

# LEGAL EDUCATION IN ASEAN IN THE 21<sup>ST</sup> CENTURY : BRUNEI PERSPECTIVE

NABIL DARAINA BADARUDDIN

Deputy Senior Counsel, Attorney General's Chambers  
Brunei Darussalam

## INTRODUCTION

Three years ago at the 8<sup>th</sup> ASEAN Law Association General Assembly held in Singapore, I had both the honour and privilege to address and present a paper<sup>1</sup> in the Workshop on “Challenges to Legal Education in a Changing Landscape”. The paper was intended to provide readers with a brief historical background leading to the present Brunei legal system, the *Syariah* legal education, in particular, the post-graduate Diploma course in *Syariah* Law and Islamic Legal Practice<sup>2</sup>.

It has been some 6 years since the inception of the Diploma course. Up till the recent university convocation<sup>3</sup>, 85 recipients have been awarded with the Diploma. It is evident that the Diploma course will remain to be relevant to academics as well as to practitioners alike. Recognition of the Diploma is further boosted as it has since become

---

<sup>1</sup> The Eighth ASEAN Law Association General Assembly 2003 Singapore, Workshop III: “Challenges to Legal Education in a Changing Landscape” at pages 93 - 99, Tweddle Litho of Singapore Pte Ltd, 2003

<sup>2</sup> being offered at the Sultan Omar Ali Saifuddien Institute of Islamic Studies, University of Brunei Darussalam.

<sup>3</sup> 7<sup>th</sup> September 2006

one of the requirements<sup>4</sup> for advocates and solicitors of the civil law Courts to practice as a *syar'ie* lawyer in the *Syariah* Courts of Brunei Darussalam.

Apart from the abovementioned, the fact that Brunei Darussalam has no law school to provide formal education or an academy of law to formally train would-be practitioners in the civil law courts makes the task of formulating this paper either easier or probably tougher, depending on how one looks at it! Nonetheless, in this (also brief) paper, it is hoped that notwithstanding the apparent absence, Brunei Darussalam may contribute at this Workshop with our ASEAN neighbours in sharing its perspectives on the domestic position, and certain issues and challenges that lie ahead both nationally and regionally in accordance with the theme of this Workshop.

## RECENT DEVELOPMENTS

### 1. A Second University?

His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam called<sup>5</sup> for “a full-fledged Islamic University to be set up in the Sultanate that could supplement current and future needs” of the nation. With the imminent establishment of a second university<sup>6</sup> in Brunei, it will not come as a surprise to see more *Syariah* legal courses on offer. Specific details of such courses and programmes to be offered will be made available once the full details emerge in due course.

---

<sup>4</sup> Section 10, *Syariah Courts' (Syar'ie Lawyers) Rules, 2002*

<sup>5</sup> Source: <http://www.brudirect.com/DailyInfo/News/Archive/Sept05/070905/nite01.htm>

<sup>6</sup> During the 17<sup>th</sup> Convocation Ceremony of The University of Brunei Darussalam held on 6 September 2005, His Majesty stated in his Titah of the existing basis to set up an Islamic University in Brunei Darussalam. His Majesty The Sultan and Yang Di-Pertuan had earlier hinted about the establishment of another university in a Titah delivered during the University's 16<sup>th</sup> Convocation Ceremony held on 18 September 2004.

## 2. Centre for Islamic Banking and Finance

Another more recent academic development in Brunei Darussalam is the establishment of a Centre for Islamic Banking, Finance and Management [CIBFM] under the umbrella of the University of Brunei Darussalam. The Centre will play a supportive key role in the development of Islamic banking, finance and management. The Government of Brunei Darussalam has, in the last two decades, placed great emphasis on the banking industry, in particular, the Islamic banking industry, as it is also one of the key sectors identified by the Brunei Economic Development Board in diversifying the Sultanate's economy. Over the years, more and more Islamic banking products have been marketed. One recent product is *Sukuk Al-Ijarah*. Generally an alternative to conventional bonds, *Sukuk Al-Ijarah* is an Islamic bond as the issuance is backed by the buying, selling and leasing of properties where the structure is endorsed by the appropriate *Syariah* experts as fully compliant to all the requirements of Islamic law. The main distinction between *Sukuk Al-Ijarah* and conventional bond is that *Sukuk Al-Ijarah* does not involve the payment of fixed interest rates.

To complement these developments, CIBFM has recently inaugurated a Masters in Islamic Banking and Finance [MIBF] programme<sup>7</sup> which commenced in August 2006. The MIBF is designed to cater to the Islamic banking needs in particular and the needs of the banking industry, in general. The primary objective of the MIBF is to provide students with a sound understanding of the concepts and practices of Islamic banking and finance, both locally and globally. The *Syariah* principles related to the area of finance and banking will be explored in order to allow analysis of the Islamic aspects in comparison with conventional banking, investment and finance products.

---

<sup>7</sup> Commencing August 2006, for academic year 2006/2007. The programme is offered on a full-time (3 semesters) or part-time (4 semesters) basis by coursework (50%) and examinations (50%) comprising of a total of 42 units. Source: Centre of Islamic Banking, Finance and Management - Postgraduate Handbook 2006/2007.

