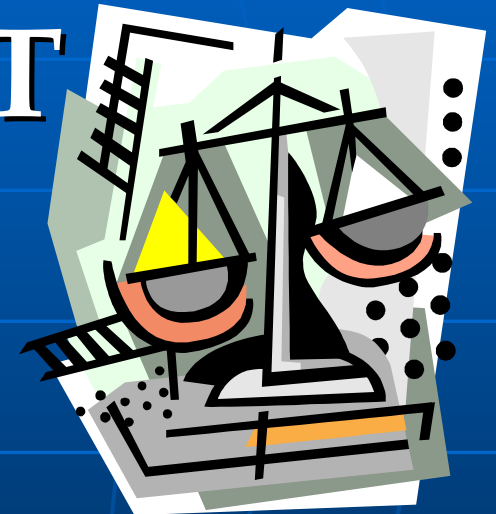


LAA 3064
MOOT/MOCK AND
PLACEMENT

OFFICERS OF
THE SHARIAH COURT



CONTENTS

- Qadhis/Judges
- Registrar
- Religious Enforcement Officer
- Pegawai Sulh
- Shariah Prosecutor
- Peguam Syarie

The Constitution of the Shariah Court

- Federal Constitution
- Item 1 of the State List
- Administration of Islamic Law
Enactment 1989 (Selangor)-Section 37
- Administration of Islamic Law
Enactment 1993 (Federal Territories)-
section 40

Hierarchy of the Syariah Court

Shariah Appeal Court- Chief syariah judge and 2 others

Shariah High Court- kadhi besar

Shariah Subordinate Court-kadhi

Hierarchy of the Civil Court

Federal Court

Court Of Appeal

High Court

Sessions Court

Magistrate Court

Qadhis/Judges

- Appointment
- Vested in the Ruler and YDPA
- Section 41 of the AILFTA 1993-YDPA may on the advice of the minister after consultation with the Majlis appoint a chief Shariah Judge.
- Section 42-Shariah Appeal Court Judges
- Section 43- Shariah High Court Judges
- Section 44- Shariah Subordinate Court Judges

Islamic perspective on the Appointment of Qadhi

- Power vested to the head of the State. No self-appointment.
- Legal implications if someone applied for post of Qadhi. Wajib aini, mustahab, harus, makruh, haram.
- Case of Abu Zar when he applied the position before Prophet SAW and case of Ibnu Umar
- Position of qadhi is fardu kifayah.
- Selection of candidates can be done by relying on the information on the candidate or by examination and interview.

Cont...

- The Condition for Perfect Appointment
 - a) Person who appoint knows that the appointee possesses characteristics of qadhi and has the right and capable of holding the post
 - b) The duty of the qadhi must be specified its territorial, place and jurisdiction.
 - c) Publicity of the appointment
 - d) Endorsement.

Cont...

- The qualification for CSJ:
 - a) The person must be a citizen of Malaysia
 - b) Has been a shariah high Court Judge or Qadhi or Registrar or a shariah prosecutor of a state for a period of not less than 10 years.
 - c) Person learned in Islamic law
- The qualification for SHCJ
 - a) and c) above plus has been a shariah subordinate Court Judge or Qadhi or Registrar or a shariah prosecutor of a state for a period of not less than 10 years.

Islamic Perspective on the Qualifications of Qadhi

- Muslim-Jumhur
- Baligh
- Soundmind-aqil baligh
- Free person- not relevant in modern days.
- Male- Jumhur- Abu Hanifah and Ibnu Hazm
- Just
- Mujtahid
- Ability to hear, speak and see.

Cont...

Position and Functions of Qadhi

- Qadhi must be independent.
- All citizen are equal before qadhis.
- His main functions are to uphold justice.
- To ensure rules and procedure in court being followed by litigants.
- To avoid any interference to the administration of justice.

Cont...

- Narrated by Buraidah Prophet SAW said: In the hereafter there will be 3 classes of judges. One of them will be send to paradise and the rest will be send to the hellfire.....
- Narrated by Abu Hurairah Prophet SAW. Said: "Who has been appointed as a judge amongst you likes he has put himself to be slaughtered without a knife"

Qadhis and Ethics

- Civil Court Judges
- They must adhere to the Judges' Code of Ethics 1994 by virtue of Article 125 (3A) of the Federal Constitutions.
- Shariah Court Judges
- Formerly there is no Code of Ethics for qadhis but in 2001 JKSM issued a directive for Code of Ethics of Qadhis

Directive on Code of Ethics for Qadhis issued by JKSM

Outside Court

- Unnecessary socialised
- Manipulate his position for his own benefit
- Accepting gift
- Involve in businesses
- Involve in politics

In Court

- To implement justice
- Based on syariah
- Shoul not conduct trial in the state of hunger, angry etc
- Should remain calm
- Trial in open court
- Encourage for reconciliation
- Not influence by the litigants
- Respect to the witness

Islamic Perspective on Adab Al-Qadhis

Ethics in General

- Should not be influenced by others
- Should not socialise unnecessarily
- Should avoid personal invitations
- Should not accept gifts or involve in bribery
- Should not involve in business
- Should not issue fatwa

Cont... (Ethics in Court)

- Should remain calm
- Should not be influenced by any party, wary of litigants
- Should give equal treatment
- Encourage reconciliation
- Should avoid lengthy proceedings
- Punctual and conduct trials on a first-come, first served basis.
- Due respect to witness and avoid presiding over cases that involve his relatives.

