

**WORKING PAPER FOR NATIONAL DAY SEMINAR 2006  
“LEGAL SYSTEM IN BRUNEI DARUSSALAM AFTER THE  
SIGNING OF THE SUPPLEMENTARY AGREEMENT 1905/1906  
BETWEEN BRUNEI & GREAT BRITAIN”**

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**Introduction**

To say that Islamic laws have only been practiced in this country in the recent years are quite incorrect as there are sources, which date the establishment of a Muslim sultanate rule. There is evidence which shows that Islam had come to Brunei since the 10<sup>th</sup> century. As a matter of fact, Islamic laws have always been the governing laws in Brunei Darussalam even before the coming of the British.

Evidence that shows Brunei was governed by Islamic law can be seen in written and codified form. This was first written under the rule of Sultan Muhammad Hassan (1528-1598), but it was duly implemented and enforced during the reign of Sultan Abdul Jalilul Akhbar (1598-1659). There exists two manuscripts, the first manuscript is called “the Hukum Kanun Brunei, which, contained 96 pages and is kept at the Language and Literature Bureau (reference no. A/BM/98/90)<sup>1</sup>. The second manuscript is known as “Undang-Undang dan Adat Brunei Lama” (Old Brunei Law and Custom). It consists of 68 pages and is now kept in the Sarawak Museum<sup>2</sup>.

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<sup>1</sup> Prof Dato’ Dr Haji Mahmud Saedon Awang Othman, *Perlaksanaan dan Pentadbiran Undang-Undang Islam Di Negara Brunei Darussalam, Satu Tinjauan, 1999, p.21*

<sup>2</sup> *Ibid, p.21*

The content of the first manuscript, Hukum Kanun Brunei covered a wide range of laws including the Islamic laws such as *budud*, *qisas*, *ta'zir* as well as matters relating to family law which includes marriage and divorce. The overall content of the manuscript is in harmony with the Islamic law. Hukum Kanun Brunei contained about 47 clauses. Some of the examples are:-

**Clause One** of the manuscript talks about the relationship between people and its ruler, conditions of becoming a ruler, responsibilities of the people towards its rulers;

**Clause Four** talks about various kinds of offences such as murder, stabbing, slaying, hitting, robbery, stealing and many other. However, no punishments for those offences were stated in clause;

**Clause Five** talks about the punishment of *qisas* for murder and also for the murderer to be killed in return for the crime;

**Clause Seven** talks about offence of stealing, the punishment of which would be to cut off certain part of his hand;

**Clause Eight** talks about the punishment of slapping which was to be slapped back in return<sup>3</sup>.

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<sup>3</sup> *Ibid*, p.22-24

An example of the Hukum Kanum Brunei being enforced was documented in W.H Treacher's commentaries back in 1871. There was an incident whereby several items which includes a gold watch and a gun were stolen from the British warship which was docked at the Brunei River. The culprits were caught a few days later and they had the punishment according to Syariah law i.e. by cutting off their hands.

Another incident was in a case whereby death penalty was carried out on a criminal. His offences consist of multiple robberies coupled with murdering a number of businessmen who have been commuting along the beach between Brunei and Labuan. There are two types of execution that were carried out in Brunei at that time, one was by hanging and the other was by using the '*keris*'.

With the enforcement of this law, it proves to show that Islamic laws were in fact practiced in Brunei and it has become the basis law and policy of Brunei Darussalam at that time.

### **The Treaty of Friendship and Commerce 1856**

British sphere of influence on Brunei's legal system began to expand when a Treaty of Friendship and Commerce was entered into in 1856<sup>4</sup>. By virtue of the said agreement signed between the two Governments, the British has started to obtain powers to administer justice in Brunei. Under this agreement, the British was given the power to try cases which arose from disputes amongst British citizens or those which arose between British citizens and other foreign citizens in Brunei. However, at this stage, the British judge did not have full

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<sup>4</sup>*Ibid*, p.26-28

judicial powers as a local judge still has to sit with them during these proceedings. Furthermore, any penalties imposed had to be based on existing local laws although any penalties imposed on a British citizen must not be heavier than that which would have normally been imposed under English law for the same offence.

### **The Protectorate Agreement 1888**

In 1888, Brunei became a British protectorate state. The Protectorate Agreement which was signed on 17 September 1888<sup>5</sup> gave the British full powers to administer judicial and legal matters involving the British citizens in Brunei.

