



**15th BILETA Conference:
“ELECTRONIC DATASETS AND
ACCESS TO LEGAL
INFORMATION”.**

Friday 14th April 2000.
University of Warwick, Coventry, England.

Internet-Based Learning in Malaysia: Islamic Law

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Abstract

This paper will be divided into three parts; Part I deal with the problems faced by students in Malaysia to make references on Islamic law. Part II continues on proper web course syllabus for Islamic law subject in Malaysia and proffers some possibilities for improvement since the web resources on Islamic law^[1]

Keywords

Internet. Web. Islamic Law. Malaysia. Syarie lawyers. Online web-course. Syllabus. Islamic Legal Practice Course. Holy Quran. Prophet's Traditions. Arabic text.

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Introduction

Why Islamic law?

1.The Sources Of Islamic Law

It is axiomatic that the advent of computing technology has played an important role in revolutionising the education environment. Hence, it is palpable at the present time that numerous faculty and students worldwide have embraced the plethora of probabilities (Michael A Geist, 1997) presented by network classes (R. Warden, 1995), chat groups(Hardy I. Trotter, 1993) and www

homepages. The government of Malaysia for instance, on its part has taken solemn strain to implement the smart schools initiative under the Multimedia Super Corridor (MSC) project. For that reason, it should not come as astonishment to discover universities in Malaysia playing a prominent role in the continued growth in the development of the Internet and the World Wide Web (the Web). The swift response to this idea in Malaysia is University Tun Abdul Razak (Unitar) when it turned out to be the country's first virtual university. (A. Rahim. Ridzwuan, 2000)

Much has been said about the potential contribution of the web to revolutionise education (Jones,1998; Hiltz SR,1990). However, it is interested to look at the possibilities of having Islamic law education on the web in Malaysia and how can the web enhance traditional classroom method of teaching and learning in terms of providing an effective learning experience for learning this subject. This is especially when there exists Syariah courts with jurisdiction to hear and decide cases on Muslim matters. Hence, law students in Malaysia would gain benefits as Islamic law is one of the faculty courses that should be taught in the Malaysian law schools. Moreover, Islamic law is also required by the Malaysian Qualifying Board to be taught as a core paper with 3 credit.

This paper will be divided into three parts; Part I deal with the problems faced by students in Malaysia to make references on Islamic law. Part II continues on proper web course syllabus for Islamic law subject in Malaysia and proffers some possibilities for improvement since the web resources on Islamic law[2]

2.Statutes and Legislation

Administration of Islamic Law State of Selangor 1952

are so poor. Part III endeavours to discuss the Islamic legal practice course in Malaysia and the use of information technology. This will include the current position of Syarie lawyers in Malaysia and how can this profession deliver a far better service that it is doing at present in order to be a successful and well-regarded profession. Before we proceed to the next discussion, it is cogent at this juncture to address why there is a need of the Internet-based learning for Islamic law education in Malaysia.

State of Kelantan Syariah Court Evidence 1991

The significant of this proposal is based on four notable reasons as follows:

Firstly, the subject Islamic civilisation that is part of Islamic Law is compulsory to every student in all universities in Malaysia regardless of what course they take. Accordingly, educators or lecturers should embrace this high technology of utilising the computers as tools for bringing education of this subject to students.

Secondly, Article 121(1A) of The Malaysian Federal Constitution, which has taken away the jurisdiction of the High Court in respect of, matters falling within the jurisdiction to the Syariah court. At the meantime, it must also be noted that jurisdiction to the Syariah Court is given by state laws, or for the Federal Territories, by an Act of Parliament, over any matter in the State List under the 9th Schedule of the Federal Constitution.[3] At this point it is interesting to note that even though we have Syariah courts (Noor Inayah Yaakub : 1999) in Malaysia, which were given special power by the Federal Constitution to decide on Muslims matters, the case law reports on the web ceases to exist. Consequently, this would result in the inability of students to make references to case law reports though these judgements are vital for their studies.

Thirdly, till now, there exists no comprehensive web course syllabus of Islamic law even though this subject is one of the core paper as recommended by the Malaysian Qualifying Board in order to

be awarded bachelor of law degree.

