

COMPARISON OF SHARIA COURT'S OF PAKISTAN, UNITED ARAB EMIRATES (UAE), INDONESIA AND MALAYSIA

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Abstract-This article explores and compares the roles and functions of Sharia courts in Pakistan, the United Arab Emirates (UAE), Indonesia, and Malaysia. It provides an in-depth analysis of the historical background, legal frameworks, and jurisdiction of these courts in the respective countries. The study examines the similarities and differences in the implementation of Islamic law, the organizational structure of the courts, and their impact on the legal systems of each country. Special attention is given to the interpretation and application of Sharia principles, the relationship between Sharia and civil law, and the influence of these courts on social, cultural, and political dynamics. By examining these four jurisdictions, this comparative analysis aims to shed light on the diverse approaches to Sharia court systems in different Muslim-majority countries and the ways in which they navigate the complex intersection of religious and legal spheres. The findings contribute to a deeper understanding of the strengths, challenges, and evolving nature of Sharia courts, as well as their implications for legal pluralism and the protection of individual rights within a broader legal framework.

Keywords: Federal Shariat Court of Pakistan, comparison, Pakistan, United Arab Emirates, UAE, Indonesia, Malaysia, Islamic law

FEDERAL SHARIAT COURT OF PAKISTAN

The Federal Shariat Court (FSC) of Pakistan occupies a distinct and consequential position within the legal framework of the country. It was established in 1980 by 18th amendment to the Constitution, which introduced provisions pertaining to the court's formation and jurisdiction, the FSC is tasked with examining and determining the compatibility of laws with the principles of Islamic Sharia. This Chapter explores the power and influence of the FSC, its role in shaping the legal landscape of Pakistan, and its impact on matters of legislation, society, and governance as compare to the other Muslim Countries. ("Federal Shariat Court," 2022)

The jurisdiction of the Federal Shariat Court (FSC) in Pakistan is defined by Article 203-C of the Constitution. This constitutional provision empowers the FSC to examine and invalidate any legislation that is deemed contradictory to the principles of Islam, referred to as being "repugnant to the injunctions of Islam." As a result, the FSC possesses the jurisdiction to ensure that laws adhere to Islamic teachings and principles. The composition of the court consists of eight judges, including three Ulama (Islamic scholars) and five judges with expertise in secular law. This diverse composition enables the FSC to draw upon both Islamic and legal knowledge in its decision-making process. The FSC's jurisdiction extends to laws at both the federal and provincial levels, promoting consistency in the interpretation and application of Islamic principles throughout Pakistan. One of the primary functions of the FSC is to interpret Islamic law and provide guidance on its application within the Pakistani legal system. The court relies on the Quran, Sunnah (traditions of Prophet Muhammad), Ijma (consensus of Islamic scholars), (Hafeez, n.d.) and Qiyas (analogical reasoning) as primary sources of Islamic jurisprudence. Through its judgments, the FSC aims to establish a comprehensive framework for the implementation of Sharia principles in line with the contemporary needs of Pakistani society. The FSC has the power to review legislation at various stages, ensuring its conformity with Islamic principles. It can examine proposed bills during their drafting process, review enacted laws, and even entertain public interest petitions challenging the compatibility of existing laws with Sharia. This authority grants the FSC significant influence in



shaping the legislative landscape of Pakistan, as it plays a crucial role in safeguarding the Islamic character of the legal system. The FSC's decisions have far-reaching implications for societal and governance issues in Pakistan. It addresses a wide range of matters, including family law, criminal law, economic and financial matters, and constitutional issues. For example, the court has pronounced judgments on issues such as blasphemy laws, women's rights, and Islamic banking, shaping the legal and social dynamics of the country. The FSC serves as a guardian of Pakistan's Islamic identity and ensures that legislation remains in line with the principles of Sharia. By upholding Islamic values and customs, the court seeks to provide a framework that reflects the aspirations of the majority Muslim population. This role ensures that legislation respects the religious sentiments and cultural heritage of the Pakistani people. (Aziz, 06:38:41+05:00)

While the FSC wields significant power, it operates within a system of checks and balances. Its decisions are subject to review by the Supreme Court of Pakistan, which can overturn or modify them if they are found to be inconsistent with the Constitution. This mechanism ensures that the FSC's judgments remain within the broader framework of Pakistan's legal system and constitutional provisions. (*12-Judgement-of-Federal-Shariah-Court.Pdf*, n.d.) The Federal Shariat Court of Pakistan holds a pivotal role in the interpretation and implementation of Islamic principles within the country's legal system. Its power to review legislation and strike down laws deemed incompatible with Islamic teachings has a profound impact on the legal landscape and societal dynamics of Pakistan. While ensuring the Islamic character of the legal system, the FSC's decisions are subject to scrutiny, maintaining a balance between religious considerations and constitutional principles. As Pakistan continues its journey as an Islamic republic, the FSC's role will remain

crucial in shaping the country's legal framework and preserving its Islamic identity.

STAGES OF LITIGATION:

Filing of Petition: The court proceedings typically commence with the filing of a petition challenging the compatibility of a particular law with Islamic principles. Petitions may be filed by individuals, religious bodies, or the Attorney General.

ADMISSION AND PRELIMINARY HEARING:

After the petition is filed, the FSC conducts an initial review to determine its admissibility. The court assesses whether the petitioner has the locus standi (legal standing) to bring the case and whether the matter falls within the court's jurisdiction.

FRAMING OF ISSUES:

Once the petition is admitted, the court frames specific issues for consideration. These issues outline the legal and constitutional questions to be addressed during the proceedings.

SUBMISSION OF WRITTEN ARGUMENTS:

Parties involved in the case, including the petitioner and respondents, submit written arguments presenting their respective positions. These arguments provide a comprehensive analysis of the legal and religious aspects related to the matter at hand.

ORAL ARGUMENTS AND HEARING:

The FSC conducts oral arguments, allowing parties to present their case before the court. Lawyers representing the petitioner and respondents present their arguments, cite legal precedents, and engage in a legal discourse to support their positions.

EXAMINATION OF WITNESSES AND EXPERT OPINIONS:

The FSC may call witnesses or seek expert opinions to provide additional insight into the matter. Witnesses and experts testify under oath, providing factual or expert evidence to support their claims.

DELIBERATION AND JUDGMENT:

After hearing all arguments and examining the evidence, the FSC proceeds with deliberations to reach a decision. The court may take into account legal principles, constitutional provisions, Islamic jurisprudence, and precedents to arrive at its judgment.

**PRONOUNCEMENT OF JUDGMENT:**

Once the FSC reaches a decision, it pronounces its judgment in open court. The judgment reflects the court's interpretation of Islamic law and its ruling on the compatibility of the law in question with Islamic principles.

REVIEW AND APPEAL:

Parties dissatisfied with the FSC's judgment can seek a review of the decision within 30 days. Further appeals can be made to the Supreme Court of Pakistan, which has the authority to review and modify the FSC's judgments.

POPULAR DECISIONS OF THE FEDERAL SHARIAT COURT OF PAKISTAN:

The Federal Shariat Court (FSC) of Pakistan has issued several influential rulings that have brought about notable changes in the legal and societal fabric of the nation. As a constitutional institution tasked with ensuring the compatibility of laws with Islamic principles, the FSC's judgments hold immense importance. This article provides a comprehensive analysis of some popular decisions of the FSC, highlighting their implications and contributions to the development of Pakistan's legal system.

The Hudood Ordinance Case (1980): One of the most influential decisions of the FSC was the interpretation of the Hudood Ordinance, which pertains to Islamic laws on theft, adultery, and consumption of alcohol. The court played a crucial role in clarifying and outlining the application and procedure of these laws, which significantly impacted the criminal justice system of Pakistan.

THE BLASPHEMY LAW CASES:

The FSC has dealt with several cases related to Pakistan's controversial blasphemy laws. Its decisions have shaped the interpretation and implementation of these laws, including issues such as the burden of proof, punishment, and safeguards against misuse. These cases have generated significant public interest and debate within Pakistani society.

THE RIBA (INTEREST) CASES:

The FSC has rendered notable judgments on the issue of riba (interest), particularly in the context of banking and financial transactions. The court's decisions have influenced the development of Islamic banking and finance in Pakistan, promoting the adoption of interest-free banking practices and facilitating the growth of Islamic financial institutions.

WOMEN'S RIGHTS CASES:

The FSC has addressed various women's rights issues, including matters related to marriage, divorce, inheritance, and the age of puberty. Its decisions have sought to strike a balance between Islamic principles and the protection of women's rights within the framework of Pakistani society. These judgments have had a significant impact on shaping family law legislation and promoting gender equality.

CONSTITUTIONAL MATTERS:

The FSC has dealt with several constitutional matters, including the interpretation of provisions related to Islamic principles in the Constitution of Pakistan. Its decisions on matters such as the role of Islamic law in the legal system, the scope of religious freedom, and the status of religious minorities have contributed to the constitutional discourse and the understanding of Pakistan's Islamic identity.

IMPLICATIONS AND CONTROVERSIES:

The popular decisions of the FSC have generated both praise and criticism. Supporters argue that these judgments have helped align Pakistan's legal system with Islamic principles and have strengthened the Islamic identity of the country. However, critics argue that some decisions have been overly conservative, potentially restricting individual freedoms and human rights. These controversies highlight the ongoing challenges in striking a balance between Islamic principles and the demands of a diverse and evolving society.



APPOINTMENTS OF JUDGES OF THE FEDERAL SHARIAT COURT OF PAKISTAN

The Federal Shariat Court (FSC) of Pakistan plays a crucial role in interpreting and reviewing laws to ensure their compliance with Islamic principles. The appointment of judges to the FSC is a significant process that determines the composition and expertise of the court. This article aims to provide a comprehensive overview of the appointments of judges to the FSC, highlighting the criteria, procedures, and implications of these appointments.