Under Article VII, the British Judicial Committee was given jurisdiction to try civil and criminal cases involving British citizens, those involving citizens of other countries with the Agreement of the Government of the citizen concerned. Apart from this, the British were also given jurisdiction to hear cases where a Brunei citizen is the plaintiff or prosecutor<sup>6</sup>.

### **The Supplementary Protectorate Agreement 1905/1906**

The Protectorate Agreement 1888 was amended by a Supplementary Protectorate agreement 1905/1906 by establishing an administration system which was already established in Malay States. This system was by appointing a British Officer, known as

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<sup>5</sup> *The said treaty was signed between Sultan Hashim and Sir Hugh Low, acting as a representative of the British Government.*

<sup>6</sup> *Supra n1, p.26-28*

Resident whose duty under this agreement was to advise the Sultan in relation to the administration of the state other than the Islamic affairs.

This Agreement was signed on 31 December 1905 and 3 January 1906 by Sultan Hashim (for Brunei) and Sir John Anderson (for the British Government). The said Agreement changed the status of Brunei once again. The introduction of the British Residential system was the event which would seal the fate of the Brunei legal system to become based on the English legal system as it was during this period that British machinery of government was introduced including that of criminal justice system and their legal framework.

The British Residential System was introduced in Brunei Darussalam by virtue of the Courts Enactment 1906. Another Enactment was later introduced, known as the 1908 Enactment<sup>7</sup>. The purpose of the Enactment 1908 was to amend the law relating to the constitution and powers of the Civil as well as the Criminal Courts and the law procedures to be administered in Brunei.

The Court Enactment put into place the laws from the Straits Settlement such as Evidence Act, Criminal Procedure Code, Penal Code, Civil Procedure Code and laws relating to contract and specific relief. The Criminal Procedure Code and Penal Code was derived from the Indian Penal Code that had been drafted by the British<sup>8</sup>. Other laws that were put in place were laws pertaining to evidence, bank books (evidence), contract, specific relief and

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<sup>7</sup> *This Act had repealed the 1906 Enactment.*

<sup>8</sup> *All these laws had been created by the British to facilitate the incorporation of their legal principles into the legal systems of other protected states and colonies.*

oaths and affirmations which were originated from the Federated Malay States Law Adoption Enactment 1939.

### **Legal System after the 1905/1906 Agreement**

By virtue of the Courts Enactment 1908, the British had proceeded to set up a court structure and procedures which mirror those under the English legal system. The new court system has wide jurisdictions which were to be administered by British judges using the English laws, procedures as well as principles. In administering justice, these judges used their legal principles such as the common law, the doctrine of equity and judicial precedent in order to support its decision. Hence, Judgments were made on the basis of these legal principles. These laws then become the sources of law in Brunei Darussalam.

