

Sources of Syariah Law

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In general, Syariah law refers to a set of rules that deal with all aspects of human life. ♦ It starts from the law on cleanliness which include as to how to perform the ritual bath, law pertaining to specific obligations as in the pillars of Islam, law pertaining to transactions, law on personal matters such as marriage, divorce, distribution of estate, the legal aspects of crime and punishment, system of government and others. ♦

The purpose of Syariah law is to protect the five basic things; religion, life, blood lineage, dignity and property. ♦ For each of these, there are principles governing it. ♦ For example, the law governing marriage and divorce is regulated to protect lineage. ♦ In relation to that, the law also prohibits sexual relations outside marriage and the punishment for such offence is provided for under hadd (plural: hudud). ♦

The sources of Syariah law are divided into two; primary and secondary. ♦ Primary sources are the Quran and the Sunnah of the Prophet Muhammad that are fixed and not subject to change. ♦ Secondary sources comprise of ijma and qiyas where rules are derived from primary sources. ♦

Example: The taking of drugs is unlawful due to its harmful effects. ♦ The principle is derived from Quranic injunction that prohibits the taking of intoxicated drinks. ♦

In developing the law which is known as fiqh (Islamic jurisprudence), Muslim jurists have used several methods or sciences to derive the ruling (usul al fiqh). In matters where there is no direct text available to explain the ruling, the Muslim jurists have used ijtihad. ♦

Ijtihad is very important in developing Syariah law as the law itself must accommodate changes in society. ♦ Rules based on ijtihad are made through analogy, maslahah (public interest), istihsan (preference or equity), prevention of evils, custom of the people, and as long as it does not contradict the hukum syarak. ♦

Principles derived by the Muslim jurists are subject to changes and not binding except when those principles are achieved through consensus of the Muslim jurists (ijma). ♦

For example, the Quran, permits polygamy as a mechanism to control social problems in the Muslim community. Thus, Muslim jurists formulated restrictions through legislation on the basis of maslahah to ensure that a Muslim husband complies with the requirement of being fair to his wives. ♦ Meanwhile, the permissibility to donate ones organ/s for the purpose of organ transplant is formulated on the basis of necessity. ♦

Principles developed by Muslim jurists come from various schools of law or Mazhabs (School of Jurisprudence). ♦ Among them are Sunni and Shiah. Malaysian law only recognizes the Sunni Mazhab (Shafii, Maliki, Hanafi and Hanbali). ♦