

**LAA 3064
MOOT/MOCK AND
PLACEMENT**

**OFFICERS OF
THE SHARIAH COURT
(PEGUAM SYARIE')**



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Hierarchy of the Syariah Court

Shariah Appeal Court- Chief shariah judge and 2 others

Shariah High Court- kadhi besar

Shariah Subordinate Court-kadhi

Why we need a Peguam Syarie

- To uphold justice
- Growing number of cases in the shariah court.
- Public awareness about their rights especially to the women.
- To prevent monopolies and exorbitant legal fees by certain peguam syarie.

Legitimacy of the Profession

- Recognised by Al-Quran, As-sunnah, practices of the companions and Al-Ijma' of later jurists.
- Known in arabic as Al-wakalah bil khusumah.
- Based on the principle of al-wakalah syarie lawyers can accept fees (ujr) for their services.

Pegulam Syarie In The Shariah Court

- - Who is a Pegulam Syarie?
 - Members of the Bar and non members of the Bar. Pegulam syarie refers to those who practice in *Syariah* courts in Malaysia and is governed by the respective states pegulam *syarie* rules.
 - Pegulam syarie is a person who is given the right by rules enacted by any state to appear and represent his client in every shariah court case within the confines of such state or federal territories, respectively.

Appointment of Peguam Syarie

- As regards to their appointment, section 55(1) AILFT states that;
- "Majlis (Board) can appoint any legal officer of Federal government and any legal officer possessed a valid certificate produced under the legal profession Act 1976 or any person qualified to be a syarie lawyer to appear and represent any party in any court"

Cont...

- Four categories of syarie lawyers who can appear before syariah courts :
 - 1) Any legal officer of federal government
 - 2) Any advocate & Solicitor who possess the valid certificate of practice produced under the legal profession Act 1976
 - 3) Any person deemed to be qualified (for e.g.; an academician)
 - 4) Any person qualified to be a syarie lawyer

Cont...

- Section 59 AILS states that;
- The Majlis may on payment of the prescribed fee admit persons having sufficient knowledge of Islamic law to be peguam syarie to represent parties in any proceedings before any shariah court. No other person than a peguam syarie shall be entitled to appear in any shariah court on behalf of any party to any proceedings before it.

Peguam Syarie Rules

- Before 1982, none of the states in Malaysia had any rules for peguam syarie. Only general provision in the Administration of Islamic Law enactments.
- 1982-Johor 1987-Terengganu 1988-Kedah and Kelantan 1990-Pahang 1991-Selangor 1993-FT.

Requirements in Selangor

- Peguam Syarie Rules 1991- A person who holds a bachelor degree in syariah which is recognized by Majlis and conferred by institute of higher learning recognised by the fed. government.
- an advocate and solicitor registered under the LPA 1976
- has completed a professional training recognized by the Majlis in the in the field of Islamic judiciary.
- Knowledgeable in Islamic Law

Cont...

- good character and: i) has not been convicted in Malaysia or elsewhere of a criminal offences as would render him unfit to be a member of his profession, and in particular, but not limited to, an offence involving fraud or dishonesty ii) has not been adjudicated bankrupt;
- A citizen of Malaysia or a permanent resident of Malaysia

Procedure for Admission

- Application to MAIS (Form 1). In form 1-personal particulars and eligibility and qualifications. Prepare a SD that he is not a bankrupt and not convicted of criminal offence.
- 2 copies of the relevant certificates (CTC) + 2 referral letters.
- Serve and to get acknowledgement by the Chairman of the Committee. Notifying for the admission for period of 1 month in every shariah court in Selangor.
- Peguam Syarie committee will consider the application and normally will call for interview.

Cont...

- Recommendation by Peguam Syarie Committee will then be submitted to Majlis.
- Majlis will notify the decision to the applicant and to every sh court in selangor within 14 days.
- If successful the applicant has to pay the prescribed fee of RM100 and will get a date to receive the certificate.
- On this date the applicant will appear in the Shariah High Court and the judge will make a declaration of his appointment as a peguam syarie. In civil court known as “Long Call”.

Requirements in Federal Territories

- **Peguam Syarie Rules 1993-** Muslim and has passed the final examination leading to the degree of Bachelor in syariah from recognized university; or
- muslim member of the judicial and legal service of the federation; or
- Muslim advocate and solicitor; or
- has served as a shariah judge or as a kathi with any state government for a period of not less than 7 years.
- has attained the age of 21 years
- is of good behavior and:

Cont...

- has not been convicted in Malaysia or elsewhere of a criminal offences and has not been adjudicated bankrupt; and a citizen of Malaysia or a permanent resident of Malaysia
- As an advocate and solicitor, has passed the Sijil Peguam Syarie examination; has not done any act which prohibited in Islamic law, has not been, or is not liable to be, disbarred, disqualified or suspended in his capacity as a legal practitioner in any other country; has satisfactorily passed or is exempted from the Bahasa Malaysia and basic.