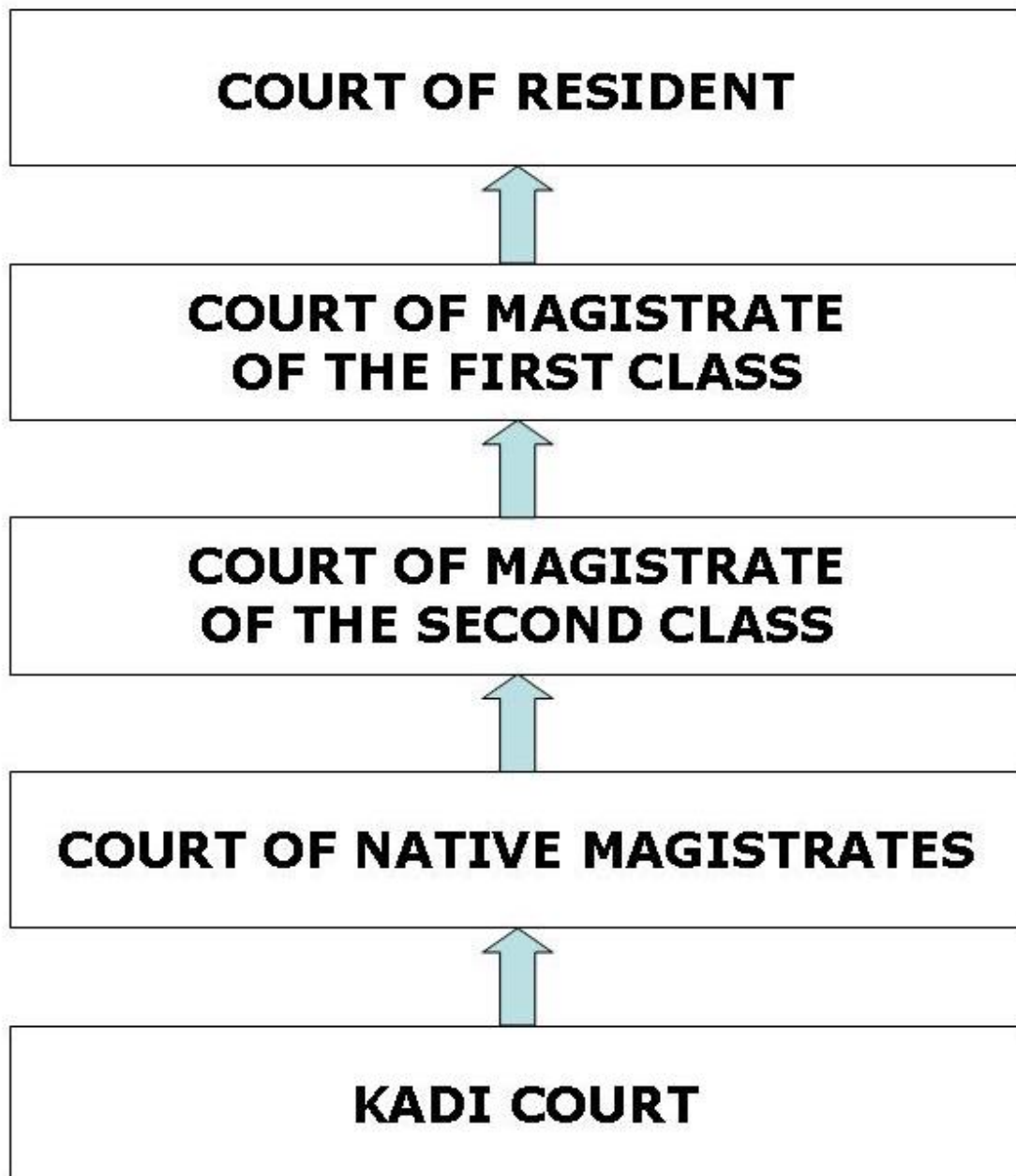
Section 3 of the 1908 Enactment provided for the constitution of five in the State for the administration of Civil and Criminal justice<sup>9</sup>. There were:

- (1) The Court of the Resident
- (2) Courts of Magistrate of the First Class
- (3) Courts of Magistrate of the Second Class
- (4) Courts of Native Magistrates
- (5) Kadi Court

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<sup>9</sup> Ahmad Basuni bin Hj Abbas and Dyg Hasnah bte Hassan, *ASEAN Legal System by ASEAN Law Association "The Legal System of Brunei Darussalam – A Historical Overview," Butterworths, 1995, p.3-7*

# **BRUNEI COURTS STRUCTURE AFTER 1905/1906 AGREEMENT**



### **The Court of Resident**

The Court of Resident was technically the most important court at those times, as it exercised original and appellate jurisdiction in civil and criminal matters. The Officer, which presided the Court of the Resident, should either be the Resident; or the District Judge of the District Court of Labuan or any District Judge of the Colony of the Straits Settlements<sup>10</sup>.

Section 5(i) of the Courts Enactment 1908 confers jurisdiction in all suits, matters and questions of a civil nature except the power to authorize any Court in the State to dissolve or annul a marriage lawfully solemnized in the United Kingdom of Great Britain and Ireland or in any British Colony, Protectorate or Possession.

The importance of the Court of Resident was further enhanced by the fact that it had appellate jurisdiction to hear and determine all appeals from the decision of the lower Courts over both civil and criminal matters; and in doing so might exercise full powers or supervision and revision in respect of all proceedings in such Courts<sup>11</sup>.

### **Courts of Magistrate of the First Class**

The criminal jurisdiction of this court would be to try all offences for which the maximum term of imprisonment provided by law did not exceed a term of 7 years imprisonment of either description or which were punishable with fine only and for any other offence in respect of which jurisdiction was given by law; whereas for civil jurisdiction it would hear

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<sup>10</sup> Section 4 of the 1908 Enactment

<sup>11</sup> Section 7 of the 1908 Enactment

and determine all suits when the amount in dispute or the value of the subject matter did not exceed \$1000.

For its appellate jurisdiction, the Court of Magistrate of the First Class had power to hear and determine all appeals from the decisions of the inferior Courts both in civil and criminal matters, and had power for revision and supervision in respect of all proceedings in such Courts<sup>12</sup>.

