

CHAPTER 3 – GOVERNMENT AND THE STATE

The Executive

As stated under section 4 of the Constitution, the supreme executive authority of Brunei Darussalam is vested in and shall be exercised by His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam who is also the Prime Minister of Brunei Darussalam. Nevertheless, His Majesty the Sultan may still appoint Ministers or Deputy Ministers to exercise that executive authority whilst solely being responsible to him in the course of their duties. These appointed ministers shall also assist and advise His Majesty the Sultan in the event His Majesty discharges his executive authority.

The Legislative Council

Under the Constitution, any member of the Legislative Council may introduce any bill and a bill will only become law when His Majesty the Sultan has assented, signed and sealed the bill with the Seal of the State.

The Legislative Council was temporarily suspended in 1983 but was recently re-established at its first official meeting in September 2004. During the period where the Council was inactive, laws were passed in the form of emergency orders by His Majesty in accordance with article 83(3) of the Constitution. The normal procedure of the law making process during this period would be initiated by a particular Ministry or Government Department who would either propose or prepare the draft legislation and would then pass it to the Attorney General's Chambers to give legal advice on. 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 his approval. The draft 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 Council.¹

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

- (i) introduce a new bill;
- (ii) propose a motion for the Council to debate on; or
- (iii) present any petition to the Council.

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

¹ Article 83A

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 Council.²

There are certain matters however that are generally excluded from being discussed by the Legislative Council, unless His Majesty the Sultan approves otherwise, and 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 that is Malay Islamic Monarchy and the finances or currency of Brunei Darussalam.³

All questions proposed to the Legislative Council to decide upon shall be concluded by way of majority vote taken from the 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 it. If the Council rejects it, which 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. Nevertheless, 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 include.⁴

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 given.⁵

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."⁶

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

² Article 41, the Constitution

³ Article 42

⁴ Article 43

⁵ Article 45

⁶ Article 46

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 so.⁷

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”) and strictly speaking has within its hierarchical structure, the Court of Appeal and the High Court. Within the same building of the Supreme Court, we can also find the Intermediate Courts and the Courts of Magistrates (also known as the Subordinates Courts).

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.

Introduction

The Supreme Court is governed by the Supreme Court Act⁸ along with its Rules annexed to the Act. The Rules of the Supreme Court regulates the practice and procedure of the High Court and the Court of Appeal. The Supreme Court consists of the President of the Court of Appeal, the Chief Justice, the Judges and the Judicial Commissioners of the Supreme Court. The jurisdiction of the Supreme Court is over any original and appellate criminal and civil cases by the High Court and also appellate criminal and civil jurisdiction by the Court of Appeal.⁹

The judges of the High Court at present consist of the Chief Justice along with two judges who are often referred to as Justices. The Court of Appeal judges are the President and two other appellate judges.

Jurisdiction

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.¹⁰

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, the Criminal Procedure Code or the Criminal Conduct (Recovery of Proceeds) Order. In the Criminal Procedure Code specifically,¹¹ the High Court will have jurisdiction over any offence that was committed wholly or partly within Brunei Darussalam, or committed on board any ship or aircraft registered in Brunei Darussalam,

⁷ Article 47, The Constitution

⁸ CAP 5 of the Laws of Brunei

⁹ Section 6, Supreme Court Act

¹⁰ Section 16, Supreme Court Act

¹¹ Section 7 of the Criminal Procedure Code

or committed on the high seas if the offence is one of piracy by the law of nations. The Court will also have jurisdiction over an offence whether or not it was committed in Brunei Darussalam if it was committed by a subject of His Majesty the Sultan or by a person who abets, or enters a conspiracy to commit, an offence of Brunei Darussalam whether or not any overt act in furtherance of such conspiracy takes place within Brunei Darussalam. The High Court may also pass any sentence authorized by law.¹²

Any civil or criminal appeals from the High Court can be brought to the Court of Appeal.

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 and again, such other jurisdiction conferred upon it by any other written law. The criminal jurisdiction of the Court of Appeal consists of appeals from the High Court.¹³

Appeals

Any civil appeals made from the Court of Appeal can only be referred 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.

There can be no civil appeals made if the appeal is¹⁴:

- (i) against an order made allowing for an extension of time for appealing against a judgment or order;
- (ii) a judgment that has been expressed to be final by any law;
- (iii) any order made with the consent of all parties to the case;
- (iv) any order relating only to costs;
- (v) made without leave of the High Court of the Court of Appeal where the amount or value of the subject matter does not exceed \$10,000 or where it is from any interlocutory order of judgment.