Finally, can extenuation such as problems occurred while transmitting on the net information that contains Arabic verses of Holy Quran or the prophetic traditions are admissible? If faculties members endure comfortable using the manual classroom and tutorials as the only a mode of teaching Islamic law, the potential for computers to play a comprehensive role in Islamic legal education process will never be accomplished.

PART 1

PROBLEMS FACED BY STUDENTS IN MALAYSIA

State of Kedah Syariah Court Evidence 1989

Islamic law is a divine system of laws in its sources and primary rules (S.Mahmassani, 1987). Being a divine law, the sources of Islamic law are divided into two categories i.e. the primary sources and the secondary sources. Unlike civil law, the primary sources are the Holy Quran and the traditions of the prophet. The secondary sources of analogical deduction (Qiyas) and consensus of opinion (Ijma') completed the four official sources of the Syariah.[4]

The above explanation mirrors the unique feature about Islamic law where it involves Quranic verses or prophetic traditions. However, these verses are in Arabic text. Would the Arabic text be transmitted on the net? Is it readable by all the computers that link to the students? If not, is it possible to have translations for these verses? Are the translations sufficient? Even with the translations, would students be able to differentiate several Arabic terms, which cannot be translated at all such as "*syariah*" or "*syarak*"? These are the interesting issues that need to be examined thoroughly.

State of Pahang Syariah Court Evidence 1990

In Malaysia we have a different and separate statutes on Muslim matters. This is due to Article of the Federal constitution[5], which states that Islamic law is a state matters. At the moment we have plenty of statutes on Muslim matters. Some of them are categorised as follows:

a) Family Matters

Islamic Family Law Act (Federal Territories)1984

Small Estates Distribution Act

b) Syariah Civil Procedure

Syariah Court Civil (Mal) Procedure Act (Federal Territories) 1998

c) Syariah Criminal Procedure

Syariah Court Criminal Procedure Act 1998

d) Islamic Evidence

Islamic Law Evidence Act (Federal Territories) Act 1998

e) Islamic Banking System

Islamic Bank Act

f) Islamic Takaful/Insurance

Islamic Takaful Act

g) Administration of Islamic Law

Islamic Criminal Procedure State of Kedah 1988

h) States Enactment**PART II****A PROPOSED WEB COURSE SYLLABUS FOR ISLAMIC LAW IN MALAYSIA**

State of Sabah Syariah Court Evidence 1992

State of Malacca Syariah Court Evidence 1991

2) Weaving the Web into Islamic Legal Education: A Proposed Web-Course Syllabus

Islamic Criminal Procedure State of Kedah 1988

Islamic Criminal Procedure State of Negeri Sembilan 1992

Islamic Criminal Procedure State of Kelantan 1984

Islamic Civil Procedure State of Selangor 1991

Islamic Civil Procedure State of Negeri Sembilan 1992

Presently, only two legal publishers such as Malaysian Law Journal (MLJ) <<http://www.mlj.com.my>> and Malaysian Current Law Journal (CLJ) <<http://www.clj.com.my>> compile a few of the above statutes in CDs. However, students have to purchase the CDs in order to get a text and the number of statutes on Islamic law provided is still limited. Lectures or students who do not wish the purchase the CDs have no free access to the law text databases.

3. Cases

Judgements decided by the Syariah Courts in Malaysia are seldom reported. Very few cases on Muslim matters are reported in several law reports such as All Malaysian Reports (AMR), Current Law Journals (CLJM) and Malaysian Law Journal (MLJ). These cases are on Muslims matters, which had been decided by civil courts.[6] Even though there was an effort by the learned Prof. Ahmad bin Ibrahim[7] to compile all the judgements of Syariah Courts in a journal called Journal Hukum, these journal had a limited volumes and was not reported consistently. Moreover, this journal was not publicised at all. No CDs containing the data of these judgements exists. Hence students would encounter difficulties to refer to cases, which had been decided by Syariah courts. Even though we have Syariah court⁸ in Malaysia, which were given special power by the Federal Constitution to decide on Muslims matters concerning Islamic law, the lack of case law reports on the web, which were decided by this court, is apparent. Consequently, this would result in the

inability of students to make references to case law reports.

4.Law Articles

Fortunately it is not difficult to find Malaysian legal articles on the web. Malayan Law journal and Current law journal for examples provide articles and case comments on the web. However, articles or case comments on Islamic law are rarely included in these two journals. Consequently, students will have difficulties to find articles on Islamic law for their research.