### **Courts of Magistrate of the Second Class**

For the Court of Magistrate of the Second Class, its criminal jurisdiction would be to try all offences for which the maximum term of imprisonment provided by law does not exceed 3 years imprisonment of either description or which were punishable with fine only of a sum not exceeding \$100 and any offence in respect of which jurisdiction is given to the Court of a Magistrate of the Second Class<sup>13</sup>.

In its civil jurisdiction, the Court of Magistrate of the Second Class would hear and determine all suits when the amount in dispute of the value of the subject matter does not exceed \$100<sup>14</sup>.

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<sup>12</sup> Section 8B(iii) of the 1908 Enactment

<sup>13</sup> Section 8C(i) of the 1908 Enactment

<sup>14</sup> Section 8C(i) of the 1908 Enactment

The distinction between the Courts of Magistrate of the First Class and Second Class was in the scope of their jurisdiction and power whereby the First Class has wider jurisdiction than the Second class.

### **Courts of Native Magistrates**

The Court of a Native Magistrate could hear and determine all suits brought by or against Malays or other Asiatics in which the amount in dispute or the subject matter does not exceed \$25 while its criminal jurisdiction would be to try and determine cases in which the maximum amount of imprisonment prescribed by law did not exceed three months<sup>15</sup>.

### **Kadi Court**

In 1908, the court structure did provide for a Kadi Court. However, the scope of its civil jurisdiction was heavily narrowed down to jurisdiction over the Personal Law of Muslims., namely in relation to marriages, divorces and *'ibadat'*.

The Kadi Court's jurisdiction in criminal cases was limited to a fine of not more than \$10 and imprisonment not more than 14 days. Therefore, in terms of powers, the scope of the Kadi Court was far limited in comparison with the jurisdiction of the civil court. The procedure to be used in the Kadi Court was also based on the procedure used in English Courts. These Kadi Courts were presided over by appointed Kadis.

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<sup>15</sup> Section 9 of the 1908 Enactment

In 1955, the Muhammadan Laws Enactment was consolidated by the Religious Council and Kadis Court Act. This Act created a separate and distinct system for syariah matters under the Kadi Courts from the structure of the civil courts of Brunei. However, the Kadi Court's jurisdiction remained limited in both criminal and civil matters. The following section shows the superior status of the civil courts.

Section 4 of the Religious Council and Kadis Court provides: "*Nothing in this Act contained shall derogate from or affect the rights and powers of the Civil Courts.*".

Section 96 states that "*civil proceedings in the Kadi Court is to refer to the practice or procedure used in the civil courts if such is not prescribed by the Act*".

Section 71(1) provides, "*in relation to criminal cases, under section 71(1), the Kadi Court has to refer to principles of law applicable to the civil courts in Brunei as guidelines for the imposition of any sentences of imprisonment, as well as evidential matters as provided under section 57, and in relation to procedure under section 78*".

These principles of law are those based on the English legal system. Therefore the provisions of the Act ensures that Kadi Court relies heavily on the civil court system.

## **Present Legal System**

The laws in Brunei Darussalam has evolved after the signing of the Supplementary Protectorate Agreement 1905/1906. As mentioned earlier, Brunei laws were based on Islamic sources, primarily the Qu'ran and Sunnah of the Prophet Mohammad, s.a.w. together with local adat before the arrival of the British. However, additional sources of law were introduced during the British Residency System

## **Sources of Law**

### **The Constitution**

Unlike Great Britain<sup>16</sup>, Brunei Darussalam now has its own written Constitution. The Constitution of Brunei Darussalam was originally enacted in September 1959 much to the efforts of our then Sultan, Al-Marhum Sultan Haji Omar Ali Saifuddien Sa'adul Kairi Waddien, who is the present Sultan's late father. The governing structure of Brunei Darussalam rests on the country's written Constitution along with the three pillars of its national philosophy, namely Malay, Islam and Monarchy.

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<sup>16</sup> Most countries today have written constitutions, that is, one document that contains all the important rules, examples are the United States and Russia. However, some countries have an unwritten constitution, in the sense that they have no one written document. The best-known example is Great Britain, whose constitution consists of many different Acts of Parliament. It also contains court decisions, and traditions and customs that stretch back over centuries.

Brunei Darussalam's written Constitution sets out its governing authorities along with their respective functions and responsibilities. There are three parts to the Constitution.

