



Administration of Islamic Religious Affairs

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+ Introduction

- The administration of Islamic religious affairs refers to various matters concerning Islam.
- It deals with matters including the establishment, roles and power of the Islamic Religious Council; the appointment and power of the *Mufti* as well as the State *Fatwa* Committee; the establishment of Syariah courts and appointment of judges; and the appointment and power of the Syariah Prosecutor, *Bayt al-Mal*, *zakat*, *mu'allaf* and mosque management.
- Focus will be given to the Islamic Religious Council institutions, *Mufti* and *fatwa* as well as the Syariah courts.

+ Federalism

- Federalism is a concept of a federal institution that consists of states with limited freedom, which has consented to form a federation.
- Art 39: The federal executive power is vested in the Yang di-Pertuan Agong and performed by him and the cabinet.
- Art 47: The power to legislate on federal laws is vested in the Parliament. At the same time the state government and state legislature still exist with their own powers.
- Art 74: Islamic matters are synonymous with the Sultanate, the religion of Islam is put under the jurisdiction of the States.
- Therefore, every state as well as the Federal Territories have their own Islamic Religious Council, *Mufti*, Syariah courts and religious administrative officers as well as their own administration of justice officers. The establishment, appointment and power of each office and institution within each own state.

+ MALAY RULERS & ISLAM

- Article 3(1) Islam as the religion of the Federation did not interfere with the position of the Malay Rulers as head of religion of Islam for the states in Malaysia.
- YDPA is only Head of Religion of Islam for his own state [Art 3(2)], the states with no monarch ie Malacca, Penang, Sabah, Sarawak [Art 3(3)] and the 3 F.T.'s [Art 3(5)]
- Rulers in the exercise of duty under the State Constitutions shall act on advice [8th Schedule Item 1(1) FC].
- Exemption under Item 1(2)(d), allows Rulers to act in their discretion in execution or performance as Head of Religion of Islam and Malay Custom.
- Discretion – can act independently, not bounded by the advice of the executive.
- In exercise as Head of Religion of Islam, Rulers are aided and advised by the Council of Islamic Religion in all matters related to the religion of Islam.
- In matters of Islamic Law- aided and advised by Muftis.



CONFERENCE OF RULERS

- At federal level, the Conference of Rulers has the function to agree that any Islamic acts, observances or ceremonies to apply to the Federation as a whole[Art. 3(2)]
- The Conference of Rulers is advised by the National Council of Islamic Religious Affairs Malaysia (Majlis Kebangsaan Hal Ehwal Agama Islam Malaysia).
- Art 38 (4) No law directly affecting the privileges, position, honours or dignities of the Rulers shall be passed without the consent of the Conference of Rulers.

+ THE NATIONAL COUNCIL FOR ISLAMIC AFFAIRS

- *Majlis Kebangsaan Hal Ehwal Islam Malaysia* (MKI), is a national coordinating body of the State Islamic Religious Councils.
- The National Council was created in 1968 at the behest of the Conference of Rulers¹⁹ in recognizing the need to have a national body to streamline the development and advancement of Islamic affairs.
- The Prime Minister as the chairperson and the members are the Menteri Besar and Chief Minister.
- The secretariat for the National Council is the Department of Islamic Development of Malaysia, popularly known as *Pusat Islam*, under the Prime Minister's Department.

+ FUNCTIONS OF THE NATIONAL COUNCIL FOR ISLAMIC AFFAIRS

- To advise and make recommendations on any matter referred to it by the Conference of Rulers, by any state Govt, or Majlis Agama
- Advise and make recommendations to the COR, state governments and Islamic Religious Councils on matters concerning Islamic law, the admin of Islam and Islamic education to improve, standardise and encourage uniformity in Islamic law and administration.
- **Article 3(5) FC** - Parliament may by law make provision for regulating Islamic Religious Council to advise the YDPA in matters relating to the Religion of Islam.
- No power over rights, privileges & sovereignty of Rulers as Head of State.

