

How are syariah laws
being currently
applied in malaysia



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Islam had been established in Malaya by the fourteenth century. Malacca, one of the Malay States in Malaya, emerged as a Muslim Kingdom under Sultan Iskandar Syah and his replacements. By the early fifteenth century, it had become a power of great importance in South East Asia. This brought an terminal to the political control and cultural influence of the Hindu and Buddhist powers over the Malay Peninsula. This brought an terminal to the political control and cultural influence of the Hindu and Buddhist powers over the Malay Peninsula. Malay society and its Torahs were influences by idea and thoughts from assorted Muslim states.

This because Islam itself came to this part from different states, viz. the Arab states, India and even China. The jurisprudence used in Malacca was Muslim jurisprudence together with Malay customary jurisprudence. Malay customary jurisprudence may besides mention every bit to as Adat Melayu. In 1511, Malacca was conquered by the Portuguese. However, it's hard to supply a satisfactory history of the legal development during that period. Although Malay customary jurisprudence was preserved under Lusitanian regulation and subsequently by the Dutch, during their conquering of Malacca in 1641, it was finally replaced by English jurisprudence during the British colonisation of Malaya get downing from 1786.

Evidences and hints of Islamic legal idea and establishments are present in Malay jurisprudence. Terminology and thoughts from the Islamic legal system found their manner into the legion treatises on traditional Malay jurisprudence. They are found in the Melaka Digest (Undang-undang Melaka or Risalah Hukum Kanun of 1523) and the Pahang Digest of 1596 with a ulterior addendum, and in the Kedah Digest dated 1606 incorporating port <https://assignbuster.com/how-are-syariah-laws-being-currently-applied-in-malaysia/>

regulations. Further grounds is found in the eighteenth century. 99 Laws of Perak and in the Johor Digest of 1789.

Finally the Orthodox Muslim plants of the Shafiee School of Islamic Law. such as the treatises on the jurisprudence of matrimony. divorce and legitimacy of kids were translated in Malay. The Majalah al-Ahkam al- Adliyyah (The Mejelle) . a set of Muslim civil Torahs of the Ottoman Empire. was besides translated into Malay and recognized as the jurisprudence to be followed by the Johor tribunals in 1914. Islamic jurisprudence. being an imported jurisprudence. evolved through a period of 6 centuries of development. Its impact on the country's legal system was far making. even until the early portion of the present century.

This is good illustrated in the instance of Laton V Ramah. where the Court of Appeal held that Islamic jurisprudence in Peninsular Malaya was non foreign jurisprudence but local jurisprudence. the jurisprudence of the land which every tribunal must take judicial notice. But during the station British colonial period. Islamic jurisprudence has been reduced in importance and its significance has farther declined after the independency. The 9th Schedule of the Federal Constitution. Legislature Lists (List II- State List) states: ' The Islamic Law is under province authorization. Each province enacts its ain passage with legal power over it.

Every province has its ain Council of Islamic Religion and Malay Custom and the Kadis Courts. These tribunals have limited legal power on individuals professing the Islamic faith. and merely included in this list. but shall non hold legal power in regard of offenses except in so far as centred by Federal

Law'. The Muslim Courts (Criminal Jurisdiction) Act 1965 [No. 23 of 1965] provides that the legal power of the Shariah Courts: ' Shall non be exercised in regard of any offense punishable with imprisonment for a term transcending 6 month or with any all right transcending one thousand dollars or with both' .

It's been a questioned among the people about the application of Hudud jurisprudence in Malaysia since there are different types of spiritual and beliefs the states uphold. Many people agreed with the execution whereas some disagreed with the issue. Basically, Hudud is the most terrible and rigorous Islamic jurisprudence for fall backing to penalize those wrongdoers through physical agencies. The commissariats of the Hudud jurisprudence cause Malays feared the jurisprudence and they are non ready for the execution of Hudud Torahs as there are deficiency of understanding on the demand of a proper theoretical account on the Islamic condemnable jurisprudence.

Harmonizing to Professor Dr. Mahmood Zuhdi Abdul Majid of IIUM, he said ' If we do non politicise it, we Malays are decidedly ready to implement hudood in Malaysia, but if we were look at Hudud as a political issue, so it becomes a problem' . He besides stated that condemnable Torahs should be imposed on all citizens because Islam does non know apart on whether you are a Muslim or a non-Muslim. Besides, PAS had decided that it will seek constitutional amendment in the Parliament to use the Hudud jurisprudence one time the Pakatan return over the federal disposal. Harmonizing to our Former President, Dr.

Mahathir Mohammad. had stated his dissatisfaction on the execution of Hudud Torahs in Malaysia which will make an unfairness bench system. For an case. a Muslim who committed an offense will be punished harmonizing to Hudud jurisprudence. which is a terrible penalty whereas the non-Muslims who committed the same offense will be punished harmonizing to civil jurisprudence which is much lineal. He besides commented that there is nil references in the Quran about the terrible penalties and he urged Muslims to follow the primary beginnings of Islam. Quran alternatively of the Sunnah or Hadith which are fundamentally those readings of the Quran.

Furthermore. Nibong Tebal MP. Tan Tee Beng said Kita president. Zaid Ibrahim confessed that non-Muslims can be punished under the Hudud condemnable codification passages. He added that Shari'ah Torahs that being practiced in Malaysia are based on civil and household statute law. which governs single Muslim affairs. The issue is controversy as Hudud jurisprudence can be applied if the Federal Constitution amended which requires bulk ballots from the members of Parliament. Based on UMNO Minister. Datuk Seri Jamil Khir Baharom position. he stated that Hudud Law will ne'er give any impact on Non-Muslims.

The authorities is watchful that there are differentiations of positions and ideas on this issue among Islamic bookmans and legal experts and a research demand to be done before the Hudud jurisprudence implemented in Malaysia. so that the penal codification is just to all. complies with Allah's conditions and is in agreement with the Malaysia legal system. He besides added that if Hudud jurisprudence is to be applied in Malaysia. the Syari'ah Court would merely hold legal power over those who pattern Islam in <https://assignbuster.com/how-are-syariah-laws-being-currently-applied-in-malaysia/>

agreement with the Federal Constitution. the Supreme jurisprudence of the Federation.

Though the issue on the application of Hudud jurisprudence in Malaysia is indecisive phase. the application of Shari'ah jurisprudence does not lose its place. The Islamic jurisprudence that is in force in Malaysia wholly is not echt Islamic jurisprudence but may have been influenced by written Torahs judicial determinations and customary jurisprudence. For an case. the written Torahs. particularly. those enacted before independency. may reject Islamic jurisprudence. Therefore in *Ainan v Syed Abu Bakar*. it was held that the legitimacy of a kid should be determined by the Evidence Enactment (F. M. S.) and not accordance with Islamic jurisprudence.