- Constitution I - Constitution of Brunei Darussalam
- Constitution Matters II - Succession & Regency Proclamation 1959
- Constitution Matters III - Constitutional (Financial Procedure) Order

#### Statutes/Legislative Enactments

Brunei Darussalam has in place a set of acts compiled in volumes called "Laws of Brunei". The Acts are kept in ring binders that consist of legislations that were passed prior to Independence Day and those that were enacted after it. Some of the legislations are also Acts that were extended from the United Kingdom, some dating back as early as 1958. However, some have been notably repealed, either in whole or in part to reflect updates in the development of the law.

#### Subsidiary Legislation

There is also in place as part of the Laws of Brunei, a number subsidiary legislations which includes rules, regulations, orders, proclamations or other documents that has the force of law and annexed to their relevant parent Acts. Other government departments whose work

is relevant to that particular legislation would usually prepare the drafts for subsidiary legislations.

The power to make subsidiary legislation is conferred under section 13 of the Interpretation and General Clauses Act (Cap. 2). Section 16 further states that the subsidiary legislation should be published in the Government Gazette.

### Laws of England

English legal principles have the force of law in Brunei Darussalam where a lacuna existed in the law on the matter in question in Brunei. These included the use of common law of England, the doctrine of equity together with the Statutes of General Application. Section 2 of the Application of Laws Act provides, “Subject to the provisions of this Act and save in so far as other provision has been or may hereafter be made by any written law in Brunei Darussalam, the common law of England and the doctrines of equity, together with statutes of general application, as administered or in force in England at the commencement of this Act, shall be in force in Brunei Darussalam”. This provision is, however, on that condition that the use of the said common law, doctrine of equity and statutes of general application does not contradict the circumstances of Brunei Darussalam, its inhabitants and subject to such qualifications as local circumstances and customs render necessary. An example of the use of The Application of Laws Act can be seen in the case of *Baiduri Bank vs Pg Hjib Zabaidah and Pg Abdul Qabar* (6 Sept 2001). In this case, the English Law of Property Act 1925 applied because a lacuna existed in the laws relating to property in Brunei.

### Common law and doctrine of equity

Common law encompasses laws that are distinguished from law created by the enactment of legislatures. It comprises the body of those principles and rules of action, and applies to a group on the basis of historical legal precedents developed over hundred of years which derive their authority solely from usages and custom because it is not written by elected politician, but rather, by judges. It is also referred to as 'unwritten law'.

On the other hand, the term equity refers to a branch of English law which developed hundreds of years ago when litigants would go to the king and complain harsh or inflexible rules of common law which prevented 'justice' from prevailing. In other words, Equity is generally available only when a 'legal' remedy is insufficient or inadequate in some way.

### Case Law/Judicial Precedent

The Supreme Court of Brunei Darussalam is largely guided by the written Constitution and the Laws of Brunei in executing their responsibility of upholding the law in Brunei Darussalam. When a magistrate or judge applies or extend an established principle of law to new facts, or decides that the principle does not apply in a certain situation, he would turn to principles of law that that are found in case law or judicial precedent

Similar to other members in the family practicing English Legal System, Brunei Darussalam also practice the doctrine of stare decisis, where decisions of a superior courts are binding on

the subordinate courts. An appellate court is, however, bound by its own decisions, decisions of its predecessor and the decisions of courts of co-ordinated jurisdiction.

### Islamic Laws

In Islam, the main source of law is the Holy Qur'an then followed by the tradition of Prophets or Hadith as the second source of the Islamic Laws. Similarly, Islamic Laws in Brunei Darussalam are guided mainly by the principles in the Holy Qur'an and the Prophet's tradition.

Islamic Law in Brunei is still governed under the Religious Council and Kadis Courts Act (Chapter 77), an Act which consolidates the law relating to the Religious Council and the Kadis Court, the constitution and organisation of religious authorities and the regulation of religious affairs.

Apart from this Act, there are also other legislations enforced in Brunei Darussalam to govern the conduct of Muslims in this country.

Examples of the legislations are:

- *The Syariah Courts Act (Chapter 184)*, an Act which make specific provisions in respects of the establishment of Syariah Courts, the determination & confirmation of the new moon;
- *The Syariah Courts Evidence Order 2001*, an Order relating to the law of evidence for the Syariah Courts;
- *The (Islamic Family Law) Order 1999*, an Order that make certain provisions relating to Islamic family law in respect of marriage, divorce, maintenance, guardianship & other matters connected with the family;
- *The Islamic Adoption of Children Order, 2001*, an Order to make certain provisions on the law of adoption of children according to Islam;
- *The Halal Meat Act (Chapter 183)*, an Act which regulate the supply & importation of halal meat & related matters.