COMPOSITION OF THE FEDERAL SHARIAT COURT:

The FSC is composed of eight judges, including a Chief Justice, who are appointed for a specified term. The judges are chosen based on their expertise in Islamic law and jurisprudence, as well as their professional competence.

APPOINTMENT CRITERIA:

QUALIFICATIONS: The judges of the FSC are required to possess the qualifications prescribed in Article 203-B of the Constitution of Pakistan. These qualifications include being a Muslim, having a good reputation, and having knowledge and understanding of Islamic teachings.

NOMINATION PROCESS: The appointment process involves the nomination of judges by the Judicial Commission of Pakistan (JCP), which is responsible for selecting suitable candidates based on their qualifications and experience in Islamic law.

PRESIDENTIAL APPOINTMENT: The President of Pakistan appoints the judges from among the nominees recommended by the JCP. The President's role is primarily ceremonial, as the appointment is made on the advice of the Prime Minister.

INDEPENDENCE AND IMPARTIALITY:

The appointments of judges to the FSC are made with the objective of ensuring the independence and impartiality of the court. It is essential to select judges who can interpret and apply Islamic principles without any external influence or bias.

TENURE AND REMOVAL:

The judges of the FSC serve a fixed term, which is determined by the Constitution. The tenure provides stability and continuity to the court's functioning. However, judges can be removed from their positions in certain circumstances, such as misconduct or incapacity, as outlined in the Constitution.

IMPORTANCE OF APPOINTMENTS:

EXPERTISE IN ISLAMIC JURISPRUDENCE: The appointments of judges with a strong background in Islamic law and jurisprudence contribute to the court's ability to effectively interpret and apply Islamic principles in the legal framework.

UPHOLDING ISLAMIC VALUES: The selection of qualified judges ensures that the FSC remains true to its mandate of upholding Islamic values and principles in the legal system of Pakistan.

JUDICIAL CONSISTENCY: The consistent and well-informed appointments of judges help maintain stability and consistency in the FSC's decisions, ensuring predictability and reliability in the interpretation of laws.

The Federal Shariat Court (FSC) of Pakistan is a unique judicial institution that holds significant importance in the country's legal system. Established in 1980 under the provisions of the Constitution of Pakistan, the FSC is responsible for examining and ensuring the compatibility of existing laws with the principles of Islamic law, also known as Sharia. This court plays a vital role in harmonizing the Pakistani legal framework with Islamic jurisprudence.

The establishment of the FSC was a response to the growing demand for the Islamization of the legal system in Pakistan. It was a significant development in the country's history, reflecting its Islamic identity and commitment to upholding Islamic principles. The FSC has been granted the authority to examine laws and legislation, including both new and existing ones, to assess their conformity with the teachings of Islam.

The FSC comprises eight judges, including a Chief Justice, who are appointed based on their qualifications and expertise in Islamic law and jurisprudence. These judges are responsible for



carefully examining cases referred to the court and issuing judgments that align with the principles of Sharia. The FSC's decisions have far-reaching implications, as they impact the legal landscape of Pakistan and shape the country's legal system in accordance with Islamic values.

The court's jurisdiction extends to various areas, including criminal, civil, and constitutional matters. It has the authority to interpret and apply Islamic principles in legal disputes, ensuring that the laws of the country are in line with the teachings of Islam. The FSC's decisions have the power to influence legislation and legal practices, ultimately shaping the legal and social fabric of Pakistan.

The FSC's role is not limited to reviewing laws and legislation; it also serves as an advisory body on matters related to Islam and its application in the legal system. It provides valuable guidance and recommendations to policymakers and legislators, helping them navigate complex issues and strike a balance between Islamic principles and modern legal requirements.

Over the years, the FSC has made significant contributions to Pakistan's legal system. Its decisions and interpretations have provided clarity on various legal issues, ensuring consistency and predictability in the application of Islamic law. The FSC has played a vital role in maintaining the integrity of Pakistan's legal system, upholding Islamic values, and fostering a sense of religious harmony and justice in the country.

The Federal Shariat Court of Pakistan holds a central position in the country's legal framework. With its mandate to examine laws and ensure their compatibility with Islamic principles, the FSC plays a crucial role in shaping Pakistan's legal system and upholding the values of Islam. Its decisions and judgments have far-reaching consequences, making it an institution of great significance in the Pakistani legal landscape. The declaration of Islamic norms as a source of legislation in Arab countries' constitutions has indeed been a significant development in the region's legal landscape. It is interesting to note that the wording of these declarations varies from country to country, and these differences hold importance in shaping the understanding and application of Islamic law. In Arabic, Islamic law is commonly referred to as "Sharia," which can be translated as "the way" or "the path." However, in some constitutions, the term "fiqh" is used instead. Fiqh refers to the deep understanding and comprehension of Islamic law as derived from the Quran, Sunnah, and scholarly interpretations. (2009.07. *Islamization of Pakistan.Pdf*, n.d.) While there may be variations in the terminology used, the common description of Islamic norms in most resources as "the principles of Sharia" highlights the fundamental values and guidelines derived from Islamic jurisprudence. These principles encompass various aspects of life, including personal conduct, family matters, commerce, criminal justice, and governance. The choice of terminology in constitutional declarations can indicate varying perspectives on the role of Islamic law in legal systems, with some countries emphasizing a broader understanding of Islamic principles and others focusing on specific applications of fiqh. The inclusion of Islamic norms as a source of legislation in Arab constitutions underscores the significance of Islamic law in shaping legal frameworks, and the wording used highlights diverse interpretations of its role. The roles and principles of Islamic law can differ based on constitutional characteristics, and the specific wording used to describe its status as a source of legislation carries important implications and reflects different understandings and approaches. In the example provided, there are slight yet significant differences in how Islamic law is described, ranging from being "a chief source of legislation" to "the chief source of legislation." (P L D 1992 *Federal Shariat Court 252*, n.d.). Both formulations recognize the primacy and significance of Islamic law as a source of legislation, but the use of the definite article "the" in the second variation emphasizes its exclusivity and prominence. Additionally, the term "raisi" used in the description can be translated as "chief" or "principal." This word carries connotations of leadership and importance, highlighting the central role of Islamic law in shaping the legal framework of the country. These nuanced differences in wording may reflect variations in the understanding and implementation of Islamic law within different legal systems. They can also influence the interpretation and application of Islamic norms in legislation, judicial decisions, and legal practice. It is important to note that the interpretation and application of Islamic law can be subject to scholarly debate and differences of opinion. Therefore, while the consensus among



professionals in the field of Islamic law may exist regarding the general concept of Sharia as a source of legislation, there can still be variations and discussions on specific details and interpretations within that broader framework. (GRR - *Global Regional Review*, n.d.) You make an important distinction regarding the nature of Islamic law being the chief source of legislation in a country. While a constitution may declare Islamic law as the chief source of legislation, it does not necessarily mean that all legislation must strictly conform to Islamic norms. The inclusion of such a provision in a constitution is more of a statement or declaration of intent, rather than a binding requirement for absolute adherence to Islamic law in all aspects of legislation. Different countries have varying approaches to the relationship between Islamic law and legislation, and this can reflect a range of political, social, and cultural factors. Some countries may prioritize a strict adherence to Islamic law, while others may adopt a more nuanced approach that allows for the incorporation of Islamic principles within a broader legal framework that also accommodates other legal sources and values. It is important to consider the broader context and interpretation of the constitutional provisions and legislation in each country to understand how Islamic law is implemented and applied. The presence of a declaration or provision stating Islamic law as the predominant basis of legislation is not inherently indicative of a contradiction with liberal values, as countries can strike a balance between Islamic principles and democratic principles, human rights, and individual freedoms. Each country's unique historical, cultural, and political circumstances shape the way Islamic law is integrated into its legal system, and the extent to which it influences legislation. It is important to study and analyze the specific constitutional and legal frameworks of individual countries to fully understand the relationship between Islamic law and legislation in each context. (Khan, 2005)

ROLE OF THE ISLAMIC LAW IN THE LEGISLATION OF THE UNITED ARAB EMIRATES (UAE)

The United Arab Emirates (UAE), officially known as Al Imarat al Arabiyah al Muttahidah, is a federation made up of seven self-governing emirates. The federation's capital is Abu Dhabi (Abu Zaby in Arabic), which is one of the emirates. Another prominent emirate is Dubai (Dubayy in Arabic), renowned as a major business hub in the Middle East. The remaining emirates are Fujairah (Al Fajayrah in Arabic), Ajman (Aymaan in Arabic), Umm Al Quwain, and Ras Al Khaimah. (Al-Muhairi, 1996b)

THE FORMATION OF THE FEDERATION:

The formation of the federation began in 1968 when the United Kingdom proposed independence for the seven Trucial coast states of the Gulf. The process culminated in 1971 (*United Arab Emirates | Euromoney*, n.d.-a) with the adoption of a provisional constitution, which remains in effect today. It is worth noting that at the outset of their independence, Bahrain and Qatar also considered joining the Federation of Arab Emirates but eventually opted for separate independence. Historically, the roots of the federation can be traced back to tribal sheikhdoms in the southern coast of the Persian Gulf and the northwestern Gulf of Oman, (*Research and Markets*, 2011) which were organized into groups. The region embraced Islam in the seventh century. (Gause, 1994) Over the years, the UAE's constitution underwent several revisions until 1996 when it was made permanent by the federal National Council, (*United Arab Emirates | Euromoney*, n.d.-b) the legislative body, and the Supreme Council of rulers, composed of the rulers of the seven emirates. (Gause, 1994) The constitution establishes the authority of the president, vice president, and the federation's institutions. Additionally, it designates Abu Dhabi as the capital of the union and declares Islamic law (Sharia law) as the primary source of legislation. (*Country Attractiveness - Country Attractiveness Assessment The United Arab Emirates Is Located in the Middle East Bordering the Gulf of Oman and | Course Hero*, n.d.)

