



CIVIL AND CRIMINAL PROCEDURE IN SYARIAH COURT

LAA 3043

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INTRODUCTION

- To familiarize with the necessary knowledge of Islamic procedure.
- To give an overview of the current application of the procedural law in syariah court.
- To equip and educate students with knowledge on the syariah procedural legislation in Malaysia either on the civil and criminal procedure; and
- The differences with substantive laws and procedural laws.

GENERAL OVERVIEW OF THE COURSE

- Part One-syariah civil procedure.
- Include explanation on the parties to an action; the appointment, functions and duties of a Peguam Syarie, the explanation on the pleadings, subpoenas and affidavits; procedure of service of documents and the process of discovery and inspection; the process of sulh; the process of hearing and judgments.

Cont....

- Part two discusses the syariah criminal procedure:
- the students will be taught the nature of charge and its ingredients, the process of arrest and the criminal trial; aspects of bail; the criminal trial and appeal; sentencing in criminal procedure.

CONCEPT OF JUSTICE, AL-QADHA' AND AL-DA'WA.

- *Surah Al-Anbiya (21) :78*

“We also bestowed favors upon Daud and Sulayman when the two were judging a case regarding the field into which the sheep of certain people had strayed by night and were watching them to arrive at the right decision although we had given wisdom and knowledge to both of them”.

Cont...

- *Surah An-Nisaa* (4): 105

“We have revealed to you book with the truth so that you may judge between people in accordance with the right way which Allah has shown you so be not an advocate for those who betray trust, seek Allah forgiveness, surely Allah is forgiving , Merciful”.

Cont...

- Hadith Ummu Salamah reported that the messenger of Allah declared;

“I’m only a human being and you bring your disputes to me Perhaps some of you indulge in logic to prove your assertions and it may be that I give my decision or the strength of your argumentation. Should I therefore give one that which his brother entitled to he should not take it, for it would be as if I am giving him a coal of fire.”

Element of justice in the Syariah Procedure Code

- By giving proper representation to the parties in litigations (ss12, ss14, ss114)
- The case can be heard by impartial hearing. (ss37, ss115 and ss123).
- Seeking the truth and do justice (ss76 and ss94)
- Adherence to Islamic law and prevent injustice (ss19, s87 and ss253)

Cont...

- Al-Qadha' or Judiciary- anything which is related with the administration of justice. It includes court and officer of the court.
- Al-Da'wa or Charge- During trial- Words accepted by a judge or qadhi to obtain a known right from another person or to defend such right in a legal dispute

CIVIL JURISDICTION

- Family laws in respect of:
 - (a) marriage, divorce, custody and guardianship, maintenance of children, matrimonial properties, alimony, Laws of succession, Probate and Administration – relating to distribution, Trust Deed – in respect of gift inter-vivos.

CRIMINAL JURISDICTION

- Limited and confined to offences in respect of: polygamous marriage, close proximity, indecent dressing and behavior, violation of the "pillars of Islam" , not fasting during Ramadhan, not attending Friday prayers, desertion by either spouse and apostasy.
- only over persons professing the religion of Islam and it has only such jurisdiction in respect of offences as is conferred by Federal law. Muslim Courts (Criminal Jurisdiction) Act, 1965 Amendment 1984- Jurisdiction to deal with cases punishable with imprisonment up to three years, or fine up to \$5,000.00 or whipping up to six strokes or the combination of all these.

CONCLUSION

- This course is very important for those who want to practice in Syariah Court.
- The student has to know the jurisdiction of the sy. Court before they may learn the civil and criminal procedure.
- There were differences and similarities on the nature of civil and and criminal procedures.

Thank You



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