Removal of Qadhis

- Administration of Islamic Law Enactment 1989 (Selangor)- hold office until 65 years or not later than 6 months after he attains 65 years.
- Ruler can remove the qadhis based on misbehaviour, inability of body or mind through recommendation by tribunal.
- Qadhi is automatically dismissed- insane, blind, dumb, death sickness and fasiq.

Registrar

- Appointment of Registrar
- Section 45 Administration of Islamic Law FT 1993
- YDPA on the advice of CSJ appoint a Chief Registrar of the SAC, Registrar of the SHC and Assistant Registrars of the SSOC.

Cont....

Functions of Registrar

- Formerly Qadhi handled almost everything in court. Qadhi cannot concentrate on the cases.
- To ensure better administration of the shariah court.
- Filing system, officers and supporting staff, registration of cases, library, facilities and etc.

Religious Enforcement Officer

Appointment of REO

- Section 58 Administration of Islamic Law FT 1993.
- The Majlis may appoint a CREO and REO to carry out the investigation of offences against precepts of the Islam.

Functions of REO.

- To do investigation for offences committed under the enactment and to enforce the law.
- To enforce the law.

Cont....

- Example:
- Gambling, drinking, intoxicating drinks, adultery, fornication, khalwat, ill treatment of wife, disobedience of wife, disrespect of ramadhan, not performing jumaat prayer.
- To enforce any order or judgment made by the Court eg. To serve summon or warrant.

Pegawai Sulh

- Surah Al-Hujurat:9-10
- "If two parties among the believers fall into fight make peace between them....."
- "The believers are brothers to one another, therefore make reconciliation between your brothers and fear Allah, so that you may be shown mercy"

Pegawai Sulh

- Shariah Civil Procedure Enactment Selangor Part xiv-The parties to an action are encouraged to hold sulh.
- Qualifications of Pegawai Sulh
- person who holds a bachelor degree in syariah from authorised university,
- has completed a professional training recognized by the Majlis in the in the field of Islamic judiciary.
- Passed BM examination

Cont...

Appointment of Pegawai Sulh

- Appointed by Majlis

Kaedah-kaedah Tatacara Mal (Sulh)
Selangor 2001.

- Pegawai Sulh is appointed and placed at Shariah Subordinate Court.
- Pegawai Sulh will conduct the Majlis Sulh. Sometime registrar or syarie judge acted as a chairman in the majlis sulh.

Cont...

- Functions of Pegawai Sulh
 - To solve problems of backlog cases in the court- In Selangor Sulh has decreased about 65% cases in Court.
 - As an arbitrator, to provide settlement on win win basis.
 - Majlis sulh will be attended by the disputed parties only and not in open court.

Shariah Prosecutor

- Appointment of Shariah Prosecutor
- Section 58 Administration of Islamic Law FT 1993-YDPA on the advice of the Minister appoint a person to be CSP.
- CSP may appoint fit and proper person to be SP.
- Only related with criminal offence-gambling, drinking, intoxicating drinks, adultery, fornication, khalwat, ill treatment of wife, disobedience of wife, disrespect of ramadhan.