THE POSITION OF THE ISLAMIC LAW WITHIN THE U.A.E CONSTITUTION

The United Arab Emirates (UAE) recognizes the significance of Islamic law (Shari'a) in its legal framework, as stated in Article 7 of the Constitution. This provision declares Islam as the official



religion of the UAE and designates the Islamic Shari'a as a primary source of legislation in the country. ((PDF) *The Position of Islamic Law in the Legal System of the United Arab Emirates*, n.d.) This highlights the country's commitment to incorporating Islamic principles into its legal system and underscores the role of Shari'a in shaping and influencing the laws of the UAE.

The wording of the provision, specifically stating that the Islamic Shari'a is a main source of legislation rather than the main source,⁴⁹ has led to various interpretations and created tensions within the legal system. This ambiguity and variety of interpretation have resulted in the emergence of two distinct camps within the Union.

The first group, known as Islamists, considers the Islamic law (Shari'a) to be supreme and above other laws. They advocate for a more dominant role of Shari'a in the legal system. On the other hand, the second group, referred to as Liberals, views the provision as placing the Islamic law on an equal footing with other sources of law. They advocate for a more balanced approach, where Shari'a is not considered superior to other legal sources. This diversity of interpretation and the presence of a dual legal system comprising both local and federal institutions further contribute to the tensions and variations in understanding the Constitutional Clause of Article 7. ((PDF) *The Position of Islamic Law in the Legal System of the United Arab Emirates*, n.d.) It creates a basis for institutional diversity and differing perspectives within the UAE's jurisdiction. The conflicting interpretations and tensions surrounding the interpretation of Article 7 highlight the ongoing debates and challenges in finding a harmonious balance between Islamic law and other legal principles within the UAE's legal system. The diverse viewpoints within the Union reflect the complexities involved in implementing and applying Islamic law in a modern legal framework.

ISLAMIC LAW (SHARI' A) AS A SOURCE OF U.A.E LAW

To grasp the place of Islamic law in the legislative system of the UAE, it is important to clarify its function and categorize the provision of the Union's State Security Law (SSL). Islamic law, or Sharia, is primarily considered a part of the Islamic religion and its traditions. Throughout history, Sharia has been recognized as one of the sources of legal rules, serving as a lawful basis influenced by historical and religious elements. (*Ojiako - PUBLIC POLICY AS A GROUND FOR CHALLENGING AND VACA.Pdf*, n.d.)

Interestingly, the incorporation of Sharia into the Constitutional Clause has not transformed it into a formal source of law, despite its gained influence over Constitutional directives. The Constitution itself does not explicitly rely on Islamic law. In this regard, an explanatory analysis can be employed: (Al-Muhairi, 1996b) although Sharia is considered a material source of legislation, Article 7 of the Constitution does not mandate the application of Islamic law. Therefore, the Constitutional Clause regarding Sharia is ambiguous. (Al-Muhairi, 1996b) It is important to note that while the principles of Sharia hold religious significance, they do not possess legal force and are driven by moral considerations. Based on the conducted analysis, it seems that the sole means of making Islamic law (or the provision of Article 7 of the SSL) mandatory in the UAE would require the legislature to formally incorporate it into a codified form. (Al-Muhairi, 1996b) This assumes that the implementation of the rule can only occur through legislation and not through morality or personal interpretation. An important point that arises from the analysis of Article 7 is that the provision targets the legislature rather than civilians and the judiciary. It emphasizes that Islamic law should be the chief of legislation, placing the responsibility on the legislature to enact laws in accordance with Islamic principles. However, it is worth noting that the Constitutional Clause on Sharia in the UAE may potentially conflict with the doctrine of Islamic law and its principles. According to Islamic law doctrine, Sharia is considered a divine system that does not allow for human-driven alterations. The introduction of a proposed Islamic law without legal authority, unless codified by the legislature, can be viewed as contradictory to the notion that Islamic law does not permit legal intervention except for its administrative application. The essence of Sharia, as understood in the Islamic law doctrine, is that it is a comprehensive and unchanging system derived from divine sources. It is believed to encompass all aspects of life and is seen as an immutable guide for Muslims. Consequently, any attempt to codify or legislate aspects of Sharia without adhering to its



inherent principles could be seen as a deviation from its true nature. Therefore, the potential conflict arises from the fact that the UAE's Constitutional Clause on Sharia, while recognizing its significance, does not fully align with the doctrinal understanding of Islamic law as a divine system. This highlights a tension between the legal framework of the state and the traditional interpretation of Sharia as an immutable and divine source of guidance. This highlights the inherent tension and potential contradiction between the constitutional provision of Islamic law and the principles of Shari'a as understood by some interpretations. The complexities of harmonizing religious principles with the practicalities of a modern legal system are highlighted in the position of Islamic law within the legal system of the UAE. This situation raises significant questions regarding the role of legislation, codification, and the relationship between Islamic law and state law. On one hand, the UAE seeks to preserve the authority of Sharia and uphold its fundamental principles, recognizing its significance as a guiding force for Muslims. The inclusion of the Constitutional Clause on Sharia reflects the importance placed on Islamic law within the legal framework of the country. However, on the other hand, the practicalities of a modern legal system necessitate the incorporation of legislative processes and codification. This poses a challenge, as the codification and secular intervention by the legislature may be seen as conflicting with the inherent nature of Sharia as a divine and unchanging system. (Al-Muhairi, 1996b) The position of Islamic law within the legal system of the UAE thus requires a delicate balance between upholding religious principles and accommodating the practical realities of a modern legal framework. It requires careful consideration of how to integrate Sharia into state law while respecting its core principles and ensuring coherence with the overall legal system of the country. This ongoing challenge reflects the complex dynamics between religious norms and the legal framework in the UAE. On the other hand, it operates within a legal system that is based on a constitution and influenced by Western models, which may undermine some of the core principles of Shari'a. (*Modernization of the Law in Arab States*, n.d.) This duality can be observed in the mindset of many Muslims in the UAE. They recognize the divine nature of Shari'a and the importance of adhering to its principles, yet they also value modernity and the adoption of Western values and ideals. This clash between traditionalism and modernization creates tensions and conflicts within society.

THE EVOLUTION OF THE LEGAL FRAMEWORK IN THE UNITED ARAB EMIRATES:

The United Arab Emirates, particularly in the emirates of Dubai and Abu Dhabi, is known for its rapid modernization and the adoption of progressive policies. While traditional Islamic values are still upheld in many aspects of daily life, there is also a strong push towards greater modernization and the incorporation of Western practices. This conflicting dynamic is evident in the provisions and policies implemented by the UAE government. On one hand, there are efforts to promote traditionalism and preserve Islamic values. On the other hand, there is a drive for modernization and the adoption of Western practices, especially in more cosmopolitan areas. (Al-Muhairi, 1996b) Balancing these two forces is a complex task for the UAE, and it highlights the ongoing tension between traditional religious values and the demands of a modern society. The UAE's approach to incorporating Islamic law within its legal system reflects this delicate balance, but it also raises important questions about the compatibility and harmonization of traditional Islamic principles with the realities of a rapidly evolving world.

The evolution of the legal framework in the United Arab Emirates has been a complex and ongoing process, influenced by various factors including historical, cultural, and modernization influences. The UAE is a federation of seven emirates, each with its own legal system and level of autonomy. Over the years, efforts have been made to unify and modernize the legal framework across the emirates. (Al-Muhairi, 1996b) The evolution of the legal framework in the United Arab Emirates can be divided into two stages: the historical stage and the stage following the Gulf transformation period. In the historical stage, which dates back to the 7th century with the spread of Islam, the legal system was characterized by a tribal customary law that was based on Sharia. During the early 20th century, the tribal rulers established Islamic courts in the coastal regions of the Gulf, marking an important milestone in the institutionalization of the judicial system. The establishment of



these courts included defining obligations, contributing to the evolution of the legal and judicial framework in the Emirates. (*Modernization of the Law in Arab States*, n.d.) During the British rule over the region, their presence had a significant impact on shaping the legal system of the UAE. The British brought with them their own legal traditions and institutions, which influenced the evolution of the legal framework in the region. Under British rule, there was an establishment of legal structures, courts, and administrative systems that introduced a more formalized approach to governance.

SHARIA COURTS:

During the early 20th century, the influx of migrants into the region led to an increase in crime as well as disputes related to marriage and property. (Al-Muhairi, 1996b) In response, the rulers of the individual Emirates made a collective decision to institute courts that would function in accordance with the tenets of global Sharia law. While the fundamental regulations of Sharia were implemented, the interpretation and application of these rules varied depending on the judge presiding over the case. The judges, often referred to as customary judges, were highly respected individuals within their tribes who possessed extensive knowledge and influence. Each Emirate had multiple Sharia courts and judges, all appointed by the rulers. The judges' salaries were provided by the rulers and funded by the local Emirate. The jurisdiction of the courts covered a wide range of matters. During court proceedings, each party had the right to reject the judge's decision. If dissatisfied with the ruling, the case could be escalated to the ruler of the Emirate for a final decision. Alternatively, if neither party was satisfied with the second ruling, they had the option to further appeal to Sharia centers in Egypt, Mecca, or Qatar for resolution. (Al-Muhairi, 1996b)

BRITISH COURTS

The discovery of oil in the emirates of Dubai and Abu Dhabi marked a significant turning point in the region's history and had a profound impact on the development of the legal system. This can be considered as the second stage in the evolution of the legal framework.

With the discovery of oil, the Trucial Emirates experienced a rapid transformation and attracted increased foreign presence, including British oil companies and other international actors. (*Modernization of the Law in Arab States*, n.d.) This necessitated the creation of new rules and regulations to govern these interactions and protect the interests of all parties involved.