## **The Judiciary**

### **The Supreme Court**

The Supreme Court of Brunei Darussalam is the body wholly responsible for the administration of justice in civil law (as opposed to “*syariah law*”). The administration of justice is still mostly conducted through Civil Courts established by the British based on the English Legal System.

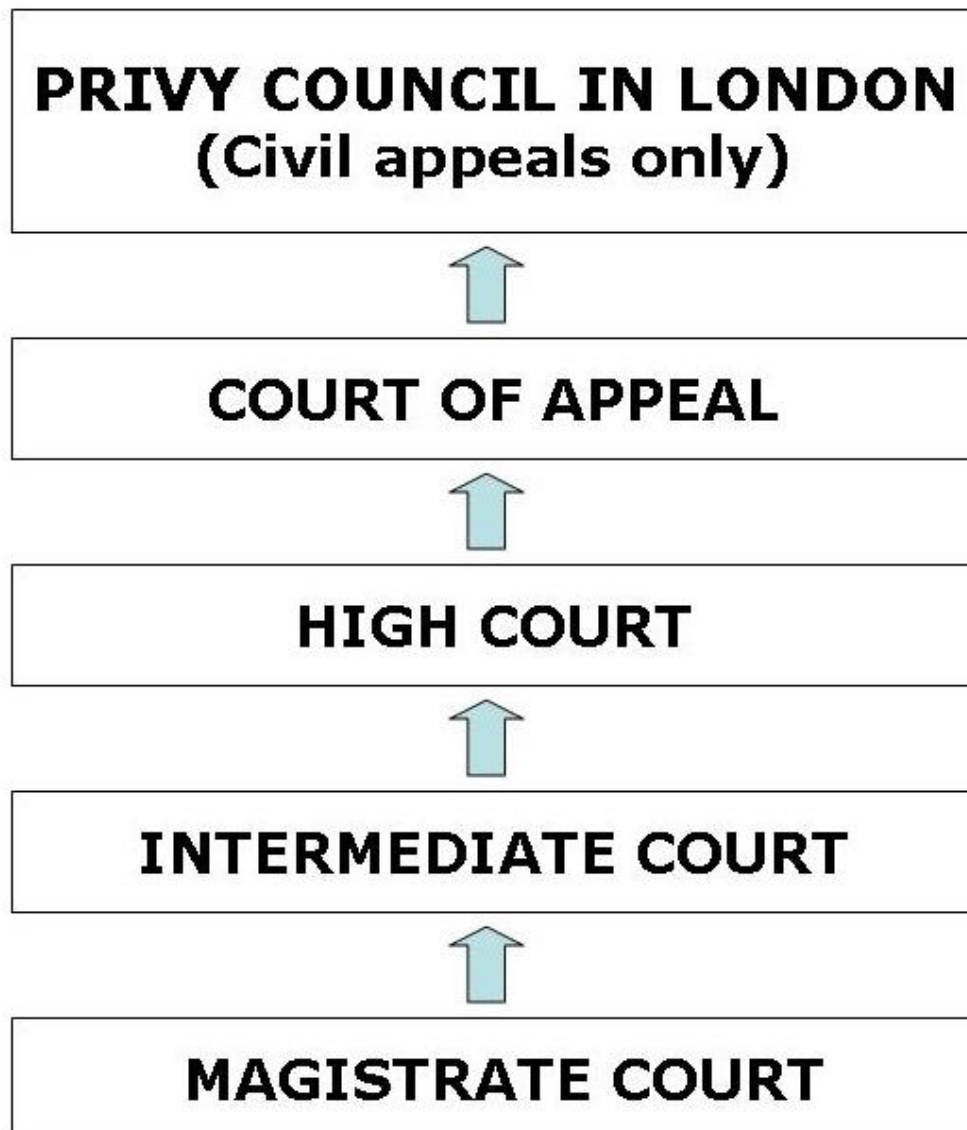
Unlike the British Resident System, the administration of the Brunei courts is now handled by locals and a majority of the judges presiding in our courts are locals. The head of administration for the Judiciary Department is the Chief Registrar whereas the entire judicial system is presided over and supervised by the Chief Justice.