+ DEPARTMENT OF ISLAMIC DEVELOPMENT MALAYSIA (JAKIM)

- A secretariat for the National Council of Islamic Affairs of Malaysia
- The Religious Division, Prime Minister's Department
- The Islamic Affairs Division (*BAHEIS*).
- On 1st January 1997, the Department of Islamic Development Malaysia (JAKIM) was established by the Government of Malaysia to take over the role of *BAHEIS*.

Aim

- To ensure the sanctity of Islam by adhering to the teachings of Ahli sunnah Wal Jamaah and to create peace and harmony among the ummah through effective planning and implementation.

+ Divisions

- Administration and Coordination
- Islamic Research Centre
- Islamic *Da'wah* & Training Institute
- *Tahfiz al-Quran Wal Qiraat* Institute
- Coordinating Board of Islamic Education
- Publication
- National Mosque
- Islamic Affairs Division, Sabah Branch
- Islamic Affairs Division, Sarawak Branch
- Islamic Information System
- Special *Da'wah* for the Aborigines

+ Functions of JAKIM

- To formulate policies for the advancement of Islamic affairs in the country and to safeguard the sanctity of the aqidah and the teachings of Islam.
- To help draft and streamline laws and regulations that are necessary as well as to evaluate and coordinate the implementation of the existing laws and administration from time to time in efforts to resolve problems faced by the ummah.

+ Cont...

- To implement programmes for the advancement of the ummah and the inculcation of Islamic values in the administration of the country.
- To streamline the enforcement mechanisms of laws and administrative procedures pertaining to Islamic affairs in the country.
- To evaluate Islamic affairs programmes that are carried out in the country.
- To act as compiler, disseminator and centre of information on Islamic affairs.
- To implement programmes for the advancement of the ummah through regional and international cooperation.

+ National Fatwa Committee

- National Fatwa Committee which was established by the Conference of Rulers
- Role to ensure uniformity of *fatwa*
- The National Council of Islamic Religious Affairs is directly responsible for the establishment of the National Fatwa Committee.
- The State Fatwa Committee to receive advice from the National Fatwa Committee (Section 52(1) of the Administration of the Religion of Islam (State of Selangor) Enactment 2003)

+ DEPARTMENT OF SYARIAH JUDICIARY (JKSM)

Aims: To supervise and coordinate the administration of Islamic Law and Syariah Courts and To uphold and upgrade Islamic Judicial institutions.

- On July 3, 1996 the Cabinet agreed to the proposal to Restructure Syariah Courts throughout Malaysia through the following measures:-
- To establish JKSM by the Federal Government headed by the Syariah Chief Justice of Malaysia, who is also Head of Open Service scheme for Syariah Officers.
- To create an organizational structure JKSM
- To create four (4) posts of Judge of the Syariah Court of Appeal to reconsider the appeals cases at the Court of Appeal in the states and federal territories.
- To Maintain the structure of the State Syariah Court and that of Federal Territories, including the commissioning of Syariah Chief Justice and Syariah Officers.
- To create a Open Service Scheme for Syariah Officer.
- The Federal Government will bear the cost of Syariah Officer.

+ STATE ENACTMENTS

- The state Enactments introduced by the respective states through the State Legislative Assemblies shall consist of the following:
- Administrative Laws: The main “all in one legislation”:
 - Religious matters are concentrated in Majlis Agama Islam covering wide areas of Islamic Administration including Syariah Courts, fatwas, Islamic Family Law, enforcement and prosecution, mosque, conversion, religious education, Baitul Mal, Zakat, Fitrah, Wakaf etc.
- Separate legislations covering various aspects of Islamic Law.
 - Substantive Laws: Islamic family law, evidence, criminal offence etc
 - Procedural Laws: civil and criminal procedure

+ Parliament to Make Laws Regarding Islamic Law

- List 1 item 4(k)- Federal List, allows Parliament to make laws regarding Islamic law.
- Ascertainment of Islamic law and other personal laws for purposes of federal law;

+ **Power of Parliament to extend legislative powers of States (Article 76A)**

- This Article permits the Federal Parliament to extend the legislative power of the States to enact laws on matters in the Federal List.
- Private members: MPs not holding ministerial posts. Under Standing Orders of the two Houses, draft a Bill and seek leave of the House by way of a motion to introduce the Bill.
- If leave is granted, then the Bill shall be referred to the Minister concerned. With his report, the Bill can be taken up for second reading, debate and vote.
- Such a Bill requires a simple majority of those present and voting.