During this period, the British courts played a crucial role in providing a legal framework for the growing British presence in the region. The highest court of One example was the Complete Court for the Persian Gulf (*British Nationality Act 1948*, n.d.), meanwhile, the lower courts consisted of the Trucial Courts and the Principal Court for the Persian Gulf, which predominantly drew upon the Indian Codes of 1947 as a legal foundation. The British authority in the region remained in effect until the 1960s, spanning over two decades.⁸⁰ This British influence undoubtedly influenced the formation of the modern legislative system of the United Arab Emirates. (Al-Muhairi, 1996b)

Overall, the discovery of oil and the subsequent changes in the region's economic and social landscape led to the emergence of a new legal system that could effectively address the needs and challenges brought about by these developments. (Al-Muhairi, 1996b) The exploration of oil in Abu Dhabi in 1958 signaled the commencement of a new era for the area, but it took several years for major developments to take place. (*Modernization of the Law in Arab States*, n.d.) The second stage of development is generally considered to have started in the 1960s. After the turning point of oil discovery, the rulers of the emirates recognized the need for modern governmental departments, including police, courts, and municipality departments. As a result, substantial legislations and regulations were put into effect. (Al-Muhairi, 1996b) In July 1971, the establishment of a structured administrative governance system was suggested, leading to the formation of the inaugural legislative body in the United Arab Emirates took place. The degree of modernization differed across the emirates during the process, with Dubai being considered the most modernized by the end of 1971, while others, dependent on agriculture and the pearl industry, experienced slower development. (Al-Muhairi, 1996b) Following the complete disengagement of the United Kingdom from the Gulf region in 1971, the modernization process accelerated further. The Emirates had to establish fresh institutions to replace the former British authorities, which included the



establishment of novel judicial systems. (*Modernization of the Law in Arab States*, n.d.) Given the scarcity of indigenous legal professionals in the UAE during that period, the federation extended invitations to experts from other Arab nations to fill the gap, mainly Egyptian jurists, to assist with the modernization of the legal system. These experts played a crucial part in formulating fresh laws and regulations for the UAE, contributing substantially to its legal advancement. (*Modernization of the Law in Arab States*, n.d.) However, the emergence of codification of the law also sparked controversy, particularly regarding the clash between traditionalism and modernization. (Al-Muhairi, 1996b) Native Emiratis, especially in relation to Sharia law, expressed resistance towards the codification of laws. (*Modernization of the Law in Arab States*, n.d.) This generated a loss of trust among local Muslims and certain federal institutions regarding the recently codified laws, leading to a credibility gap. (Al-Muhairi, 1996b) Overall, the process of modernization and the introduction of codified laws in the UAE have been accompanied by challenges and debates, reflecting the tensions between preserving traditional values and embracing modernization. (*Modernization of the Law in Arab States*, n.d.)

ISLAMIC COURT IN THE JUDICIARY OF THE EMIRATE OF DUBAI:

According to this provision, the Sharia Court has the authority to adjudicate over all individuals and cases, except those specifically designated for resolution by the civil court or other competent bodies as prescribed in this or other legislations within the Emirate of Dubai. In other words, the Sharia Court possesses broad authority to oversee and address all types of issues and cases, unless there are specific laws designating certain cases to be heard by the civil court or other authorities. This provision establishes the scope of authority for the Sharia Court and outlines its limitations in relation to other judicial bodies in Dubai. (Al-Muhairi, 1996b) The Sharia Courts in the UAE typically have a single judge presiding over cases, regardless of the nature of the case. The judgments made by the Sharia Courts are generally considered final, meaning that they cannot be appealed. However, recent revision has been implemented, granting the right to challenge verdicts issued by the Sharia Court in all matters, excluding those pertaining to family law, through the appellate process. (*UAE: Law of the Formation of the Courts in the Emirate of Dubai, No. 3 of 1992 on JSTOR*, n.d.) The Sharia Courts apply Islamic Law as the legal framework in their jurisdiction, which is derived from the teachings of Islam. However, it is crucial to emphasize that the application of Islamic Law in the UAE also takes into consideration the secular laws of the Emirate. This means that the Sharia Courts must ensure that their judgments are in accordance with both Islamic principles and the applicable secular laws of the Emirate. (Al-Muhairi, 1996b)

Indeed, the division between Sharia Courts, which practice Islamic law, and Civil Courts, which adopt a Western model, continues to exist in the UAE today. This division reflects the ongoing tension between traditionalism and modernization within the country. The coexistence of these two legal systems highlights the efforts to balance religious and cultural traditions with the influence of global practices and the need for a modern legal framework. The Sharia Courts play a significant role in addressing matters related to personal status, family law, and specific elements of criminal legislation, grounded in Islamic doctrines. On the other hand, the Civil Courts handle a wide range of civil, commercial, and administrative matters using a legal framework influenced by Western legal systems. This dichotomy in the legal system demonstrates the challenges and complexities faced by the UAE as it strives to maintain its cultural and religious identity while embracing modernization and globalization. The coexistence of these two legal systems reflects the unique characteristics of the UAE and its ongoing efforts to navigate the complexities of tradition and progress in its legal landscape. (Al-Muhairi, 1996b)

THE APPLICATION OF SHARIA LAW IN THE U.A.E. ALONGSIDE THE FEDERAL PENAL CODE.

The Federal Penal Code underwent a substantial revision in November 1987, marking a significant milestone in the criminal law system of the UAE. The main objective of this revision was to unify the legal system and address the conflicts that had arisen between the criminal law and Islamic law and its doctrine within the UAE. However, upon closer examination, it becomes evident that the Federal Penal Code, despite its intention to adhere to Sharia precepts, falls short of fully



incorporating them and instead leans towards secularization. This observation is supported by a detailed analysis of Article 1 of the Federal Penal Code of 1987. To provide a comprehensive understanding of the position and implications of Islamic law within the Federal Penal Code, the study will provide a full citation of Article 1. This closer examination aims to highlight any deviations or discrepancies from Sharia principles within the code and shed light on the extent to which the code aligns with Islamic legal doctrines. By delving into the specific provisions of the Federal Penal Code, the study seeks to assess the level of adherence to Sharia precepts and analyze any potential conflicts or discrepancies between the code and Islamic law. This analysis will contribute to a deeper understanding of the interplay between Islamic law and state law within the criminal justice system of the UAE. It is important to examine the Federal Penal Code in detail as it represents a crucial component of the legal framework in the UAE. By scrutinizing its provisions and their alignment with Islamic law, the study aims to provide valuable insights into the extent to which the code incorporates Sharia principles and the implications of any deviations from them. (Al-Muhairi, 1996a)

The analysis reveals that while the new Penal Code in the UAE demonstrates concern for Islamic Sharia, it differentiates between doctrinal offenses. However, a significant portion of the recognized offenses, particularly the Tazir offenses, are completely codified and secularized. Furthermore, the research shows that even in cases involving other offenses recognized under Sharia, such as Hudud, Qisas, and Diyah, the governmental enactments have transformed them into sources of only substantive criminal law in the UAE. (*Islamic Criminal Justice System | Office of Justice Programs*, n.d.)

As a result, all judges in the UAE, whether state judges or Sharia judges, are required to adhere to the governmental enactments. This system creates considerable clashes with Sharia Law and significantly impacts the day-to-day practices of the UAE courts. Consequently, (*Modernization of the Law in Arab States*, n.d.) The attempt to Islamize legislation in the UAE by enacting the Federal Penal Code has not achieved its intended goals, despite the objective of aligning with Islamic law. As a result, the practical implementation of Sharia provisions remains limited within this context. (Al-Muhairi, 1996b) The process in question is paradoxical since the UAE government seeks to uphold Sharia institutions while simultaneously pursuing a path of traditionalism, while simultaneously seeking to modernize the field of criminal law by emulating Western institutions. However, neither approach is fully acceptable on its own. Given the profound influence of Islam on UAE society and culture, pursuing a singular path of modernization becomes impracticable, while reverting solely to Sharia doctrine is impossible due to the process of secularization that has taken place. (*Modernization of the Law in Arab States*, n.d.) Consequently, the need for a balanced approach to unification has been continually emphasized over the subsequent decades, the consolidation of not just criminal law but the entire legal framework has been recognized as imperative for national welfare. The complexities of harmonizing Islamic principles with the demands of a modern legal system continue to pose challenges in the UAE's legislative development. (*The Incompatibility of the Penal Code with Shari'a in: Arab Law Quarterly Volume 12 Issue 3 (1997)*, n.d.)

FAMILY LAW IN THE UNITED ARAB EMIRATES:

Family law in the United Arab Emirates is regulated by the federal Civil Code of 1987, which serves as the principal legislation in this area, which is supplemented by the Personal Status Law of 2005. The Personal Status Law specifically addresses matters related to marriage, obligations of spouses, and the roles and responsibilities of husbands and wives within the family. (*Hall - INTRODUCTORY CHAPTER.Pdf*, n.d.) Under the Personal Status Law, there are articles that outline the husband's obligations towards his wife, such as treating her with kindness and respect, providing for her needs, safeguarding the well-being of the family, and fulfilling his role as a husband and father. Similarly, the law also emphasizes the wife's obligations towards her husband, which include treating him kindly, being obedient, and taking proper care of their children. (*Modernization of the Law in Arab States*, n.d.) The Personal Status Law reflects the Islamic principles and cultural norms



prevalent in the UAE society. It aims to regulate family relationships and ensure the well-being of family members. However, it is worth emphasizing that family law in the UAE is based on a mix of Islamic principles and civil laws, and it is interpreted and implemented by the courts according to their understanding of Islamic jurisprudence and local customs. In addition to the Personal Status Law, certain provisions related to sexual offenses and unlawful relationships can also be found in the Penal Code. These provisions are aimed at protecting family values and promoting moral conduct within society.