5.Governmental Resources

There are several governmental departments, which provide sites for Islamic law. The Institute of Understanding Islam Malaysia (IKIM)<<http://www.ikim.com.my>> supplies site-containing information on Islamic law. This site is designed for searching the information on researches carried out by IKIM. Though the site provides selected articles in newspaper, these articles concern religion of Islam. No specific topic for Islamic law is provided. Another site is JAKIM <<http://www.islam.gov.malaysia>>. This site contains selected articles on Islamic law in general and serves as useful sites for students seeking information about this subject.. Unfortunately, only 5 out of 36 articles are in English. These articles are for instance, "Awakening of Europe: by Jamil Aslam", "Basis of Islamic belief: by Gary Miller", "The call to Islam: by Darul Fitrah Malaysia", "Prophecy on the coming of Prophet Muhammad s.a.w. in other scriptures: by Dr Mohamad Amir" and "The door of happiness is always open: by Jakim." Again, these articles discussing the religion of Islam and its belief that are less important to the students who are searching for Islamic law.

A legal education is primary to train legal practitioners. The knowledge and skills acquired for this practice are no doubt also useful in many other areas; business leadership, teaching, journalism, politics, social work, police and so on. To be a Syaria

As had been pointed earlier, some of the present syarie lawyers do not received the comprehensive Islamic laws education. Thus, there is a need to keep up to date in the latest development of Islamic law. Programs such as continuing Islamic legal educati

1.General

The web has the potential to revolutionise education. Its potential contribution to curriculum programming and planning cannot be ignored. The web as faced by the students and instructor in the classroom-based learning environment can overcome barriers of time and space. Although the capability of computers to assists in legal research and to supplement legal education was noted as early in the mid 1960s, there was no evidence on the use of computers in Islamic legal education in Malaysia for the past 10 years. Perhaps the late awakening is due to various reasons such as;

* Islamic law is unique in the sense that its primary sources are Holy Quran and the tradition of the prophet, which are of Arabic words. Thus, only computers with a Microsoft Arabic word are able to

read these Arabic texts. Otherwise, the text is not transmittable on the net.

* In Malaysia, no governmental sites provide a comprehensive database of Islamic law on the web. Hence, it is arduous to search for a specific issue about Islamic law.

With these as backdrop, this section suggests a proposed web course syllabus for Islamic law in Malaysia. Since there is no prior web-course syllabus for the similar subject as a sample, it is significant proffering some possibilities of developing the existing Malaysian web resources of Islamic law.

CONCLUSION

Due to the strong developments of the computer industry and digitalisation, most universities and colleges in Malaysia are now allied to the Internet. Most libraries classify the library catalogue as a computer database, not by index card. Academic staff are using e-mail daily and receiving a lot of information for their academic life through the web.

With these ambiances, how far universities in Malaysia furnish materials for Islamic law or Islamic civilisation subjects that is accessible on the net as the Ministry has requisitioned all universities in Malaysia to render this subject as a core and compulsory paper for every student? Can extenuation such as problems occurred while transmitting information containing verses of Holy Quran or the prophetic traditions of Arabic word on the net are admissible? Or can the translation of these verses, which is available in English, be given and is it sufficient? If not, do such problems remain unresolved even the basic software which has been already provided such as internet, Microsoft word, and other accessories in a each computer do include a software of Arabic word so that it would automatically capable of receiving and reading the Arabic word? However, even this is done, the next problem is can the non-Muslims understand the Arabic word that appears on the screen without a translation?

As mentioned earlier, since there is no prior web course syllabus of Islamic law as a model in Malaysia, starting with the following materials may prove to be an ideal solution. Possibilities discussed herein include the posting of online versions of a course syllabus, assignments, class readings, model exams and answers, student's evaluation and personal schedules.

Web Course Syllabus for Islamic law

Since providing students with a course syllabus is standard operating procedure (Michael A. Geist, 1997), it is not surprising to find that it is the most common item placed on law school course web sites (Berkely Reports, 1997). It is therefore highly recommended for professors of Islamic law choose not only to provide a general description of the course but also embed the syllabus with links to other documents. The link is vital for students and can be helpful to them especially when contemplating course selection or when it provides additional features not found in the paper version.