+ STATE ADMINISTRATION OF ISLAMIC RELIGIOUS AFFAIRS

- The administration of Islamic affairs & law have been streamlined to 3 principal authorities:
- 1. Majlis Agama Islam: responsible for matters concerning the religion of Islam.
- 2. Mufti: responsible for determination of Islamic Law.
- 3. Syariah Courts: responsible for the administration of justice.

+ ISLAMIC RELIGIOUS COUNCIL

- S 6 Administration of the Religion of Islam (State of Selangor) Enactment 2003: The Sultan being the Head of Islamic Religion is assisted by the Islamic Religious Council in all matters but excluding Islam law and administration of justice which are within the function of the *Mufti* and Syariah courts.



- **Kedah Constitution 33B (1)**

The Head of the Religion of the state shall be the sovereign; and the Majlis Agama Islam constituted under the existing state law shall continue to aid and advise the sovereign in accordance with law.

- **Constitution of Negeri Sembilan 6 (1) (2)**

There shall be established a Majlis Ugama Islam called “Council of Muslim Religion” to aid and advise His Highness and the Ruling Chiefs in all matters relating to the religion of state. In exercising the functions and powers of the Head of Muslim Religion in the state, His Highness shall obtain the concurrence of the Undang.

- **Sabah State Constitution 5 B (2)**

The Legislative Assembly shall be responsible for making provisions for regulating the Islamic Religious Affairs and for constituting a Council to advise the YDPA in matters relating to the religion of Islam.

+ Scope of Majlis

- **Administration of Islamic Law (Federal Territories) Act 1993**
- **S31:** The Majlis shall aid and advise the YDPA in respect of all matters relating to the religion of Islam within the Federal Territories except in matters of Islamic Law and those relating to the administration of justice.

+ **FUNCTION & POWERS OF THE MAJLIS**

- Aid and advise the YDPA on religious matters
- Involvement in economic and social development wellbeing of the muslim community
- Administration of all the money and funds of Baitul Mal
- Making rules for the collection and distribution of all properties of Baitulmal
- Sole trustee of all wakaf
- Looking after all mosques in the Federal Territories
- Determine, amend and alter boundaries of any Kariah Masjid



- Looking after all mosques in the Federal Territories
- Determine, amend and alter boundaries of any Kariah Masjid
- Appointment of religious officers
- Responsible for the religious schools
- Conversion and muallaf
- Promoting Islamic Religion
- Granting of Loans and Scholarships

+ Chairman of Majlis

- The chairman of the Islamic Religious Council being slotted to the Menteri Besar. (Section 11(1)(a) Administration of the Religion of Islam (Negeri Sembilan) Enactment 2003)
- Several laws provide that the Sultan appoints the chairman on the advice of the Menteri Besar. Section 11(2) Administration of the Religion of Islam (State of Selangor) Enactment 2003.
- However, there are also states that provide for the Sultan to appoint without the advice of the Menteri Besar. (Section 11(2) Administration of the Religion of Islam (State of Johor) Enactment 2003).

+ MEMBERS OF MAJLIS

- Menteri Besar/ Chief Minister
- State Secretary
- State Financial Officer
- State legal Advisor
- Mufti
- Chief Registrar
- Directors, Religious Department

+ Islamic Religious Department

- The Islamic administration operation is carried out by the state's Religious Department headed by the Director of the Islamic Religious Department.
- The Islamic Religious Department obtains the mandate to perform its duties based on the powers of the Islamic Religious Council which in turn derives its legitimacy from the Sultan.
- the Director of the Islamic Religious Department to be the secretary of the Islamic Religious Council. His appointment needs to be done after due consultation with the Islamic Religious Council.