MARRIAGE

In the context of Islamic teachings, the process of marriage involves negotiations between the guardian of the bride and a representative of the groom. They discuss and reach a consensus on the terms of the marriage contract, including provisions related to divorce and financial claims. In the case of Islamic (Sharia) marriages in the U.A.E., if a woman is divorced, she may be entitled to compensation for moral harm, which is set by the state and is generally half of the husband's salary from the last two years. The compensation amount may be higher if the woman is divorcing after a long marriage and has limited prospects of remarrying. Additionally, there is a mandatory waiting period during which the divorce process can be revoked, and the process is not considered finalized until the three-month period has expired. During this waiting period, the husband is responsible for providing accommodation for the wife. In the case of non-Islamic marriages in the U.A.E., expatriates typically follow the marriage customs of their home countries. The main difference occurs in the event of divorce, where the wife may seek to reclaim her financial contributions made during the marriage or request the court to award her a dowry. (*Modernization of the Law in Arab States*, n.d.) Regarding child custody in cases of divorce, under the Personal Status Law, mothers are automatically granted custody of the children until a specified period, during which the husband has limited visitation rights. After this period, the custody arrangement may change. (*Hall - INTRODUCTORY CHAPTER.Pdf*, n.d.) For expatriates, the court must be convinced to apply the laws of the parents' nationality, which need to be translated into Arabic and verified as the current applicable law. (Uddin, 2015) This process can be financially challenging. Interestingly, if the court deems the interpretation of the nationality law as impossible, the applicable law then becomes Islamic Sharia Law. It is important to note that family legal matters in the United Arab Emirates are primarily governed by Sharia Law, with the Personal Status Law specifically addressing marriage and divorce issues. Expatriates also have the option to choose the applicable law instead of Sharia Law, although the Sharia Law still applies to them. (Uddin, 2015)

RELIGIOUS COURTS IN INDONESIA AND MALAYSIA: HISTORY, STRUCTURE AND JURISDICTION.

The comparative study between the Indonesian Religious Court and the Malaysian Religious Court sheds light on the similarities and differences between these two systems. In terms of commonalities, both countries have a long history of the development of their Religious Courts, which can be divided into different periods. This indicates the importance and continuity of these courts in resolving disputes among Muslims. (*Adhani, H. (2019). Menakar Konstitusionalitas Syari ' at Islam Dan Mahkamah Syar ' Iyah Di Provinsi Aceh. 16(September). - Google Search*, n.d.) Furthermore, both the Indonesian and Malaysian Religious Courts have a similar three-tiered structure, typically consisting of a lower level court, an intermediate level court, and a higher level court. This hierarchical structure allows for a systematic handling of cases within the Religious Courts.

Another commonality is that the jurisdiction of the Religious Courts in both countries is limited to Muslims. This means that only Muslims can bring their cases to these courts and be subjected to their jurisdiction in matters related to personal status, family law, and certain aspects of Islamic law. (Cahyani, 2019) However, there are notable differences between the Indonesian and Malaysian Religious Courts. Firstly, the historical development of these courts was influenced by different colonial powers. Indonesia was colonized by the Dutch, while Malaysia was under British colonial



rule. This colonial influence might have shaped the development and characteristics of the Religious Courts in each country.

Secondly, in terms of structure, the Religious Courts in Indonesia have a more integrated and hierarchical system, where there is a clear chain of command and authority from the lower level courts to the higher level courts. In Malaysia, on the other hand, the structure of the Religious Courts varies from state to state, and there is less uniformity in their organization.

Lastly, the jurisdiction of the Religious Courts differs in terms of uniformity. In Indonesia, there is a greater degree of uniformity in the application of Islamic law across the country. In contrast, Malaysia has a more decentralized legal system, where each state has the authority to enact and apply its own Islamic laws, leading to variations in the jurisdiction of the Religious Courts among different states. (Abdullah, 2017)

Overall, the comparative study highlights both the commonalities and differences between the Indonesian and Malaysian Religious Courts, providing valuable insights into the historical, structural, and jurisdictional aspects of these important institutions in their respective countries. The socio-political environment and historical context have played significant roles in shaping the evolution of these courts in each country. In Indonesia, the development of Religious Courts has been influenced by various factors throughout history. From the early days of Islam in the region to the periods of Islamic kingdoms, colonialism, and independence, the need for a formal institution based on Islamic law has been recognized and addressed. The socio-political changes and interactions with different ruling powers have contributed to the growth and adaptation of the Religious Courts in Indonesia. On the other hand, in Malaysia, the legal system reflects a pluralistic model inherited from the British colonial period. The federal law, which is primarily based on British models, governs most aspects of life in the country. However, certain aspects of Muslim life are subject to state Islamic-based law, known as Sharia law. The establishment of state Islamic Court systems, or Sharia Courts, allows for the application of Sharia law in specific areas. This decentralization of Islamic law within the legal system reflects the diversity and autonomy of each state in Malaysia. The differences in the historical development and legal frameworks of Religious Courts in Indonesia and Malaysia can be attributed to various factors, including the colonial history, political structures, and approaches to legal pluralism. These factors have shaped the nature and functioning of the Religious Courts in each country, highlighting the unique characteristics and challenges faced in the application of Islamic law. (Azzahra & Shuaib, 2022)

Overall, the Religious Courts in both Indonesia and Malaysia play crucial roles in providing a juridical framework for the application of Islamic law, addressing the needs and concerns of their respective Muslim-majority populations.

It provides valuable insights into the historical evolution and the challenges faced by the Religious Courts in Indonesia. The article's focus on the internal and external factors influencing the development of religious courts sheds light on the complex dynamics that have shaped these institutions over time. The distinction between Islamic and public courts, as well as the changes in the authority and status of religious courts during the colonial era, highlight the impact of external influences on the religious judicial system in Indonesia. Furthermore, the implementation of the Law in 1989 marks a significant milestone in the development of religious courts in Indonesia.

In the context of Malaysia, research and scholarly work have also been conducted to explore the Religious Court system. Although not mentioned in the previous discussion, it is important to acknowledge that the Malaysian Religious Court system operates within a framework that incorporates both civil law and Islamic law. (Shuaib, 2012)

Comparative studies that analyze the commonalities and differences between the Religious Courts in Indonesia and Malaysia can provide valuable insights into the influence of legal systems, historical contexts, and cultural factors on the development and functioning of these courts. By examining the experiences and challenges faced by Religious Courts in each country, researchers can contribute to a deeper understanding of the complexities and dynamics of Islamic law within the legal systems of Muslim-majority countries.



In summary, the comparative analysis of the Religious Courts in Indonesia and Malaysia, considering their legal systems, historical backgrounds, and challenges, can contribute to a more comprehensive understanding of the role and significance of these institutions in the context of Islamic law and the resolution of disputes among Muslims. (Idri, 2009). The focus on the historical background of the Syariah Court and its role in upholding Islamic law provides valuable insights into the development and functioning of the court as an important Islamic institution in Malaysia.

The original position of the Syariah Court in Malaysia can be traced back to pre-colonial times when Islamic law was applied by Muslim rulers and local communities. However, with the arrival of European colonial powers, including the British, the legal landscape underwent significant changes. During the colonial period, British authorities introduced their own legal system, which was predominantly based on English common law. Islamic law, including the jurisdiction of the Syariah Court, was marginalized and limited in its scope. The British colonial administration implemented secular laws that governed many aspects of life, including family matters and criminal offenses, which were traditionally under the purview of Islamic law. After gaining independence in 1957, Malaysia went through a process of nation-building and legal reform. The Malaysian legal system became a dual-track system, with separate courts for civil and Islamic matters. The Syariah Court was given the authority to handle Islamic family law, inheritance, and other personal matters for Muslims, while the civil courts retained jurisdiction over non-Muslims and matters not covered by Islamic law. The civil and criminal jurisdiction of the Syariah Court in Malaysia varies between the different states, as Islamic law falls under the jurisdiction of state governments. The court generally handles cases related to marriage, divorce, custody, and inheritance for Muslims. It also has the power to adjudicate on certain criminal offenses defined under Islamic law, known as "hudud" offenses, although the implementation of hudud punishments has been a subject of debate and controversy. To ensure the effective functioning of the Syariah Court and the implementation of Islamic law, several institutions and agencies are involved. The enforcement division, for example, is responsible for enforcing court orders and ensuring compliance with Islamic laws and regulations. The prosecution department handles the prosecution of offenses under Islamic law, while the Department of Syariah Judiciary Malaysia oversees the administration and management of the Syariah Court system. (*Administration of Islamic Law in Kadhis' Court in Zanzibar | Journal of Malaysian and Comparative Law*, n.d.)

Overall, understanding the historical context and the current jurisdiction of the Syariah Court in Malaysia provides insights into how Islamic law is applied and how it influences the legal system in the country. It highlights the complex interplay between Islamic law and the civil legal system, and the efforts made to ensure the effective functioning of the Syariah Court and the administration of Islamic justice.

By studying the position, history, and jurisdiction of the Syariah Court in Malaysia, researchers and scholars can gain insights into the complex dynamics between Islamic law and the legal system in a Muslim-majority country. It contributes to a deeper understanding of how Islamic justice is administered and the various institutions involved in upholding and implementing Islamic principles within the Malaysian legal framework. ((PDF) *SULH: Its Application in Malaysia*, n.d.)

This research adds to the existing knowledge on the administration of Islamic justice in Malaysia and contributes to the broader understanding of the intersection between Islamic law and the legal systems of Muslim-majority countries. (JKSM) (Muhammad, 2020).

