



Recent Developments (2004-2009) in the Legal Systems of ALA Member Countries

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INTRODUCTION

The world is constantly changing so it is apt that laws consequentially change to adapt to new circumstances. At the same time we also need to ensure that existing laws considered obsolete or impractical are repealed or not be in place any longer. As lawyers and in turn, caretakers and implementers of the law, we are responsible to keep ourselves updated with these changes so as our advice and our work are accurately prepared to fit in the current situation.

It is no different in Brunei Darussalam's case as we too have experienced a number of notable developments in the years of 2004-2009 that have led to numerous amendments to the laws and also to the introduction of new laws in Brunei Darussalam. However, because the topic of the paper speaks of developments in the *legal system*, I shall restrict discussions in this paper only to developments that have affected the Brunei Legal System write-up that has been previously produced for the ASEAN Law Association e-book.

By way of introduction, the developments that I shall present on are the following:

- A. The rejuvenation of the Legislative Council
- B. The establishment of the Law Society
- C. The recognition of another legal qualification for legal practice in Brunei Darussalam;
- D. The establishment of Small Claims Tribunals;
- E. The establishment of a Juvenile Court;
- F. The addition of probation and community service to types of sentences available;
- G. The introduction of a register of criminals; and
- H. The new faculty of Law in Brunei Darussalam.

I shall discuss the developments of the above separately.



BACKGROUND

Before we start discussing the developments in details, perhaps it is helpful at this stage to offer a brief introduction to the legal system of Brunei Darussalam.

Brunei Darussalam follows a system similar to the English Common Law System that was first introduced in Brunei Darussalam in 1906. It cites its sources of law primarily from:

1. the Constitution, which sets out the governing structure and authorities of Brunei Darussalam along with their respective functions and responsibilities;
2. Statutes or legislative enactments including subsidiary legislation produced in “government gazette” form; and
3. Islamic or Syariah law in specific areas of the law such as those related to Islamic family law, Islamic adoption of children, halal meats (specially slaughtered meat in accordance with Islamic guidelines) and Islamic banking.

His Majesty the Sultan and Yang Di-Pertuan exercises supreme authority over Brunei Darussalam and he may appoint Ministers and Deputy Ministers to exercise that authority who will be responsible to His Majesty in the course of their duties.

The hierarchy of the courts in Brunei Darussalam is also modeled on the hierarchy of the Courts of the English Legal System which exists alongside the Syariah Court System. The civil law system has in place the Supreme Court (which consists of the Court of Appeal and the High Court), the Intermediate Court and the Courts of Magistrates (or Subordinates Courts) governing its civil law jurisdiction whilst the Syariah Courts consists of the Syariah Subordinates Courts, the Syariah High Court and the Syariah Appeal Court governing its syariah law jurisdiction.

High Court and Court of Appeal judges, Intermediate Court judges and Magistrates are appointed by His Majesty the Sultan. His Majesty the Sultan also, on the advice of the President of the Majlis Ugama Islam, appoints the Chief Syari'e Judge, Syariah Appeal Court Judges, Syariah High Court Judges and Syariah Subordinate Courts Judges¹.

To qualify to practice in Brunei Darussalam, one must meet the qualification requirements set out in the Legal Profession Act which recognizes qualifications only from certain countries and jurisdictions. Ultimately, one must possess a “practicing certificate” which

¹ Legal System of Brunei E-Book



one applies for from the Chief Justice before he or she is admitted to practice and have the exclusive right to appeal and plead in all the courts of justice in Brunei Darussalam².

LATEST DEVELOPMENTS

A. The rejuvenation of the Legislative Council

The re-opening of the State Legislative Council in 2004 after twenty one years in absence was an important step in defining Brunei Darussalam's legislative arm and to introduce a more formal form of consultation amongst relevant citizens³.