As sources of Islamic law differs from English or civil law in the sense that it involves Arabic text of Holy Quran and prophet's traditions, the next step is adhere to the suggested format as follows:

* The use of English language at all times with scrupulous a care and integrity to translate any verse of Holy Quran or Prophet' s tradition. The use of the translation of Holy Quran by Yusuf Ali is highly recommended.

* If professors choose to provide the Arabic text, both original Arabic text and its English translation should be provided.

* If item (e) is preferred, make sure that those texts are transmittable and readable by all computers. At present, only Arabic Microsoft version 6 is considered as the best as it can read both English and Arabic simultaneously.

* The access to the web course syllabus should be universally available to students in Malaysia, regardless of the geographic location, urban development, or economic condition of the community.

Assignments

An online assignment page may include required reading for upcoming lectures, problems or issues to consider in addition to the assigned readings and assignment to be submitted to the professor. As in Malaysia, assignments form an integral part of the evaluation format in majority of law schools. A mark of 40% is taken from the assignments. Hence, the web site contains online versions of the assignments with sample answers and assignment guidelines will be helpful to students.

Class Reading

Professors of Islamic law should provide the actual reading online. With the amount of material available online increasing daily, this step is developing into a realistic alternative to costly Islamic law books. Professors may use links to readings located elsewhere on the Internet since relevant materials are readily available online. For example the SOAS site which is available via <http://www.soas.cimel.com>. Alternatively, electronic versions of relevant materials can be created for and posted directly on the course web site.

Model Exams and Answers

Students of Islamic law may request prior to examination periods a sample copies of old exams to serve as study aids. This is especially so when it is for the first time for those students to sit for the Islamic law paper examination. Hence, it is worth for professors to include guidelines and tips for exam writing on the web.

Frequently Asked Question Page

FAQ pages are helpful to professors in that they allow for recurring students questions to be answered in a singular and effective manner.(Michael A. Geist, 1997). The FAQ page serves as a helpful resource to students. Example of existing web site on FAQ for Islamic law in general is <http://www.iboglobal.com/cgi-bin/sporum/comments.cgi>.

Improving the existing web resources on Islamic law in Malaysia

* Statutes and legislation

As discussed earlier, only two legal publishers such as Malayan Law Journal (MLJ) and Malaysian Current Law journal compile a list of few Islamic law statutes in CDs. It can also be useful for the professors of Islamic law to provide an online statute text. This is vital in the sense that students who studied Islamic law must get access to the statutes and legislation which concern Muslims matters such as wills, Islamic family law and its related areas of custody, rights of husband and wife, divorce and maintenance. Students should also be exposed to the procedures in Syariah courts and the said procedures contained in the Islamic Evidence Act 1998, Syariah Court Civil procedure 1998 Act and Syrah Court Criminal Procedure Act 1998. Thus, it is highly recommended for professors to make available online statutes for Islamic law. Moreover, there should not be any difficulties of this step since there is no Arabic text in all the Islamic law statutes. In fact, this effort is developing into a realistic alternative to costly statutes books or CDs.

* Cases

Since Malaysia has Syariah Courts, which are given special power by the Federal Constitution to exercise jurisdiction over matters pertaining to Muslims, it is advisable to make available online decisions or judgements of these cases. To begin with, it would be easier to update the "Journal Hukum" that currently compile some of the Syariah Courts decision and make the available on the net. Perhaps the Department of Islamic Judiciary (launched in 1998) should be entrusted for this special task. In addition to that, the two publishers in Malaysia such as MLJ and CLJ should provide in their journal more articles on Islamic law and they should also update their case reports, which has been decided by Syariah Court in Malaysia.

* Islamic Law Articles

There should be more Governmental web sites that provide selected articles on Islamic law. A list of links related to the topics of Islamic law should also be provided. These links have the potential to serve as a "jumping off" point for student's research and may assists students to grasp the breadth of a particular topic.