The article by Abdullah Tri Wahyudi on the absolute authority of the Religious Courts in Indonesia during the Dutch colonial period until the post-Reformation period. This article provides a historical perspective on the development and competencies of the Religious Court in Indonesia, offering insights into its role and authority during different periods. What sets this article apart from the previous ones you mentioned is its focus on comparing the Religious Courts of Indonesia and Malaysia in terms of history, structure, and jurisdiction. By adopting a comparative approach, the article contributes to a better understanding of the similarities and differences between these two countries' Religious Courts. The comparative analysis of the Religious Courts in Indonesia and Malaysia helps identify commonalities and variations in their development, structure, and



jurisdiction. This approach provides a fresh perspective on the historical trajectory of the Religious Courts in both countries and how they have been shaped by different colonial influences and post-colonial reforms. By examining these aspects comparatively, researchers can gain insights into the factors that have influenced the formation and functioning of Religious Courts in Indonesia and Malaysia. The comparative approach allows for a nuanced understanding of the dynamics between religious law, legal systems, and socio-political contexts in both countries. In conclusion, the article by Abdullah Tri Wahyudi offers a unique contribution to the study of Religious Courts in Indonesia and Malaysia by adopting a comparative approach. By exploring the commonalities and differences in their history, structure, and jurisdiction, the article provides valuable insights into the development and characteristics of these institutions in two Muslim-majority countries with different colonial legacies. (Abdullah, 2017)

RELIGIOUS COURT IN INDONESIA:

History of the Religious Court in Indonesia, dividing it into three periods: the Islamickingdom period, the Dutch and Japanese colonial period, and the period after independence. Additionally, we will touch upon the history of the Syar'iyah Court in Aceh. (Huda, Y. (2020). *Islamic Sharia in Aceh and Its Implications in Other Regions in Indonesia*. *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah*, 5(2), 189-201. <https://doi.org/10.22373/Petita.V5i2.98> - Google Search, n.d.)

THE ISLAMIC KINGDOM PERIOD

The arrival of Islam in the Indonesian archipelago brought about the enactment of Islamic law, which has had a long-standing presence in public life. While initially focusing on religious rituals (ibadah mahdah) and marriage (fiqh al-munakahah), Islamic law gradually extended its reach to encompass various aspects of daily life, reflecting local traditions. During this period, Religious Courts operated differently in different kingdoms, leading to a significant degree of diversity. Several factors contributed to this diversity. Firstly, it depended on how religious officials and scholars approached the Islamization process and the extent to which they integrated Islamic law with pre-existing customs. The autonomy and unique characteristics of each kingdom also played a role in shaping the Religious Courts' practices. Additionally, there were variations in the hierarchy of the courts and their authority, both in terms of general governance and the sources of accepted law-making authority. These variations were influenced by elements of local tradition, the ongoing Islamization process, and the position of the judiciary within the organizational structure of each kingdom. In some kingdoms, the judiciary held a central and prominent role, while in others, it received less attention. (Idri, 2009) The historical development of the Religious Courts in Indonesia during the Islamic kingdom period exemplifies the diverse approaches and structures within the legal systems across different regions. This diversity highlights the dynamic nature of the integration between Islamic law and local customs, as well as the varying levels of emphasis placed on the judiciary as an institution of governance. (Idri, 2009).

THE DUTCH AND JAPANESE COLONIAL PERIOD

During the Dutch Colonial period, the establishment of the Religious Court (Priesterrad) took place officially in 1882 through the issuance of Stbl. No. 152 of 1882. However, unlike the general courts (District Council), the Dutch government did not provide the same level of support and enforcement for the Religious Court. Budgets and salaries were not allocated for the court's staff, except for the head of the court, and even then, it was only because of his advisory role. The authority of the Religious Courts was also quite limited, as they were restricted to handling family matters (ahwal shakhsyah) and were not involved in other civil or criminal cases. The narrow jurisdiction of the Religious Courts during this period can be understood in light of the Dutch colonial authorities' opposition to the formal imposition of Islamic law, except in matters related to family law, such as marriage and inheritance. The Dutch government curtailed and limited the authority of the Religious Courts as part of their efforts to deter Muslims from fully embracing their own teachings. The permission granted for the practice of Islamic law was primarily driven by



political interests, as it allowed the Dutch colonial government to maintain control and influence over the Muslim population in Indonesia. This period of Dutch colonial rule marked a time of restriction and control over the Religious Courts, with the focus on limiting their jurisdiction and preventing the full implementation of Islamic law. The intentions behind these measures were aimed at exerting dominance and influence over the Muslim population while ensuring the perpetuation of Dutch colonial rule. (Melayu, 2013).

During the Japanese occupation of Indonesia from 1942 to 1945, the Religious Courts did not undergo significant changes. The existing court system remained largely unchanged, and Japan's influence on the courts was minimal in practice. The Japanese government introduced the Regulation of the Government Court of the Dai-Nippon Army through Law No. 14 of 1942, which essentially maintained the existing court structure. However, the names of the courts were changed to Japanese terms. For example, the District Court became Gun Hooiin, the Landraad (Land Court) became Keen Hooiin, the Raad van Justitie (District Court) became Tihoo Hooiin, and the Religious Court became Sooryo Hooiin. During this period, the Religious Courts faced challenges and conflicts between different groups. The Islamic group sought to preserve the Religious Courts and restore their authority in matters of inheritance, while the nationalists aimed to abolish them, advocating for the separation of religious affairs from state affairs and the elimination of Islamic law as the basis for legal matters. However, the Religious Courts were not abolished as Japan surrendered unconditionally to the Allies, and Indonesia declared independence as an independent and sovereign nation on August 17, 1945. The Japanese occupation did not significantly impact the Religious Courts, and their existence and authority continued into the post-independence period, setting the stage for further developments in the legal system of Indonesia (Wahyudi, 2016).

AFTER THE INDEPENDENCE PERIOD

After Indonesia gained independence, the administration of Religious Courts came under the jurisdiction of the Ministry of Justice. However, with the establishment of the Ministry of Religious Affairs in 1946, the Religious Courts and Religious Higher Courts were transferred to the ministry. This transfer aimed to centralize the management of religious institutions and improve the Religious Courts based on pre-independence practices. To extend the jurisdiction of the Religious Courts beyond Java and Madura, the government issued Regulation No. 45 in 1957. This regulation was based on the Temporary Constitution and the Emergency Constitution of 1951. It authorized the establishment of Religious Courts in various regions of Indonesia, allowing them to handle cases related to marriage, inheritance, trusts, endowments, grants, and charity. As a result, Religious Courts were established in almost every region of Indonesia, ensuring that Muslims throughout the country had access to Islamic legal services. In some cases, indigenous courts in various regions were converted into Religious Courts, further expanding their presence and influence in the Indonesian legal system. The establishment of Religious Courts and their broad jurisdiction in handling various aspects of Islamic law has played a significant role in providing legal services and resolving disputes for Muslims in Indonesia. The centralization and expansion of the Religious Courts have contributed to the accessibility and availability of Islamic legal mechanisms and services throughout the country. (*Malaysia-Freedom-of-Religion-Brief-Advocacy-Analysis-Brief-2019-ENG.Pdf*, n.d.)

SYAR'IYAH COURT IN ACEH

In Aceh, the province has a special status and enjoys implementation privileges granted by Law No. 14 of 1999 on Implementation Privileges in the Special Province of Aceh. This law has brought about significant developments, particularly in the judiciary of Aceh. The province has been given the authority to create and manage its own privileges, as outlined in Article 2, Paragraph 1 of the law. The special autonomy granted to Aceh is a recognition of the region's long history and the values held by its society. It acknowledges the struggle of the Acehnese people and their fundamental spiritual, moral, and humanitarian values. The implementation of privileges in Aceh encompasses various aspects, including religious life, adat (customary) life, education, and the role



of ulama (religious scholars) in the legislation process of provincial policies. As part of the implementation of privileges, the Syar'iyah Court was established in Aceh on March 4, 2003. This court was created under the decision of the President of the Republic of Indonesia, specifically Presidential Decree No. 11 of 2003. The Syar'iyah Court replaced the function and authority of the Religious Court, while the authority of the Religious High Court was replaced by the Provincial Syar'iyah Court. Since its establishment, the Syar'iyah Court has had absolute authority over all aspects of Islamic Sharia in Aceh, as prescribed by qanun (local regulations). The court operates as an Islamic Sharia court, and all the facilities, infrastructure, employees, and equipment previously associated with the Religious Court and its jurisdiction in Aceh Province now belong to the Syar'iyah Court in the respective regencies and cities of Aceh. (Aceh regional Islamic law) (Iskandaretal., 2022).

STRUCTURE OF THE RELIGIOUS COURT IN INDONESIA:

The structure of the Religious Court in Indonesia follows a unified judiciary system under the supervision of the Indonesian Supreme Court. The Religious Judicature Act of 1989 (Undang-Undang Peradilan Agama) serves as the legal framework that defines the structure and powers of the Islamic branch of the Indonesian judiciary. According to this act, Religious Courts, also known as Peradilan Agama, are established as the first instance courts for religious matters in each district and municipality. These courts have jurisdiction over cases pertaining to Islamic law and handle various matters such as marriage, divorce, inheritance, and other issues related to personal status and family law matters. The Religious Courts operate as part of the Indonesian judicial system, and their judges are appointed by the Supreme Court after fulfilling specific qualifications and undergoing selection processes. The decisions made by the Religious Courts can be appealed to the Religious High Courts (Pengadilan Tinggi Agama) at the provincial level, and further appeals can be made to the Supreme Court. The Religious Judicature Act of 1989 also establishes the position of the Chief Justice of the Religious Court, who oversees the administration and management of the Religious Courts. This act ensures the uniformity, consistency, and professionalism of the Religious Courts throughout Indonesia. Overall, the Religious Courts in Indonesia play a vital role in administering Islamic law and providing legal services to Muslims in the country, particularly in matters related to personal status and family law. Additionally, there is a Religious High Court, known as Peradilan Tinggi Agama, in each province, which serves as the court of appeal. As of 2018, there were 441 Religious Courts, including Syar'iyah Courts in Aceh. Previously, the authority of Religious Courts was somewhat limited, as their decisions had to be approved by state or public courts. However, significant changes occurred with the enactment of Law No. 7 of 1989 on Religious Courts. This law granted Religious Courts autonomy and independence, placing them on the same level as other judicial institutions. The legal products of Religious Courts are legally binding and carry the same weight as the products of other judicial institutions. The supervision of the Religious Courts was initially divided between the Ministry of Religion and the Supreme Court. However, in 2004, the Supreme Court gained complete control over the Religious Courts as part of the one-roof system policy, aimed at creating judicial independence. This alignment with other judicial institutions in Indonesia has solidified the position of Religious Courts. In Aceh, a special province with specific privileges and a unique legal system based on Islamic law, the Syar'iyah Court was established in 2003 under Presidential Decree No. 11 of 2003. The Syar'iyah Court serves as an appellate court in the province's capital, while Syar'iyah Courts operate as first instance courts in each district. As of 2018, there were 23 Syar'iyah first instance Courts in Aceh. The Syar'iyah Court in Aceh operates under the jurisdiction of the Religious Court. (StatistikSDMHakimMahkamahSyar'iyahSeWilayahAcehPer31Oktober2018, n.d.).