The Legislative Council was temporarily suspended in 1983 but was recently reestablished at its first official meeting on 25th September 2004. It consists of members from both the government and the non-government side. At its first meeting in 2004, there were six ex-officio members from the government side (which include His Majesty the Sultan and Yang Di-Pertuan) and five official members from the senior ranks of the civil service. From the non-government side, there were ten appointed members coming from different key areas of the country namely business, religion and civil society. The council further increased its members in 2005 to a total of 29 members (who are all appointed) and the plan for the Council is that it should eventually comprise a maximum of 45 members, with 15 of those elected⁴. A main speaker and clerk to the Legislative Council are also present at the meetings. Some of the members are holders of traditional offices in their personal capacity such as the "cheteria" and aristocratic hierarchies. These are a group of traditional palace-relevant office holders who makes up the upper level of nobility⁵. Issues that have been discussed in previous meetings touched on budget allocations for the year ahead, improved community infrastructure and facilities, proper rehabilitation of drug offenders, support for local businesses, increased construction of schools and the improvement of housing development schemes.

The law making process by the Legislative Council is prescribed under Part VII of the Constitution. Basically, any member of the Legislative Council may:

- a) introduce a new bill;
- b) propose a motion for the Council to debate on; or
- c) present any petition to the Council.

² ibid

³ Page 13, The report. Brunei Darussalam By Oxford Business Group

⁴ ibid

⁵ The Brunei Times article dated Tuesday 4th March 2008 (http://www.bt.com.bn/en/home_news/2008/03/04/a_primer_on_the_legislative_council_of_Brunei)



The bill, motion or petition will then be debated on and disposed of in accordance with the Standing Orders of the Legislative Council.

Certain matters are generally excluded from being discussed by the Legislative Council, unless His Majesty the Sultan approves otherwise. These include matters relating to the issue of bank notes, the establishment of any bank association, amendment of the constitution in relation to both those matters. Matters that would also be disqualified are where the issues are inconsistent with any obligations imposed upon His Majesty under any international treaty or agreement with another power of state. Other disqualified matters include those having the effect of lowering or adversely affecting the rights, positions, discretions, powers, privileges, sovereignty or prerogatives of His Majesty, the standing or prominence of Brunei Darussalam's national philosophy of Malay Islamic Monarchy and the finances or currency of Brunei Darussalam⁶.

Every bill that is going to be introduced needs to be published in the gazette and within 7 days of the publication of the bill in a gazette, the bill shall then be laid before the Legislative Council⁷.

All questions to be decided by the Legislative Council shall be concluded by way of majority vote taken from members that are present and voting. Once a bill has been debated on, the Legislative Council will then make a decision whether or not to pass such bill. If the Council rejects what is called a "negative resolution", the Speaker of the Council will then have to submit a report to His Majesty the Sultan incorporating a summary of the debate and the reasons why the Council reached such a resolution. His Majesty may still declare the Bill to have effect, notwithstanding the negative resolution and he may order it to have effect either as an Act in the form in which it was introduced or to include any amendments that he may think fit to include⁸.

When the Legislative Council decides to pass the Bill, such Bill will only become law if His Majesty the Sultan assents to it, signs it and thereafter seals the Bill with the official State Seal. Again, the bill might take effect as an Act either in its original form as to how it was introduced or His Majesty the Sultan may still make amendments to it as he thinks fit. Such law once assented, signed and sealed by His Majesty shall come into operation on the date on which such assent shall be given⁹.

⁶ Article 42, ibid

⁷ Article 41, ibid

⁸ Article 43, ibid

⁹ Article 45



All the laws made through the Legislative Council shall be styled as “Acts” which will always have the enacting words as follows: “Be it enacted by His Majesty the Sultan and Yang Di-Pertuan with the advice and consent of the Legislative Council as follows....”¹⁰

His Majesty the Sultan also has reserved powers over any bills that was not or has not yet been passed by the Legislative Council if in his opinion, the passing or expedited passing of the Bill is in the interests of public order, good faith and good government. In such cases, he can declare that bill/motion/petition /business to have effect as if it had been passed or carried by that Council even though it has not been done so¹¹.

When the council was inactive, all laws were passed in the form of emergency orders by His Majesty in accordance with article 83(3) of the Constitution¹². The normal procedure of the law making process in the form of emergency orders would be initiated by a particular Ministry or Government Department which would either propose or prepare the draft legislation and would then pass it to the Attorney General’s Chambers for consideration. Where a Ministry or Governmental Department merely propose the drafting of such legislation, the Attorney General’s Chambers will then prepare the draft based on substantive points the former provides. Once the draft is ready to be adopted, it will be presented to His Majesty for assent. The legislation that His Majesty approves of will be passed in an Emergency Order form and will be published in the *Government Gazette*.