Extended jurisdiction of the High Court

Along with the exercise of its own jurisdiction as mentioned above, the High Court also has a general supervisory and revisionary jurisdiction over the Intermediate Courts and the Magistrates' Courts. Any time during a proceeding in an Intermediate Court or a Magistrates' Court, a High Court judge can always call for and check the record of proceedings and thereafter can either transfer the matter or proceedings to the High Court or he could also give directions as to the further conduct of the proceeding by the Intermediate or Magistrates' Court. Upon the High Court calling for any record in this instance, all such proceedings in the Intermediate or Subordinate Courts shall be stayed pending further what the High Court will order later on. The High Court may also feel the need to call on any decision recorded or passed by the Intermediate or Magistrates' Courts to assess the correctness, legality or propriety of the decision recorded. If they are not satisfied with their findings, they can direct for a new trial or whatever action that is necessary to secure that substantial justice is done.¹⁵

¹² Section 10 of the Criminal Procedure Code

¹³ Section 18, 19, Supreme Court Act

¹⁴ Section 20, Supreme Court Act

¹⁵ Section 20A to 20E, Supreme Court Act

Intermediate Courts

Introduction

The Intermediate Court is governed by the Intermediate Courts Act.¹⁶ It is an open court to which the public generally has access to.¹⁷ However, the same provisions with regards to power to hear proceedings in camera that was are mentioned below for Magistrates Court likewise applies to the Intermediate Courts. The Intermediate Court is presided over by a Judge who sits alone.¹⁸ There are also registrars and deputy registrar who shall also be ex-officio commissioners for oaths and notaries public.¹⁹

Jurisdiction

The Intermediate Court's criminal jurisdiction²⁰ runs concurrently with the High Court. Hence, it has all the 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. If it so happens that after the trial ends and a conviction is secured, and it appears to the Court that the imprisonment imposed should be longer than 20 years or should carry a more serious penalty, then the Intermediate Court may commit the case to the High Court for sentencing.

Where the High Court and the Intermediate Court has concurrent jurisdiction in respect of any prosecution or proceeding, the Public Prosecutor or any person expressly authorized by him in writing, can direct in which those courts the proceeding should be instituted in.

The Intermediate Court exercises its original civil jurisdiction²¹ 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 or any higher sum that the Chief Justice may further prescribe. Similarly to the provisions for the Magistrate Court, to obtain this jurisdiction, one has to further prove that the cause of action arose in Brunei Darussalam or the defendant at the time the proceedings were instituted has some form of connection with Brunei Darussalam, be it being a resident or carrying on a business etc, or the facts of the case the proceedings are based on must be alleged to have occurred in Brunei Darussalam.

¹⁶ CAP 162 of the Laws of Brunei

¹⁷ Section 7, Intermediate Courts Act

¹⁸ Section 10, Intermediate Courts Act

¹⁹ Section 11, Intermediate Courts Act

²⁰ See Part IV of the Intermediate Courts Act

²¹ See Part V of the Intermediate Courts Act

The Court does not have civil jurisdiction over the recovery of immovable property or where there is a dispute as to a title registered under the Land Code, over the interpretation of a trust instrument, the grant or revocation of probate, over the interpretation of a will, over a declaratory decree, over the legitimacy of any person, over the guardianship or custody of a minor and over the validity or dissolution of any marriage.

In an action concerning immovable property that commenced in the Intermediate Court, a defendant may within one month apply to the High Court for the action to be transferred to the High Court if he feels that there is a dispute as to a title registered under the Land code. If a High Court judge is satisfied, he may order the action to be transferred to the High Court.

Also, not taking into account that the amount claimed should not be more than \$100,000, an Intermediate Court has jurisdiction over any action for the recovery of immovable property with or without a claim for rent or profits if there is no dispute as to title registered under the Land Code.

Any judgement of an Intermediate Court should be regarded by the Parties as final and conclusive between themselves.

The Intermediate Court also has jurisdiction to grant probate and letters of administration in respect of the estate within Brunei Darussalam of a deceased person and the estate in respect of which the grant is applied for but it must be exclusive of what the deceased possessed of and over what the applicant is entitled to as a trustee and not a beneficiary, and without deducting anything on the account of debts due or owing, the amount claimed must not exceeds \$250,000.

When a plaintiff has a cause of action for more than \$100,000, which the Intermediate Court does not have jurisdiction over, it is possible for him to abandon the excess amount in order to bring it within the jurisdiction of the Intermediate Court. However he will not be able to recover any of the excess amounts that he abandoned. Nevertheless, if the amount is more than \$100,000, the Intermediate Court can still have jurisdiction when and if the parties concerned agree by a signed memorandum filed in the Intermediate Court that it shall have jurisdiction, even though the amount claimed exceeds \$100,000.