Procedure for Admission

- Application to Majlis (Form A)-personal particulars and eligibility and qualifications. No express provision for SD that and no requirement for 2 copies of the relevant certificates (CTC) + 2 referral letters.
- Serve and to get acknowledgement by the Chairman of the Committee. Notifying for the admission for period of 1 month in every shariah court in FT.
- Peguam Syarie committee will consider the application and normally will call for interview and examination.

Cont...

- Recommendation by Peguam Syarie Committee will then be submitted to Majlis.
- Majlis will notify the decision to the applicant and to every sh court in FT within 14 days.
- If successful the applicant has to submit the name of the firm and to pay the prescribed fee of RM100 and will get a date to receive the certificate.
- On this date the applicant will appear in the Shariah High Court and the judge will make a declaration of his appointment as a peguam syarie. In civil court known as “Long Call”.

Requirements in Other States

- Johor- Specifically states Al-azhar and other universities, only 3 years experience if shariah judge, must be ahli sunnah waljamaah
- Kedah-Registration fee RM120.
- Kelantan- 10 years experience if shariah judge
- T'ganu-conversant in BM
- Pahang- Specifically states Al-azhar and other universities.

Jurisdiction

- There is a statutory limitation imposed on syarie lawyers as regards to their jurisdiction. Section 50(1) of the Laws of Administration Of Islamic Religion State of Selangor Vol: 3/52 provides that no syarie lawyer is allowed to take part in a court for any party in a proceeding where it contradicts with the religion of Islam.

Admission as an Advocate and Solicitor

- Commencement of the pupillage from the date of filing of petition.
- Period- 9 months, exemption 3 months if supported with satisfactory evidence.
- Master- 7 years experiences as a lawyer.
- Full time except with leave from Bar Council.
- If appear in High Court only in chambers.
- There will be 2 “calls”: Short Call-Interim locus to appear in Court. Long Call-Admission to the High Court of Malaya.

The Roles and Duties of Peguam Syarie

■ Full responsibilities

- To represent the client with full responsibilities whether as a defendant's or plaintiff's solicitors.
- Pre-trial- To advice for "sulh" or reconciliation.
- During the trial-To assist the court in providing true facts and etc.Punctuality, honest and competent.
- Post trial or after the judgment- To make sure that the Order made by the Court be obeyed by the disputed parties. To file an appeal if dissatisfied with the decision.

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- Competent and Knowledgeable
- Sharie lawyers should have a good knowledge of the law both substantive and procedural and they should continue to improve his knowledge and make himself competent to perform his duties.

Cont...

- Truthfulness
- The verses of the holy quran call for lawyer to stand out firmly witnesses to fair dealing. Al Maidah:9 and “*to stand out firmly justice as witnessed by Allah. An-Nisa’:135*”

Cont...

- **Upholding the Command of Allah**
- A Muslim lawyer must always remember that the only guidance is the Quran and Sunnah of the prophet if there is any problem in any or including legal practice. A Muslim lawyer should uphold the command of Quran and Sunnah not only in his professional practice but he also has to implement it in his personal life and family. Lawyer should never betray the command of Allah in order to win his case.

Cont....

- Encouraging Others to uphold the Command of Allah.
- In surah An-nisa:144
- *“ There no good in most of their secret talks save him who orders charity or kindness or reconciliation between mankind and who does this seeking the good pleasure of Allah we shall give him a great reward”*.
- Act as a counselor.

Cont....

- **Honesty To Client**
- Honesty to client is the essence in legal profession. A lawyer owes duty to give frank and fair opinion to his client even though he may not his client. His endeavor must always be to inspire confidence to his client about the honesty of his advice and legal practice.

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- **Reasonable Legal Fees**
- When we appoint a person to a position on his provision. If he takes anything beyond that it is illegal gains. In Islam lawyers are accountable to the client and they must give their service professionally and competence”.

Pro Bono works.

- Prophet Muhammad said “Do you know what is the right of neighbors are? Help him if he asked for your help. Give him relief if he seeks your relief, lend he needs a loan. Show him concern if he is distressed. Nurse him when he is ill. At end his funeral if he dies. Congratulate him if he meets any good. Sympathize with him if any calamity befall him. Do not block his air by raising your building high without his permission. Harass him not. Give him a share when you buy fruits and if you do not give him bring that you buy quietly and let not your children take them out to excite the jealousy of his children”.

Issues

- Different state requires different criteria for the admission of syarie lawyer and there is no common final examination for all graduates in order to become a syarie lawyer.
- There should be standard guidelines by every state in Malaysia on the appointment of syarie lawyers.
- Syarie lawyers do not received the comprehensive Islamic laws education.
- No professional body as Bar Council

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Thank you

“Success is not the key to happiness. Happiness is the key to success. If you love what you are doing, you will be successful”