COMPETENCE (JURISDICTION)

In Indonesia, the term "competence of Court" is similar to the term "jurisdiction of the Court" in Malaysia. Competence of Court is divided into two types: absolute competence and relative competence. Absolute competence, or attributie van rechtsmacht, refers to the authority granted



to judicial bodies regarding the division of powers. It pertains to specific problem areas that have been regulated in legislation for the court's right to examine, decide, and judge. The judgments made within these areas are absolute and cannot be intervened by other jurisdictions. Relative competence, or *distributie van rechtsmacht*, defines the authority of a particular court within its jurisdictional territory. It determines which regional court has the authority to hear a case and administer justice among courts of the same type. The absolute competence of the Religious Court in Indonesia is outlined in Article 49(1) of Law No. 7 of 1989, as amended by Law No. 3 of 2006. According to the law, the Religious Court has the duty and authority to examine, decide, and resolve cases at the first level related to various matters involving Muslims. These matters include marriage, inheritance, wills, grants, endowments, alms-giving, voluntary contributions, and sharia economics. The addition of sharia economics as an area of authority was made after the amendment to the law. Under the scope of sharia economics, the Religious Court can handle cases related to various aspects such as sharia banking, sharia microfinance, sharia insurance, sharia reinsurance, sharia mutual funds, sharia bonds, sharia securities medium-term, sharia securities, sharia financing, sharia mortgages, and sharia business. The Elucidation of Article 49 further clarifies that the jurisdiction of the Religious Court extends to individuals or legal entities who voluntarily submit themselves to Islamic law in matters falling within the authority of the court. This means that not only Muslims but also non-Muslims who willingly choose to be subject to Islamic law can litigate in the Religious Courts. Additionally, legal entities conducting business in accordance with Islamic law are also eligible to bring cases before the Religious Court. These provisions reflect the inclusive nature of the Religious Court system in Indonesia, allowing individuals and entities who adhere to Islamic principles to seek legal resolution in matters falling within the jurisdiction of the court. The relative competence of the Religious Courts refers to their authority to hear cases based on their level and territorial jurisdiction. According to Article 4(1) of Law No. 50 of 2009, Religious Courts are located in the capitals of municipalities or districts, and their jurisdiction covers the respective municipality or district. However, exceptions may apply in specific cases. For the Syar'iyah Court in Aceh, its governing competence is stipulated in Qanun No. 1 of 2002 on the Islamic Courts, as stated in Article 49 of Qanun No. 10 of 2002. The absolute competence of the Syar'iyah Court is similar to that of the Religious Court, as outlined in Article 49 of Law No. 3 of 2006. However, certain additional competencies are based on qanun (local regulations) specific to Aceh in the area of *jinayah* (criminal law). This means that Islamic law enforced in Aceh includes both civil and criminal matters. The relative competence of the Syar'iyah Court in Aceh, as the successor of the Religious High Court in Aceh, covers the entire jurisdiction of the province. It supervises 20 Syar'iyah Courts at the municipality/regency level. (Sufiarina, 2015).

HISTORY OF RELIGIOUS COURT IN MALAYSIA:

The history of the Religious Court in Malaysia can indeed be divided into three main periods: the Malacca Sultanate period, the British colonial period, and the period after independence. Here's an overview of each period.

THE MALACCA SULTANATE PERIOD

That the Malacca sultanate was not the first Malay sultanate to accept Islam. However, it played a significant role in the spread of Islam throughout the Malay Archipelago and established a structured political and administrative system in Malaya. The implementation of the Laws of Malacca, such as the *Risalat Hukum Kanun* and *Undang-undang Laut Melaka*, demonstrated the Islamization process during the Malacca Sultanate. These legal texts provided guidance on various aspects of governance, including matters related to Islamic law. During the Malacca Sultanate, the Sultan held both social and religious authority as the head of state and Allah's vicegerent. While other religious figures like the Mufti, village headman, and Qadi were granted autonomy in exercising judicial powers, the ultimate power resided with the Sultan. The Sultan stood at the top of the judicial hierarchy, and his position significantly influenced the administration of the Islamic judiciary. After the fall of the Malacca Sultanate in 1511, Islamic laws continued to spread



throughout the Malay lands. The Islamic judiciary system remained intact, and efforts were made to improve and systematize the judicial system while maintaining the hierarchical structure. It is important to note that the development and history of the religious courts in Malaysia are complex and multifaceted, influenced by various historical, political, and social factors. The subsequent periods, such as the British colonial period and the period after independence, further shaped the administration of the Islamic judiciary in Malaysia. (Muhammad,2020).

THE BRITISH COLONIAL PERIOD

The British intervention in the Malay states during the colonial period had a significant impact on the religious and judicial affairs of the Malay community. While the Pangkor Treaty of 1874 officially stated that the British would not interfere in matters of Islamic religion and Malay customs, they still found ways to exert influence unofficially. As part of their administration, the British introduced a court system in the Malay states that was modeled after the English court system. This new court system had an impact on the existing Sharia court structure and the role of the Sultan as the religious leader. The Sultan retained his position as the religious leader of the state but lost control over the Sharia court hierarchy with the establishment of the position of Judicial Commissioner in 1896. The Judicial Commissioner became the final judicial authority, replacing the Sultan. This change significantly weakened the position of Sharia judges and officers. Furthermore, the jurisdiction of the Sharia courts was limited to that of state courts, reducing their authority. The British emphasis on the separation of church and state resulted in a gradual erosion of the Islamic judiciary system. The British administration neglected the judges and officers by not providing them with proper channels of communication and support. As a result, the value and effectiveness of the Sharia courts in dealing with legal disputes related to the Islamic religion were diminished. (Noordin et al., 2012) It's important to recognize that the British colonial period had a profound and complex impact on the Malay states, including their legal and judicial systems. The changes implemented during this period laid the foundation for the subsequent development of the Malaysian legal framework and the role of the Islamic judiciary in the country (Muhammad,2020).

AFTER THE INDEPENDENCE PERIOD

After gaining independence, the structure of the judiciary in Malaysia remained largely unchanged. The Federal Constitution grants the federal government the authority to establish and regulate all Civil Courts, except for the Sharia Courts, whose establishment, jurisdiction, and powers are within the legislative powers of the states. The Civil Courts, including the highest and lowest tiers, are established under federal law, while the Sharia courts apply to Muslims and operate based on state-enacted laws. However, prior to 1998, the administration of the Sharia Courts faced various challenges. There was a lack of specific guidelines or mechanisms to manage these courts, leading to a lack of uniformity in the application of Islamic law across Malaysia. Additionally, there was a shortage of dedicated Sharia Court facilities and legal officers appointed to run the institutions. The influence and interference of executive bodies on Religious Departments, Sharia Courts, and Fatwa Institutions further complicated matters. The overlapping and contradictory powers granted to these institutions also contributed to the challenges faced by the Sharia Courts. To address these issues, the federal government took the initiative to improve the administration of the Sharia Courts. A proposal to restructure the Sharia Courts was approved during a cabinet meeting on July 3, 1996. Subsequently, a special work committee was established to discuss the plan. The committee proposed the establishment of a centralized federal department called the Department of Sharia Judiciary Malaysia (JKSM) to coordinate efforts in standardizing the administration and management of the Sharia Courts throughout Malaysia. JKSM was officially established on March 1, 1998. It is important to note that despite the establishment of JKSM, the jurisdiction of the Sharia Courts remains under the states' authority. JKSM's role is to bring uniformity to the administration of Islamic law and the Sharia Courts across the states. This restructuring initiative aimed to enhance the efficiency, effectiveness, and standardization of the Sharia Courts' administration, ensuring a more consistent application of Islamic law throughout Malaysia. (Muhammad,2020).



The restructuring of Malaysia's Islamic judiciary in the 1980s and 1990s resulted in the current three-tiered Sharia court structure. Each state and the Federal Territories enacted legislation to govern the Islamic judiciary in their respective jurisdictions. The Sharia Subordinate Courts form the lowest tier, followed by the Sharia High Court, which has supervisory and revisionary jurisdiction over the subordinate courts. The highest tier is the Sharia Court of Appeal, which hears appeals from both criminal and civil lower courts and makes final decisions. (Shuaib, 2012) However, the state of Perak has an additional layer in its Sharia court structure. The Perak Sharia Supreme Court was established through an amendment to the Islamic Religious Administration (Perak) Enactment in 2018. This new institution serves as a platform for issuing principles related to the outcome of the law and Sharia laws specifically in Perak. The overall structure of Malaysia's judiciary reflects the distribution of legislative power. Federal laws are handled by the nationwide civil court system, while matters governed by Islamic law, as enacted by the states, fall under the jurisdiction of the respective state's Sharia court system. Each of the fourteen Sharia court systems operates autonomously, and the administration of Islamic law is delegated to the states. The 1957 Federal Constitution, which is the highest law in the federation, stipulates that Islamic law matters are within the legislative power of the state's legislature. Consequently, each state has its own statutes and Sharia courts. The Sharia Courts are supervised and governed by the Sharia Judiciary Department of Malaysia (JKSM), which is currently under the Prime Minister's Department. The department is headed by the Director General, who also serves as the Sharia Chief Justice. JKSM's primary role is to standardize Islamic law practices across the states and improve the effectiveness of Malaysia's Sharia Courts. (HanisWahed, 2015).