The ‘civil’ court system is organised in a hierarchy. It has within its hierarchical structure, the Court of Appeal, High Court, Intermediate Courts and the Courts of Magistrates. The Court of Appeal is the highest court in Brunei. Cases are no longer referred to the Privy Council, but for civil cases it may still be done if both parties agree to it. Each type of courts can only hear cases within its jurisdictions<sup>17</sup>.

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<sup>17</sup> Chapter 7 of the Laws of Brunei define the type of criminal offences that can be heard under the Penal Code, Chapter 22 provide the types of cases that are heard by the courts. The Supreme Court Act, the Intermediate Court Act and the Subordinate Courts Act provide jurisdictions for civil cases.

# ORGANISATIONAL STRUCTURE OF COURTS IN BRUNEI DARUSSALAM



### **Court of Appeal**

The Court of Appeal judges are the President and two other appellate judges. The Civil jurisdiction of the Court of Appeal consists of appeals from a judgment or order of the High court in a civil cause or matter. The Criminal jurisdiction consists of appeals from the High Court.

### **Appeals**

Any civil appeals made from the Court of Appeal can only be conferred by His Majesty the Sultan to the Judicial Committee of Her Britannic Majesty's Privy Council. For criminal cases however, no such appeals from the Court can be further made.

### **High Court**

Unlike the Court of Appeal, the High Court at present consists of the Chief Justice along with two judges who are often referred to as Justices. The civil jurisdiction of the High Court consists of the original jurisdiction and authority similar to that held and exercised by the Chancery, Family and Queen's Bench Divisions of the High Court of England and shall also include any other jurisdiction, original or appellate as may be conferred upon it by any other written law.

The criminal jurisdiction of the High Court consists of such jurisdiction, original or appellate, as may be conferred upon it by any written law, which includes the Penal Code and the Criminal Procedure Code.

### **Intermediate Court**

The Intermediate Court is governed by the Intermediate Courts Act<sup>18</sup>. This Court is presided over by a Judge who sits alone.

The Intermediate Court's criminal jurisdiction runs concurrently with the High Court. Hence, it has all jurisdiction, powers, duties and authority as are vested, conferred and imposed on the High Court in the exercise of its original criminal jurisdiction. The Court however does not have jurisdiction in respect of any offence that is punishable with death or with imprisonment for life. Nor does it have jurisdiction in respect of any offence that imposes a period of imprisonment that is longer than 20 years.

The Intermediate Court exercises its original civil jurisdiction<sup>19</sup> in every action where the amount claimed or the value of the subject matter in dispute exceeds \$15,000 but does not exceed \$100,000.

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<sup>18</sup> *Chapter 162 of the Laws of Brunei*

<sup>19</sup> *Part V of the Intermediate Courts Act Chapter 162*

## Appeals

Civil appeals goes straight to the Court of Appeal as if it was an appeal from the High Court. However, there will be no right of appeal entertained if the parties to the action have agreed in writing that the judgment of the Court shall be final and conclusive between them.

Criminal appeals also go to the Court the Court of Appeal. The Court of Appeal can also review any sentencing that has been passed by the Intermediate Court on any person on provide an opinion on point of law has been referred to it.

## **Magistrates' Court**

The Magistrate Courts are governed by the Subordinate Courts Act<sup>20</sup>, in terms of its civil jurisdiction and by the Criminal Procedure Code<sup>21</sup> in the exercise of its criminal jurisdiction.

The Magistrate Court exercises its civil jurisdiction<sup>22</sup> over every civil proceeding where the amount claimed or the value of the subject matter in dispute does not exceed \$30,000. However, if the matter is heard before the Chief Magistrate, Chief Registrar, Deputy Chief Registrar, Senior Magistrate or the Senior Registrar this prescribed limit would be \$50,000.

The Magistrate's Court criminal jurisdiction is similar to the High Court's criminal jurisdiction.

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<sup>20</sup> *Chapter 6 of the Laws of Brunei*

<sup>21</sup> *Chapter 7 of the Laws of Brunei*

<sup>22</sup> *Section 17 of the Subordinate Courts Act Chapter 6*

## Appeal

Any appeal in a civil matter in the Magistrate Court goes to the High Court. As for a criminal matter, if a defendant, the complainant or the Public Prosecutor is not satisfied with any judgment, sentence, or order given by the Magistrate, he may appeal to the High Court against such judgment, sentence or order for any error in law or in fact, or on the ground that the sentence is either extensive or too inadequate.

