION

This is the second section of the administration structure of DSJM. The main role of this division is to listen and determine the appeal cases from State Syariah Courts³⁶.

The appeal cases happen when the accused, plaintiff or defendants are unsatisfied with the sentencing given by the previous judge in a particular trial. In the appeal case of *Ramah v Laton*³⁷ a majority of the Court of Appeal in the Malay States held that Islamic Law is not foreign law but is the law of the land and as such it is the duty of the courts to declare and apply the law.³⁸ The main issue before the Supreme Court was whether the principle of Islamic Law on what is now known as *harta sepencarian* had application in this case.

³⁶ DJSM profile, published by DSJM

³⁷ (1927) 6 FMSLR 128

³⁸ Farid Sufian Shuaib and Friends, Administration Of Islamic Law In Malaysia, Text and Material, Malayan Law Journal, pp 177.

CHAPTER 3

THE FUNCTIONS OF DSJM

3.0 Introduction

In the previous chapter the author discusses about the organization of DJSM. In this chapter, the author touches on the functions of DSJM as the main body to restructure the management of the Syariah Court in Malaysia through the specific role as a medium of coordinating the administration of Syariah Law.

This chapter will discuss about the relationship between DSJM and Department of Syariah Judiciary of State (DSJS). Both departments should have a good relationship to ensure the goal for restructuring the Syariah Court is not only a dream but also becomes a reality.

The good relationship is needed to carry out what the government has planned. The problem may occur if the co-operation is not satisfactory and our dream becomes futile.

3.1 Relationship between DSJM and DSJS

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The relationship between DSJM and DSJS is good³⁹ and all States have established their Department of Syariah Judiciary of State, such as Pahang⁴⁰ Kelantan⁴¹ Selangor⁴² and the states in east Malaysia also have their DSJS such as Sabah⁴³ and Sarawak⁴⁴. From this, it shows the States have good relationship with the government to ensure the State getting benefit from the establishment of DSJS to achieve the goal of DSJM.

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The main roles of DSJS are to execute what have been discussed in the previous meeting such as Syarie Judge Code Ethics⁴⁵. All the Syarie Judges must follow the practice order. If he fails or refuses, the Syarie Chief Judge may give the judge disciplinary actions for example, a judge shall not subordinate his judicial duties to his private interests.⁴⁶

The other role of DSJS is to manage the application register of Syariah cases⁴⁷ at state level. In the court trials, the register of cases is very important to ensure the cases is registered before the court mentions the case and is ready to go into the second stage for trials to get the decision on whom is responsible in dispute between two parties either applicant or defendant such as in the case of *Piah v Che Lah*⁴⁸, a Penang case, the divorced wife claimed a *muta'ah* in addition to *iddah* maintenance. The parties in the case had been married for 43 years. On the evidence that it was the wife who left the matrimonial home and although she claimed that the husband was harsh towards her, she had made no complaints to the Syariah Court and had not returned to the matrimonial home even after efforts at conciliation had been made. In

³⁹ Interview was held on Friday, 16th January 2004 with Tn. Hj. Abdul Walid Bin Abu Hassan. Senior Research Officer at DJSJ head office Putrajaya.

⁴⁰ Jabatan Kehakiman Syariah Pahang, Jalan Masjid 25000 Kuantan.

⁴¹ Jabatan Kehakiman Syariah Kelantan, Kompleks Islam Lundang, 15200 Lundang, Kota Bharu, Kelantan.

⁴² Mahkamah Syariah Negeri Selangor, Aras 5 & 6, Bangunan Mahkamah Sultan Salahuddin Abd Aziz Shah, Persiaran Pegawai, Seksyen 5, 40000 Shah Alam, Selangor.

⁴³ Jabatan Kehakiman Syariah Sabah, Tingkat 3, Bangunan USIA, Beg Berkunci No. 130, 88739 Kota Kinabalu.

⁴⁴ Jabatan Kehakiman Syariah Sarawak, Tingkat 2, Bangunan Mahkamah Syariah, Jalan Satok, 93400 Kuching.

⁴⁵ Practice Order, No. 1 year 2001.

⁴⁶ Clause 3 (1) (a), Judges' Code Ethics 1994.

⁴⁷ jksn.pahang.htm.

⁴⁸ (1983) 3 JH 220

this case the learned Chief Kadi held that the divorced wife was not entitled to *iddah* maintenance, as she was *nusyuz* but he held she was entitled to *muta'ah*. Even though there was evidence of *nusyuz* on the part of wife, this did not affect the rights of the wife to *muta'ah*. The learned Chief Kadi ordered him to pay *muta'ah* of RM 500.

In the criminal case two parties are incriminated namely accused and public persecutor, such as case of *Tuan Ismail and Nik Asnas v Pendakwa Jenayah Kelantan*⁴⁹, in this case the accused was caught because of *khalwat* or close proximity with his partner Nik Asnas in one room. The learned Chief Kadi held that both parties were guilty.