JURISDICTION

Malaysia's government follows a parliamentary system with a true federalist structure. State governments possess autonomy and independence from the central or federal government, particularly in matters pertaining to the judicial system. Each state has its own constitution, Sharia Courts, and state laws.

The relationship between the Sharia Court and the civil High Court in Malaysia demonstrates the existence of a dual legal system. While the High Court is established through the Federal Constitution, the Sharia Court is established based on state law. The allocation of jurisdiction over Islamic law and Islamic matters, including the establishment of Sharia Courts, is outlined in Article 74 of the Federal Constitution, in conjunction with the State List. The State List specifies specific areas where the state legislature has the authority to legislate on Islamic law and Malay customs. These areas cover a range of matters such as succession, marriage, divorce, zakat (charitable donations), mosques, and the structure and functioning of the Sharia Courts. The Sharia Courts have jurisdiction solely over Muslims and the specific matters outlined in the State List. It is important to note that the Sharia Court's jurisdiction over offenses is only granted when expressly provided by federal law. In practice, Sharia Courts have their own evidence Act and procedural rules based on Islamic law.

The responsibility for criminal law lies mainly with the federal government, although state governments have the authority to enact their own laws to address offenses committed by Muslims that violate religious principles, with the exception of matters listed in the Federal List. The Sharia Courts (Criminal Jurisdiction) Act of 1965, amended in 1984, grants jurisdiction to the Sharia Courts to adjudicate cases involving offenses against Islamic precepts, but with limitations on the sentences that can be imposed.

The inclusion of Clause (1A) in Article 121 of the Constitution in 1988 aimed to restrict civil courts from interfering with matters within the jurisdiction of the Sharia Courts. However, the exact scope of judicial review powers and the relationship between civil courts and Sharia courts remain unclear. This has resulted in an expansion of Sharia courts' jurisdiction at the expense of civil courts.

The recognition and standing of the Sharia Courts as equal to civil courts under the Federal Constitution were established in various court cases, such as the *Subashini Rajasingam v Saravanan*



Thangathoray case in 2007. The *Lina Joy v Majlis Agama Islam Wilayah Persekutuan* case in the same year clarified that matters of conversion out of Islam fall under the jurisdiction of the Sharia Courts.

Due to Islamic laws being state laws, there is a lack of uniformity in their application across states. This lack of uniformity affects the administration of Sharia Courts throughout Malaysia. For instance, inheritance claims are generally limited to the state where the majority of the assets are located, making it challenging to claim inheritance outside one's state of residence. Therefore, efforts to achieve greater uniformity in the application of Islamic law across states are welcomed. (Noordin et al., 2012).

COMPARISON BETWEEN RELIGIOUS COURTS IN INDONESIA AND MALAYSIA

when comparing the religious courts in Indonesia and Malaysia, there are both commonalities and differences in their history, structure, and jurisdiction. Here is a summary of these points:

Indonesia: The religious court system in Indonesia has its roots in the colonial era, with the establishment of Islamic courts during Dutch rule. However, the current structure and jurisdiction of the religious courts have evolved since Indonesia's independence in 1945.

MALAYSIA: The British intervention in the Malay states in the 19th century led to the establishment of the Sharia Court system, which continued after Malaysia gained independence in 1957. Subsequent restructuring and amendments have shaped the current structure and jurisdiction of the Sharia Courts.

STRUCTURE OF ISLAMIC COURTS:

INDONESIA: The religious court system in Indonesia consists of two levels: the Religious Courts of First Instance and the Religious High Courts. These courts operate at both the provincial and district levels. The Religious High Court serves as the appellate level for cases heard in the Religious Courts of First Instance.

MALAYSIA: The Sharia Court system in Malaysia also has a hierarchical structure. It includes the Sharia Subordinate Courts, the Sharia High Courts, and the Sharia Court of Appeal. The recent establishment of the Perak Sharia Supreme Court in the state of Perak adds another layer to the appeal process in Malaysia's Sharia Courts.

JURISDICTION:

INDONESIA: The Religious Courts in Indonesia have jurisdiction over matters related to Islamic law, such as marriage, divorce, inheritance, and religious endowments. They handle cases involving Muslims, and their decisions are enforceable under Indonesian law.

MALAYSIA: The Sharia Courts in Malaysia have jurisdiction over matters governed by Islamic law, including personal status, family law, and inheritance, but their jurisdiction is limited to Muslims. Civil Courts handle non-Muslim matters, while Sharia Courts handle cases involving Muslims and issues related to Islamic law.

RELATIONSHIP WITH CIVIL COURTS:

Indonesia: The religious courts in Indonesia operate independently from the civil courts. Their decisions are final and binding, and there is no provision for further appeal to the civil courts.

MALAYSIA: The interplay between the civil courts and the Sharia Courts in Malaysia has been a topic of discussion and legal analysis. Constitutional amendments have broadened the authority of the Sharia Courts, yet the scope of oversight by the civil courts and the application of judicial review are still ambiguous.

In summary, while both Indonesia and Malaysia have religious courts that handle cases related to Islamic law, there are variations in their historical development, structure, and jurisdiction. Indonesia's religious courts operate at two levels, while Malaysia's Sharia Courts have a three-tiered system. The jurisdiction of the courts in both countries is primarily focused on matters concerning Muslims, but there are differences in the relationship between religious and civil courts and the extent of appellate jurisdiction.



ADDITIONAL COMMONALITIES

Historical Evolution: Both Indonesia and Malaysia have experienced a long history of the evolution of religious courts. These courts have been shaped by various historical periods, including the Islamic kingdom era, colonial rule, and the post-independence period. They have faced challenges and undergone changes to strengthen their position and improve their functioning.

Three-tiered Structure: Both countries have structured their religious courts into three levels. In Malaysia, it consists of Sharia Subordinate Courts, Sharia High Courts, and the Sharia Court of Appeal (with the addition of the Sharia Supreme Court in Perak). In Indonesia, there are Religious Courts at the district level, Religious High Courts at the provincial level (as appellate courts), and the Supreme Court at the cassation level.

Jurisdiction: Islamic law and the jurisdiction of religious courts in both countries are applicable only to Muslims. Non-Muslims are not subject to the jurisdiction of the religious courts and are governed by their respective personal laws or civil courts. These commonalities demonstrate the shared historical development, structural organization, and the limited jurisdiction of religious courts in both Indonesia and Malaysia.

DIFFERENCES

The differences between the Religious Courts in Indonesia and Malaysia there are also notable differences. Here are some key distinctions:

LEGAL SYSTEM: The religious courts in Indonesia and Malaysia operate within different legal systems. Indonesia follows a civil law system influenced by Dutch colonial law, while Malaysia follows a mixed legal system influenced by British common law.

JURISDICTION AND APPLICABILITY: In Indonesia, religious courts have jurisdiction over a wide range of personal and family law matters, including marriage, divorce, inheritance, and custody. Similarly, in Malaysia, religious courts predominantly handle cases pertaining to Islamic family law and personal status, such as marriage, divorce, and inheritance. However, it should be noted that the jurisdiction of the religious courts in Malaysia is limited to Muslims, whereas in Indonesia, these courts have jurisdiction over both Muslims and non-Muslims who voluntarily accept their authority.

COURT STRUCTURE: While both countries have a three-tiered court structure for their religious courts, the specific names and organization of these tiers differ. In Indonesia, there are Religious Courts at the district level, Religious High Courts at the provincial level, and the Supreme Court at the cassation level. In Malaysia, the structure consists of Sharia Subordinate Courts, Sharia High Courts, and the Sharia Court of Appeal (with the addition of the Sharia Supreme Court in Perak).

UNIFORMITY: The administration and application of Islamic law in Indonesia's religious courts are generally more diverse compared to Malaysia. Due to Indonesia's decentralized system, there may be variations in the interpretation and implementation of Islamic law across different regions. In Malaysia, there is a greater emphasis on standardizing the administration of Islamic law through the Sharia Judiciary Department, aiming for greater uniformity across the states.

CONSTITUTIONAL FRAMEWORK: The constitutional framework governing the religious courts differs between the two countries. In Indonesia, the 1945 Constitution recognizes the authority of religious courts and provides for the freedom of religion and belief. In Malaysia, the Federal Constitution establishes the framework for the religious courts, and the jurisdiction of these courts is defined by federal and state laws. These differences in legal systems, jurisdiction, court structure, uniformity, and constitutional frameworks contribute to variations in the operation and administration of religious courts in Indonesia and Malaysia.

CONCLUSION

Based on our analysis of the Religious Courts in Indonesia and Malaysia, we have gained valuable insights into these institutions. Through a comparative study, we can conclude that there are both similarities and differences between the two countries. In terms of commonalities, both Indonesia and Malaysia have a rich historical background of Religious Court development, spanning various periods such as the Islamic kingdom era, colonial rule, and the post-independence era. Additionally, the organizational structure of Religious Courts in both countries typically consists of



three levels of courts. Moreover, both countries adhere to the same jurisdiction of Islamic law and Religious Courts, which applies exclusively to Muslims.

However, there are notable differences between the Religious Courts in Indonesia and Malaysia. The establishment and evolution of these courts have been influenced by different colonial powers in each country's history. In Indonesia, all Religious Courts follow an integrated and hierarchical structure, with the Supreme Court serving as the apex authority overseeing their operations. On the other hand, in Malaysia, the structure of the Religious Courts varies from state to state, reflecting the decentralized nature of the country's federal system.

Another significant distinction lies in the jurisdiction of the Religious Courts. In Indonesia, the jurisdiction is uniformly defined at the national level, covering family law, Sharia economic matters, and Islamic criminal law (specifically in Aceh). This demonstrates a certain level of law uniformity across the country. In contrast, Malaysia's jurisdiction is determined by individual states, leading to variations in the scope of jurisdiction between different states. Criminal law, in general, falls under federal jurisdiction, but state governments can enact their own laws to address Islamic criminal offenses, with some limitations imposed by the Federal List.

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