Every Order made under Article 83(3) however are deemed to have been validly made, to be fully effectual and to have had full force, from the date on which such Proclamation or Order was declared or made and they are deemed to have been passed by the Legislative Council¹³.

B. The establishment of the Law Society

The Law Society was established in 2003 by virtue of the Legal Profession (Law Society of Brunei Darussalam) Order and the main purposes behind the Society was *inter alia*¹⁴ „

- a. to maintain and improve the standards of professional conduct and learning within the legal profession;
- b. to facilitate the acquisition of legal knowledge by members of the legal profession;
- c. to assist the Government and the Courts in all matters relating to the law;

¹⁰ Article 46

¹¹ Article 47, The Constitution

¹² This type of law making process is still carried out alongside the work of the Legislative Council

¹³ Article 83A, the Constitution

¹⁴ Section 4, Legal Profession (Law Society of Brunei Darussalam) Order 2003



- d. to represent, protect and assist members of the legal profession in Brunei;
- e. to establish a library housing law books and reports;
- f. to protect and assist the public of Brunei Darussalam in all matters relating to the law;
- g. to provide for or assist to promote a scheme where a needy person on a non-capital case can be represented by an advocate and solicitor,
- h. to grant prizes, scholarships to help subsidize education in law institutions;
- i. to grant financial assistance to any associations, institute, board or society in Brunei in the interests of the profession of law or law students;
- j. to afford financial assistance to members or former members and to their wives, widows, children and other dependants who are in need of such assistance;
- k. to promote good relations amongst the members and other persons concerned in the administration of law and justice in Brunei Darussalam; and
- l. to establish and maintain good relations with professional bodies of the legal profession in other countries and to participate in the activities of any international association and become member of it.

The Society comprises of practitioner and non-practitioner members but with only the former given the eligibility to attend and vote at any general meeting of the Society and only the practitioner members of the Society who are Brunei Darussalam citizens are eligible to be elected to the Council. The Council is responsible for the proper management of the Society's affairs and for the proper performances of its purposes and powers under the law. It consists of 3 statutory members that include the immediate past president of the Society, an advocate and solicitor nominated by the Attorney General and an advocate and solicitor appointed by the Council after it is constituted and 10 elected members consisting of 4 practitioner members who have been practicing not less than 10 years before the day of his nomination for election to the Council, 3 practitioner members who have been practicing not less than 5 years before his nomination and 3 practitioner members who have been practicing less than 5 years before his nomination. Statutory members appointed by the Attorney General and the Council and all elected members shall hold their offices as a member for 2 years. There shall also be officers for the Council who consists of a President, Vice-President, secretary and treasurer. They must be Brunei Darussalam citizens and are elected by members and members elect of the Council.



The Council is mainly responsible for the management of the Society and its funds. Its other powers include ¹⁵, making rules that are not already expressed by the Chief Justice, answering questions affecting the practice and etiquette of the profession, take cognizance of anything affecting the Society or the professional conduct of its members and to bring before any General Meeting, any material to the Society that would be in the profession's interests and make recommendations in relation to it. The Council may also propose legislation or report on any current legislation that has been submitted to them, create prizes and opportunity for scholarships for law students, communicate with other similar bodies and members of the profession in other places or countries to enable exchange of information that may be beneficial to the members of the Society. The full list of powers can be found under section 27 of the Law Society Order.

One of the matters looked into by the Law Society is they are presently in discussions with the Attorney General's Chambers, the Judiciary and the trade department of the Ministry of Foreign Affairs and Trade about modalities on any future plans to liberalise the legal services sector of Brunei Darussalam.

C. Recognition of additional qualification to legal practice in Brunei Darussalam

As briefly mentioned above, one must have a practicing certificate to be able to practice law in Brunei Darussalam and to obtain that, one of the conditions to satisfy is to possess any one legal qualification requirement from those stated under Section 3 of the Legal Profession Act, as follows;

1. He is a barrister at law in England, Northern Ireland or a member of the Faculty of Advocates of Scotland; or
2. He is a solicitor in England, Northern Ireland or a Writer to the Signet, law agent or solicitor in Scotland; or
3. He has been in active practice as an advocate and solicitor in Singapore or in any part of Malaysia; or
4. He possesses the Certificate of Legal Practice issued by the Qualifying Board pursuant to section 5 of the Legal Profession Act 1976 of Malaysia; or
5. He possesses a degree in law conferred by the Universiti Islam Antarabangsa.