PART III

INFORMATION TEHNOLOGY AND THE ISLAMIC LEGAL PRACTICE COURSE

1.General

BIBLIOGRAPHY

Faculty of Law, National University of Malaysia for instance has prepared a separate Islamic legal practice course in the final year in preparation for Syariah lawyer profession. This Islamic Legal Practice course includes the subject of Islamic Law of Evidence, Syariah Court Civil Procedure and Syariah Court Criminal Procedure. By the end of the course it is intended that Islamic Legal Practice Course students should be able to:

- * Perform, with understanding, the skills and tasks required to complete transaction, in a manner, which effectively achieves the client's, and syarie lawyer objectives.
- * Identify the client's objectives.
- * Identify the necessary steps and actions that need to be taken to implement those objectives.
- * Learn from experience of the course and from the future practice.
- * Be able to undertake defence fairly and honourably.
- * Be able to uphold interest of client, justice and dignity of the profession.
- * Be able to conduct with candour, courtesy and fairness.

2.Qualifications to be admitted as Syarie lawyer in Malaysia

(A) Legal Education Background Of The Present Syariah Lawyer And Their Appointment

The education background of the present Syariah lawyer can be categorised as follows:

- a) Those received their legal education and training from Universities and Inns of Courts in United Kingdom.
- b) Those received their legal education and training from local Universities.
- c) Those received their legal education and training on Islamic and Civil laws from local Universities.
- d) Those received their legal education and training but received limited Islamic laws knowledge from local Universities
- e) Those received their Syariah laws education and training comprehensively without being exposed to civil legal education from Middle Eastern Universities

At present all categories can apply to be admitted as syarie lawyer in Syariah Courts.

However, there is a statutory limitation imposed on syarie lawyers as regards to their jurisdiction. Section 50(1) of the Laws of Administration Of Islamic Religion State of Selangor Vol: 3/52 provides that no syarie lawyer is allowed to take part in a court for any party in a proceeding where it contradicts with the religion of Islam. This provision clearly indicates that the appearance of syarie lawyer in Syariah courts must not against the Islamic law. Thus, the function and role of syarie lawyer are subject to Syariah.

As regards to their appointment, section 55(1) states that;

"Majlis (Board) can appoint any legal officer of Federal government and any legal officer possessed a valid certificate produced under the legal profession Act 1976 or any person qualified to be a syarie lawyer to appear and represent any party in any court"

From the above it is clear there appears to four categories⁸ of syarie lawyers who can appear before syariah courts :

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

The variety of categories above mirrors the lack of uniformity in procedures for admittance as syarie lawyer. Category for number 3 especially, causes the conflict of interest in the sense that an academician (syariah law) also can be admitted as syarie lawyer. This should be strictly prevented to avoid the conflict of interest. The Rules of Syarie Lawyers therefore is recommended to provide a provisions that no qualified person shall, without the special leave in writing of the proposed syarie lawyers council, hold any office or engage in any employment of any kind, whether full-time or otherwise. Moreover, different state requires different criteria for the admittance of syarie lawyer and on top of that there is no common final examination for all graduates in order to become a syarie lawyer. Other states for instance Negeri Sembilan, Penang and Perak require an applicant to undergo a special interview only. As much concern has been expressed about the entry standards of the syarie lawyers, there should be a standard guidelines by every state in Malaysia on the appointment of syarie lawyers. At least other states should follow the state of Selangor and Federal Territory where

these states require a diploma holder in Syariah and Legal Practice.

(B)Entrance Examination

It is proposed that the qualifications for admission as syarie lawyer will be:

a) has passed the final examination leading to the degree of Bachelor of Laws (Honours) of a recognised university.

OR

b) has passed the final examination leading to the degree of syariah laws (honours) of a recognised university

AND all the followings;

a) A diploma holder in Syariah and legal practice

b) has attained the age of 21 years

c) is of good character

i) has not been convicted in Malaysia or elsewhere of a criminal offences as would render him unfit to be a member of his profession, and in particular, but not limited to, an offence involving fraud or dishonesty

ii) has not been, or is not liable to be, disbarred, disqualified or suspended in his capacity as a legal practitioner in any other country;

iii) has not been adjudicated bankrupt;

iv) has not done any act which prohibited in Islamic law, if being an advocate & Solicitor in civil courts that would render him liable to be barred, disqualified or suspended from practice as syarie lawyer;

d) A citizen of Malaysia or a permanent resident of Malaysia

e) Has satisfactorily passed or is exempted from the Bahasa Malaysia and basic