In the case of *Halimah v Pendakwa Jenayah Kelantan*⁵⁰ in this case the accused was caught because of having sexual intercourse with Osman and she gave birth to a baby and Osman was released because they could not find the proof to incriminate and the court released him. The learned Chief Kadi held Halimah is guilty.

The other role of DSJS is to administer justice, Allah states in the Holy Quran:

*"Allah has commended you to render back your trust to those to whom they are due and when you judge between mankind that you judge with justice. Verily how excellent is the teaching, which he gives you. For Allah is He who hears and sees all thing"*⁵¹

From this ayah Allah has commanded all mankind to render back your trust and judge mankind with justice; this big responsibility goes to the Syarie judge to ensure justice and give the both parties the rights thus deserve. From this ayah, the important legal rules are laid down, include the following:

- a. That, the judge should decide based on clear evidence presented by both sides;
- b. that amicable settlement is generally permissible;
- c. that a person is innocent until proven guilty;
- d. that a judge should decide based on the al-Quran and as-Sunnah;

⁴⁹ (1978) 1 JH 91.

⁵⁰ (1979) 2 JH52.

⁵¹ Surah An-Nisa' (4): 58

- e. That a judge should resort to the use of *ijtihad* in making decisions where no direct solution could be found in the al-Quran and as-Sunnah. (Farid Sufian Shuaib: 2001)

3.2 The implementation of E-Syariah

The introduction of E-Syariah was raised through the Board of ministers meeting on October 13, 1999 which discussed the proposal from the Sarawak Government to execute the Syariah Court Electronic System (SEMak) to all states which was set up by the Sarawak Information System Sdn. Bhd. (SAINS) to form the Electronic Government between the State Syariah Court and other government departments. SAINS prepared the Syariah Court management system application at Syariah Federal Court Territory which was launched on 16 October 1998 by YB Dato' Dr. Abdul Hamid Bin Othman who was the Minister at the Prime Minister's Department.

The chronology of E-Syariah project started after the decision by the Board of Ministers which discussed the offer from Sarawak Information Technology Council (SITC) under Sarawak Government to Federal Government to execute the SEMak package to all states with the budget worth RM 12.4 million with the condition the Federal Government must pay all the execution cost after the job was settled. The Department of Syariah Judiciary Of Malaysia (DJSM) was appointed as the executer and committee for this project.

After that, DJSM discussed the proposal during the 15th Meeting of Malaysian Syariah Chief on 3rd January 2000 and they agreed that all the Syariah Courts should implement the Malaysia Syariah Court Electronic System with the co-operations from MAMPU, State Secretary and JAKIM.⁵²

⁵² Sinopsis Sejarah Perlaksanaan E-Syariah, Jabatan Kehakiman Syariah Malaysia, Percetakan Nasional Malaysia Bhd. Caw. Kuala Lumpur, 2003, m.s 3.

3.3 Objectives and Module of E-Syariah

The main objectives and Module of E-Syariah are listed below: -

- a) To upgrade the quality of Malaysian Syariah Court services;
- b) To upgrade the efficiency of DSJM in monitoring and supervising the agency under his jurisdiction
- c) To gain the productivity and management efficiency of Syariah Court in our country; and
- d) To strengthen the Islamic principle through Information and Communication Technology (ICT).⁵³

3.4 Scope of E-Syariah

- i. To examine the network infrastructures, the gadgets and software on DSJM and Syariah Court in our Country;
- ii. To examine the process and forms used in the Syariah Court management and give the recommendation to re-engineering;
- iii. To develop and upgrade the short and long network on DJSJ and Syariah Court in our country;
- iv. To execute as below: -
 - a. Syariah Court Case Management System (SPKMS version 1 and 2)
 - b. Library Management System
 - c. Syari'e Lawyer Register System
 - d. E-Syariah Portal and
 - e. Automation Office System
 - f. E-Syariah Network (DJSJ network with all Syariah Court at state head office and districts.)
- v. To ensure the mechanisms of implementation and maintenance as soon as possible with E-Syariah is needed.

⁵³ Ibid, pg 9.

- vi. To ensure the safety of E-Syariah is given the full attention and
- vii. To ensure and execute the suitable training programs to support the implementation of E-Syariah.⁵⁴

3.5 Concept of E-Syariah

The execution of E-Syariah application follows the concept below: -

- a) Public
- b) Court
- c) Judge
- d) Public Persecutor
- e) Syarie Lawyer
- f) Enforcement
- g) The accused
- h) Case
- i) References
- j) Case Schedule⁵⁵
- k) Defendant
- l) Held

⁵⁴ Ibid, pg 10

⁵⁵ This system has the colorful calendar for easier to look and use by the customers. As example the different color for mention the case with hearing the case. Beside that, the personal schedule of judge such as holiday, seminar, meeting and the purpose are earliest for the case under postponed category.