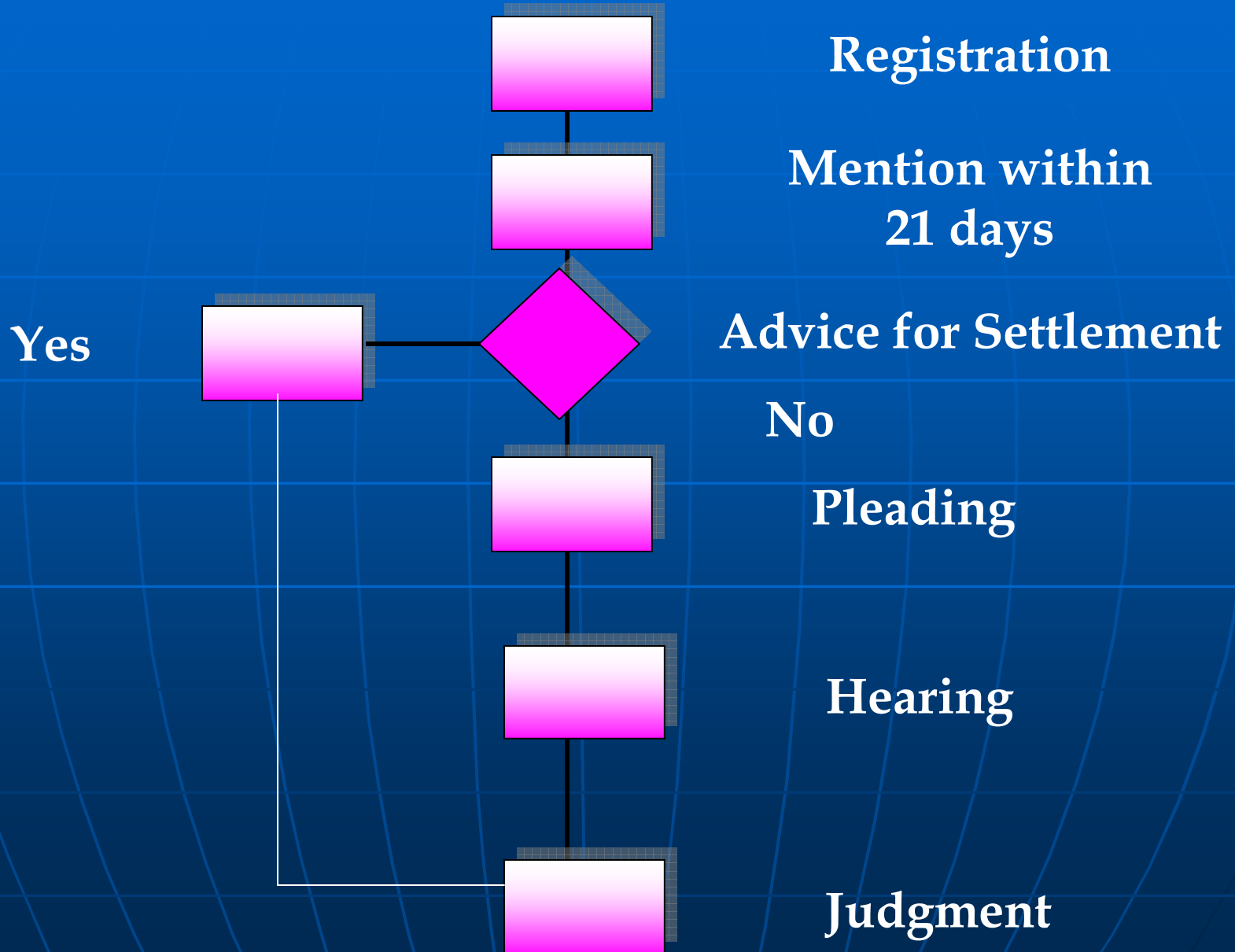
Functions of the Shariah Prosecutor

- To institute and conduct any proceedings for an offence before Shariah Court.
- Review and evaluate Investigation report made by REO.
- Preparation of court papers such as charges, affidavit, evidence, including preparation of witnesses.

Flow Chart For Criminal Cases



Flow Chart For Civil Cases



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.

Required Reading

- Berita Harian, *Sulh Produk Baru Mahkamah Syariah*, 17 September 2002.
- Enakmen Kanun Prosedur Mal Syariah (Selangor) 1991.
- Farid Sufian Shuaib, Tajul Aris Ahmad Bustami & Mohd Hisham Mohd Kamal, *Administration of Islamic Law in Malaysia Text and Materials*, 2001, MLJ.
- Imam Khassaf, *Adab Al-Qadhi (Islamic Legal and Judicial System)*, 2004, Adam Publishers & Distributors.
- Legal Profession Act 1976.

Cont....

- Mahmud Saedon Awang Othman and Nik Ahmad Kamil Nik Mahmood, *'Adab al-Qadhi in Daily Activities of a Qadhi'*, IIU Law Journal 0012No. 1992.
- Mahmud Saedon Awang Othman, *Intitusi Pentadbiran Undang-undang dan Kehakiman Islam*, Dewan Bahasa dan Pustaka, 1996, Kuala Lumpur.
- Peguam Syarie Rules 1991 (Selangor).
- Peguam Syarie Rules 1993 (Federal Territories).
- *Prosiding Seminar Hasil Penyelidikan*, Kolej Universiti Islam Malaysia, 2003.
- Salleh Buang, *The Education and Training of Shariah judges and Lawyers in Malaysia*, Shariah Law Journal, Vol 6 Oct 1999.

Recommended Reading

- Ahmad Ibrahim, *Al Ahkam (PENGHAKIMAN dan KEPEGUAMAN)*, Dewan Bahasa dan Pustaka, 1997, Kuala Lumpur.
- Ahmad Ibrahim, *Pentadbiran Undang-undang Islam di Malaysia*, IKIM, 1997, Kuala Lumpur.
- *Adab Al Qadhi in Islamic Law* by Fyzee, Asaf Ali Ashgar (1964) Mal LR 406.
- Tan Yock Lin, *The Law of Advocates and Solicitors in Singapore and Malaysia*, 1991 MLJ.

Thank you

*“Justice must not only be done
but must be seen to be done”.*