## Syariah Court

The Kadi Court structure has been abolished and replaced by the Syariah Appeal Court, the Syariah High Court and the Syariah Subordinate court. Unlike the Kadi Court, These courts now have exclusive jurisdiction, powers, duties and authority as are conferred and imposed by the Syariah Courts Act (Chapter 184) to hear offences relating to Syariah, Islamic family laws and as well as by any other written law<sup>23</sup>.

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<sup>23</sup> Section 6(1) of the Syariah Courts Act Chapter 184

# **SYARIAH COURT STRUCTURE**

**SYARIAH APPEAL  
COURT**



**SYARIAH HIGH  
COURT**



**SYARIAH  
SUBORDINATE  
COURT**

### **Syariah Appeal Court**

Jurisdiction of the Syariah Appeal Court shall be to hear and determine any appeal against any decision made by the Syariah High Court in the exercise of its original jurisdiction. Whenever an appeal against a decision of the Syariah Subordinate Court has been determined by the Syariah High Court, the Syariah Appeal Court may, on application by any party, grant leave for any question of law in the public interest which has arisen in the course of the appeal, and where the decision of the Syariah High Court has affected the determination of the appeal, to be referred to the Syariah Appeal Court for its decision.

### **Syariah High Court**

The Syariah High Court has both criminal and civil jurisdiction. In its criminal jurisdiction it shall try any offence punishable under any written law which provides for syariah criminal offences, under any written law relating to Islamic family law or under any other written law which confers on its jurisdiction to try any offence, and may impose any punishment provided therein<sup>24</sup>.

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<sup>24</sup> Section 15(a) of the Syariah Courts Act Chapter 184

In its civil jurisdiction, the Syariah High Court shall hear and determine all actions and proceedings relating to –

- (i) betrothal, marriage, divorce or any matrimonial matter;
- (ii) any disposition of or claim to any property arising out of any matter set out in the above paragraph;
- (iii) maintenance of dependant, legitimacy or guardianship or custody of infants;
- (iv) division of or claim to *harta sepencarian*;
- (v) wills or gifts during *maradal-maut* of a deceased Muslim;
- (vi) gift, or settlement made without adequate monetary consideration or value by Muslim;
- (vii) *waqaf* or *naẓar*;
- (viii) division of an inheritance of property, testate or intestate;
- (ix) determination of persons entitled to part of the estate of a deceased Muslim or part of the property which such persons are respectively entitled to; or
- (x) other matters in respect of which jurisdiction is conferred by any written law<sup>25</sup>.

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<sup>25</sup> Section 15(b) of the Syariah Courts Act Chapter 184

### **Syariah Subordiante Court**

For Syariah Subordinate Court, their criminal jurisdiction are to try offence punishable under any written law which provides for syariah criminal offences, prescribing offences where the maximum punishment provided for does not exceed \$10,000 or imprisonment for a period not exceeding 7 years or both and may impose any punishment provided therefore<sup>26</sup>.

In their Civil jurisdiction, the Syariah Subordinate Courts shall hear and determine all actions and proceedings which the Syariah High Court is empowered to hear and determine, where the amount or value of the subject-matter in dispute does not exceed \$500,000 or is not capable of estimation in terms of money. However, this jurisdiction may, from time to time, be increased by His Majesty the Sultan and Yang Di-Pertuan on the recommendation the Chief Syar'ie Judge, by notifying it in the *Gazette*<sup>27</sup>.

As can be seen, we now have two distinct legal systems which exist in Brunei. The Kadi Court's jurisdiction in criminal and civil matters was far more limited in comparison with the Syariah Court. Furthermore, with the new structure and its jurisdiction revised, the Syariah Court will not be labeled as inferior as the Kadi Court in the past.

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<sup>26</sup> Section 16(1)(b) of the Syariah Courts Act Chapter 184

<sup>27</sup> Section 16(2) *Ibid*

## **Conclusion**

It is clear that throughout the years, the British had managed to establish a legal system in Brunei styled on their own legal system. Hence, to depart completely from the application of English laws and principles would be a very difficult task, considering that they are so entrenched in our legal system. However, Brunei legal system is slowly developing to put in place its own sets of laws and precedents. Even Syariah law has gained recognition as an important source of law in Brunei Darussalam. With the new Syariah Court structure and the coming into force of various Syariah legislations, Islamic law will eventually be a very prominent feature of the Brunei legal system.

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