There have been two updates and thus two new qualifications are now recognized and they are:

¹⁵ Section 25, Law Society Order 2003



1. He has been in active practice as an advocate and solicitor in **Australia**; and
2. He possesses a degree in law conferred by the **Universiti Kebangsaan Malaysia**¹⁶.

Therefore, any practitioner who is qualified in Australia is now eligible to practise in Brunei Darussalam. Since this development, we have had a number of students pursue their professional legal education in Australia as many before this received their legal qualifications from United Kingdom and Malaysia.

D. The establishment of Small Claims Tribunals

The Small Claims Tribunals Order was gazetted in 2006 but has yet to come into force. It is to provide for the establishment of Small Claims Tribunals that would have limited civil jurisdiction¹⁷ in cases related to claims and disputes arising from contract, sale of goods, provision of services, claims in tort in respect of damage caused to any property.

The tribunal shall consist of adjudicators and deputy adjudicators and all proceedings in the tribunal shall be heard and determined by either of them who will be sitting alone. The adjudicator and deputy adjudicator are appointed by His Majesty the Sultan and Yang Di-Pertuan on the recommendation of the Chief Justice and he must be a qualified person under the Legal Profession Act. Each adjudicator shall hold office for such term as pay be specified in the instrument of his appointment and this appointment may at any time be revoked by His Majesty the Sultan and Yang Di-Pertuan on the recommendation of the Chief Justice.

Jurisdiction

The Order confers upon the tribunal jurisdiction to hear and determine cases where the claim relates to a dispute arising from any contract for the sale of goods or the provisions of services and also any claim in tort in respect of damage caused to property. However, its jurisdiction shall not extend to claims in respect of damage caused to any property due to a motor vehicle accident and also in cases which the subordinate courts would have no jurisdiction to hear and determine.

Once a claim has been filed with the tribunal, the claim cannot be brought before any other court except where the proceedings before that court were commenced before the claim was filed with the tribunal or where the claim before the tribunal has been withdrawn or abandoned. Nonetheless, the tribunal can transfer the proceedings to another court at any

¹⁶ Legal Profession (Alternative Qualifications) (Amendment) Rules 2007

¹⁷ Small Claims Tribunal Order 2006



stage of proceedings.

The primary function of a tribunal is to attempt and assist all parties to agree into a settlement¹⁸. Where an agreed settlement has been reached, a tribunal may make one or more orders it is empowered to make which includes¹⁹:

1. Order a party to the proceedings to pay money to another party;
2. A work order against any party to the proceedings;
3. Order requiring a party to the proceedings to do anything referred to in the work order in (2) above, within such time as may be specified in the order and he would be required to pay money to a person specified in the order if he fails to comply with the order;
4. Order dismissing the claim to which proceedings relate; and
5. Ancillary orders as may be necessary to give effect to any order made by the tribunal. If the tribunal is of the view that a settlement cannot be reached within a reasonable time, then it shall proceed to determine the dispute²⁰.

Appeals

Except in cases where a party has filed an application for leave to appeal and does not agree to withdraw the application, an adjudicator may, within 14 days from the date an order was made or given by him, review the order and on such review may re-open and re-hear the whole claim or in part and may also call or hear fresh evidence. He may then confirm, vary or reverse his previous award or order²¹.

Appeals against an order made by the tribunal may also be made to the High Court on any ground involving a question of law or on the ground that the claim was outside the jurisdiction of the tribunal²². The High Court may allow or dismiss the appeal or remit the matter to the tribunal together with any directions it deems fit which may include a direction to the tribunal to have a new hearing²³. The High Court may also draw any inference of fact and make orders on costs and expenses as it thinks fit. The High Court may now however reverse or vary any determination made by the tribunal on questions of fact and it

¹⁸ Section 12(1), *ibid*

¹⁹ Section 38, *ibid*

²⁰ Section 12(3), *ibid*

²¹ Section 42, *ibid*

²² Section 43, *ibid*

²³ Section 44(1), *ibid*



also cannot receive further evidence²⁴. Any decision made by the High Court shall be considered final and shall not be subject to any further appeal²⁵.