Lectures and tutorials will be conducted in English with text references and materials in Malay, English and the Arabic languages. The core subjects are as follows:

1. Islamic Economic and Finance
2. Islamic Banking : Theory and Practice
3. Accounting for Islamic Banking
4. Business Research Methods
5. Islamic Law of Transaction
6. Islamic Financial Planning
7. Islamic Investment and Risk Management
8. Regulation and Supervision of Islamic Financial Institutions
9. Case Study<sup>8</sup>
10. An Optional Subject<sup>9</sup>

Inevitably, as seen above, a student of the MIBF programme is obliged to undertake “Islamic Law of Transaction” as one of the core subjects. A comprehensive understanding of the rudiments of Islamic law and jurisprudence in the area of civil transactions, or *Fiqh al-Muamalat*, is deemed essential for a sound basis in the examination of the theoretical as well as the practical application of the *Syariah* concepts. The study of theory of contract in Islamic law will encompass the topics of fair dealing and the Islamic stance on *riba* (interest), *gharar* (uncertainty) and *maysir* (chance and gambling). Further topics on this subject include, among others, the scheme to nominate contracts, theoretical and applied *muamalat*, application of *muamalat* in Islamic finance and the *Syariah* framework in Islamic finance (including banking, insurance, capital market and money market).

---

<sup>8</sup> On a topic to be approved by the Assessment Board, and the length of the report must be not less than 10,000 and not exceeding 15,000 words.

<sup>9</sup> From a list of 9 selected subjects from the Faculty of Business, Economic and Policy Studies, UBD

## **A FACULTY OF LAW FOR BRUNEI?**

While *Syariah* legal education at the tertiary level in Brunei Darussalam had been in place and improvising programmes to cater to the changing needs, it will be some more years before a proper Faculty of Law is established to offer an LL.B undergraduate course locally for the first time. The number of students from Brunei reading law abroad have always steadily increased over the decades, and the costs of education especially in the United Kingdom (where a majority of Bruneians read law) have multiplied tremendously. The overall financial costs in completing legal education of these students abroad are undoubtedly staggering.

As a result, only a selected few are privileged with Government scholarships from the authorities. While some fortunate ones are supported by “MAFA” (an acronym for “mother-father” or parental scholarship!), a majority of prospective law undergraduates will eventually be forced to pursue other non-law courses at the local university or higher learning institutes as a result. Thus, if such a programme is to be made available locally, it is foreseeable that many more student applicants will be able to pursue a law degree. With a higher turnover of law graduates, it will not only be cost effective in the long-term but such law subjects may also be more relevant in the context of the Brunei legal system. It may even be the case that a Faculty of Law in Brunei one day may eventually attract prospective applicants from neighbouring ASEAN countries. A Faculty of Law under the umbrella of the University of Brunei Darussalam will surely require immense efforts from all those concerned to lure the academics from established institutions abroad and provide the necessary logistical support to realise the same.

## **THE INTERNET**

As we approach the second half of the first decade in the 21<sup>st</sup> century, it is undeniable that in this global era of mass info communication our lives have increasingly become dependent on the technological advancements especially the internet for the

availability of information on what is often referred to “information superhighway”. The internet has become the domain of many worldwide websites with abundant information and a powerful source of research.

Information which would otherwise only be exclusively available from the lectures and libraries of law schools a decade ago are now accessible via the internet to the general public irregardless of geographical location. Thus, for example, an individual with the means to access the internet may easily surf the web pages on-line for information in the field of medical law and be able to access and learn information on the same in a relatively short period of time as opposed to studying the same subject in-attendance at a law school. Such an individual may have no formal training in law but may in fact learn more or become more practical in approach than his “learned” brother who spent time to read law at a law school! Surely, such an undesirable eventuality will spell doom and gloom to the objectives of any higher institute of education, law institution included.

While computer technology and the internet have changed the perspectives of many and necessitated others to evaluate their positions, legal education to the community in general must be enhanced continuously so that the relevance, quality and overall experience of legal education can produce, as it should, lawyers of the highest calibre which the society needs. To this end, we have seen formal training programmes for lawyers-to-be and re-training programmes for existing practitioners are well underway in many jurisdictions around the world. The standard of legal education must continue to be improved in order to uphold bar admission and practice standards. Not simply anyone who can show "sound knowledge" or possess “good character" shall be permitted to practice law, regardless of qualification attainment in the field. That is why Bar exams are understandably stringent and must never become perfunctory.

## CONCLUSION

In conclusion, civil legal education in Brunei Darussalam can be best described as desired but absent for now. *Syariah* legal education is inseparable with *Syariah* education simply because *Syariah* principles are more than law, not only covering the total way of life that include both faith and practices, but also all personal behaviour, legal and social transactions<sup>10</sup>. With the advent of the internet, efforts to uphold the standard of legal education in the 21<sup>st</sup> century must continuously be lauded so that it shall remain relevant, cater and serve the changing needs of society and times.

---

<sup>10</sup> Sudin Haron, *Islamic Banking Rules and Regulations*, Kuala Lumpur, Pelanduk Publications (M) Sdn Bhd, 1997