E. The establishment of a Juvenile Court

Introduction

The Children and Young Persons Order 2006 (also not yet in force) establishes the institution of a juvenile court which shall be presided over by the Magistrate²⁶.

The magistrate shall sit with two advisers who are selected from a panel of advisors nominated by the Chief Justice and upon receiving a written report on the child regarding his background, family history, school record or any other relevant matters, will determine how to deal with a child or young person. He may however sit with one adviser or he may sit alone if it appears that the Court cannot without adjournment be fully constituted.

Jurisdiction

All children or young persons shall be charged with or tried summarily for any offence only by a Juvenile Court except where the child or young person is charged with any offence triable only by the High Court. However, if the Public Prosecutor applies to a Juvenile Court for it to try such offence and the legal representative of that child or young person agrees to the offence being tried by a Juvenile Court, then the child or young person who is to be tried in the High Court can instead be tried by the Juvenile Court²⁷. In joint charges made against a child or young person together with a person who is 18 years or over, the charge shall be heard by a court of appropriate jurisdiction other than a Juvenile Court. A Juvenile Court's jurisdiction is to try all offences which would be triable only by a Magistrate Court, the Intermediate Court or the High Court.

E. The introduction of probation and community service

The Offenders (Probation and Community Service) Order was gazetted in 2006 and the Offenders (Probation and Community Service) Regulations was gazetted in 2007 and are also waiting to come into force.

Probation Orders

²⁴ Section 44(2), *ibid*

²⁵ Section 44(3), *ibid*

²⁶ Section 9(1), Children and Young Persons Order 2006

²⁷ Section 10, *ibid*



Where an offender is convicted of an offence that does not carry a sentence which is fixed by law²⁸, and the court thinks that having regard to the circumstances of the case including the nature of the offence and the character of the offender, it may instead of sentencing him, make a probation order requiring him to be placed under the supervision of a probation officer or a volunteer probation officer for a probation period of not less than 6 months and not more than 3 years.

A probation order may in addition require the offender to comply with such requirements as the court considers necessary for securing the good conduct of the probationer and for preventing him from repeating the offence²⁹ such as requirements relating to the probationer's residence such as requiring him to reside in an approved institution, the name of the approved institution and how long he has to reside there³⁰. All of these should be specified in the probation order.

A chief probation officer along with other probation officers are appointed by the minister and a volunteer probation officer can also be appointed so long as they are not a police officer or a prison officer³¹.

The minister may also appoint a probation committee or committees who shall review the work of probation officers along with any other duties as may be prescribed by regulations³².

A copy of the probation order shall be given to the Chief Probation Officer who shall give a copy of it to the probationer, probation officer or volunteer probation officer, the person in charge any institution in which the probationer was required to reside³³.

Upon an application made by the probationer or the probation officer or volunteer probation officer, the court may discharge the probation order or he may amend the order by cancelling any of its requirements or by inserting any other requirements³⁴.

Once a court discharges or amends a probation order, it shall forthwith give copies of the discharging or amending order to the Chief Probation Officer who shall give a copy there of to the probationer, the probation officer or volunteer probation officer and the person in charge of any institution in which the probationer was required to reside by original probation order.

²⁸ Section 5(1), Offenders (Probation and Community Service) Order 2006

²⁹ Section 5(2), *ibid*

³⁰ Section 5(4), *ibid*

³¹ Section 3, *ibid*

³² Section 4, *ibid*

³³ Section 5(7), *ibid*

³⁴ Section 6(1) and (2), *ibid*



If a probationer breached any requirements of the probation order, the court will issue a summons requiring him to appear³⁵. Then the court may, whether or not the probation order continues, impose on the probationer a fine not exceeding \$1,000 or he may, if the probation order was made by Magistrate, deal with the probationer for the offence in respect of which the probation order was made as if the probationer has just been convicted for that offence. If the order was made by the High Court or an Intermediate Court, the court may commit him to custody or release him on bail until he appears before that court that made the probation order. In that case, the Magistrate court shall send a certificate signed by him to the High Court or the Intermediate Court certifying that the probationer has failed to comply with the requirements of his probation order. The High court or the Intermediate Court may then deal with the probationer as if he had just been convicted of the offence for which the probation order was originally made in respect for.

A court can also make an order of conditional discharge discharging the offender but subject to the condition that he does not commit any offence during such period of conditional discharge³⁶.

Community Service Orders

If a probationer was convicted for an offence that carried a sentence of imprisonment, the court may order that he, in addition to the probation order, make the offender perform unpaid work under a community service order³⁷. The number of hours the offender is required to work shall be specified in the order but it shall not be less than 40 hours and not more than 240 hours³⁸.

With respect to the community service order, a probationer is required to³⁹:

1. Forthwith report to the probation officer or volunteer probation officer;
2. Notify him of any change of address;
3. Perform the work for certain number of hours as specified in the order at such times instructed by the probation officer or volunteer probation officer; and
4. Perform the work in a satisfactory manner.

³⁵ Section 7(1), *ibid*

³⁶ Section 8(1), *ibid*

³⁷ Section 13(1), *ibid*

³⁸ Section 13(2), *ibid*

³⁹ Section 14(1), *ibid*



Any instructions with regards to time as instructed by the probation officer or volunteer probation officer shall not conflict with the probationer's religious beliefs and also shall try and not interfere with work times or school times whichever is the relevant case⁴⁰.

Similar to any breaches of a probation order, a probationer who failed to comply with a community service order may be summoned to appear before the court or the court may issue a warrant for his arrest⁴¹. If the court feels that there was no reasonable excuse to such breach, then it may impose on him a fine not exceeding \$1000 (with or without the maintenance of the community service order) or revoke the order and deal with him for the offence in respect of which the order was made in any manner which he could have been dealt with for the offence by the court which made the order.

F. The introduction of a register of criminals

The Criminal Registrations Order came into force in 2008. It is an order to provide for the registration of criminals. The Commission of Police as the Registrar of Criminals shall keep a register of persons convicted within Brunei Darussalam and persons ordered to be banished, expelled or deported from Brunei Darussalam which will record their registrable particulars such as details of conviction, sentence, banishment, expulsion or deportation, any name, description, photograph or finger impression of, or any document relating to any convicted, sentenced, banished, expelled or deported person. Particulars of any outstanding offence should also be considered to be recorded for the purpose of determining and passing sentence. The Registrar may also maintain a DNA database which will store all DNA information that was derived from a body sample taken under this Order.

The Registrar has discretionary powers to not register any person who has been convicted of an offence where the sentence upon his conviction was not imprisonment and was only a fine not exceeding \$1,000 and also providing he has not been previously registered as a criminal.

G. The introduction of a new faculty of law in Brunei Darussalam

Brunei Darussalam now has a local faculty of law as offered by the newly established Universiti Islam Sultan Sharif Ali (UNISSA) which at its second intake for the 2008/2009 academic session introduced the Bachelor of Laws (LL.B) program under the Faculty of Shariah and Law. The program is designed to introduce an integrated legal studies with

⁴⁰ Section 14(4), *ibid*

⁴¹ Section 15(1), *ibid*



the aim of training and preparing students for the legal profession. Courses incorporate both laws which are the English common law as well as *shariah*.

CONCLUSION

It is an ongoing effort for the Attorney General's Chambers and all other relevant stakeholders to keep abreast with latest developments of the law. We also try and assist other government agencies by advising on what laws that need to be changed and at the same time expect a readiness in their part on policy so they tally with the law and also with the infrastructure and availability of resources. Such inevitable reasons are probably causes that have delayed the implementation of the 3 orders still waiting to be in force though the Children and Young Persons Order is expected to come into force soon. As you can see or will see, this paper overlaps with some of the papers by the paperwriters of Brunei Darussalam, namely the papers on judicial reform and legal education. Hopefully we will be able to show Brunei Darussalam's efforts to keep up with fast changing world whilst at the same time balancing those obligations and commitments with our own needs and availability of resources. We shall continue to do so and strive to amend laws whenever necessary. We will also keep ALA updated by forwarding any amendments to the E-Book.

Thank you.