In an Intermediate Court proceeding, if the counterclaim or defence of any defendant involves a matter beyond the Intermediate Court's jurisdiction, any party may apply to the High Court within one month of being served the counterclaim, for an order that the whole proceedings, or just proceedings on the counterclaim defence to be transferred to the High Court.

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.²²

Criminal appeals also go to the Court of Appeal. The Court of Appeal can also review any sentencing that has been passed by the Intermediate Court on any person or provide an opinion on a point of law that has been referred to it.²³ The practice and procedure as contained in the Supreme Court Rules for the High Court and the Court of Appeal shall also apply to the Intermediate Court.

Magistrates' Court

Introduction

The Magistrate Courts are governed by the Subordinate Courts Act²⁴, in terms of its civil jurisdiction and by the Criminal Procedure Code²⁵ in the exercise of its criminal jurisdiction. There is also in place a set of Subordinate Courts Rules regulating and prescribing the procedure (including methods for pleading) and the practice in the Magistrate Courts in the exercise of its civil jurisdiction. These Rules of Court extends to all matters of procedures, practice relating to or concerning the effect or operation in law of any procedure or practice, enforcement of judgments or orders, in any case within the cognizance of the Magistrate Court.

All magistrate courts are deemed to be open and allow public access, however there are some instances when a Court may still direct to have the whole proceedings or only in part to be in camera sitting only²⁶. In particular, where references are made, whether orally or in writing, directly to any act, decision, grant, revocation, suspension, refusal, omission, authority or discretion by His Majesty the Sultan or if there are cases that intends to refer to any issue that may directly or indirectly concerns the inviolability, sanctity or interests of the position, dignity, standing, honour, eminence or sovereignty of His Majesty the Sultan, then the Magistrate Court shall hold such proceedings in camera, so long as His Majesty the Sultan has not himself issued a direction that such proceedings need not be heard in camera.

Jurisdiction

The Magistrate Court exercises its civil jurisdiction²⁷ over every civil proceeding where the amount claimed or the value of the subject matter in dispute does not exceed B\$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 B\$50,000.

²² Section 26, Intermediate Courts Act

²³ Section 27, Intermediate Courts Act

²⁴ CAP 6 of the Laws of Brunei

²⁵ CAP 7 of the Laws of Brunei

²⁶ Section 7, Subordinate Courts Act

²⁷ See Section 17 of the Subordinate Courts Act

For the court to have jurisdiction of the case, the cause of action need to have arose in Brunei Darussalam, the defendant at the time the proceedings were instituted has some form of connection with Brunei Darussalam, be it being a resident or carrying on a business etc, and the facts of the case the proceedings are based on must be alleged to have occurred in Brunei Darussalam.

Furthermore, a Magistrate Court also has jurisdiction in any proceedings for the recovery of immovable property where the rent payable in respect of such property does not exceed \$500 per month. This excludes cases where there is a genuine dispute as to title registered under the Land Code.

A Magistrate Court does not have any civil jurisdiction over acts done by the order of His Majesty the Sultan, over the recovery of immovable property where there is a genuine dispute as to the title registered under the Land Code, over cases involving specific performance and rescission of contracts, over the cancellation or rectification of instruments, over the interpretation of trust instruments and the enforcement of administration of trusts, the grant of probate or letters of administration in respect of a deceased person, over the interpretation of wills, administration of estate of any deceased person and lastly it does not have civil jurisdiction over declaratory decrees.

The Magistrate's court criminal jurisdiction²⁸ is similar to the High Court's criminal jurisdiction as mentioned above. Namely, the court will have jurisdiction over any offence that was committed wholly or partly within Brunei Darussalam, or committed on board any ship or aircraft registered in Brunei Darussalam, or committed on the high seas if the offence is one of piracy by the law of nations. The Court will also have jurisdiction over an offence whether or not it was committed in Brunei Darussalam if it was committed by a subject of His Majesty the Sultan or by a person who abets, or enters a conspiracy to commit, an offence of Brunei Darussalam whether or not any overt act in furtherance of such conspiracy takes place within Brunei Darussalam. Furthermore, the types of offences the magistrate court may try are any offence that is shown in the eighth column of the First Schedule of the Criminal Procedure Code to be so triable. However, if the offence it is given the power to try carries a maximum punishment the court has no power to award, it shall then commit the defendant for trial by the High Court if it holds the opinion that the punishment it has power to award is inadequate.

The criminal jurisdiction of magistrates conferred by the Criminal Procedure Code include hearing, trying, determining and disposing of summarily prosecutions for offences cognized by such magistrate and inquiring into offences committed with a view to committal for trial by the High Court. Magistrates also have the power and authority to inquire into complaints of offences, summon and examine relevant witnesses, summon and issue warrants for the apprehension of criminals and offenders, and deal with them according to law, issue search warrants, hold inquests and do all other matters and things which a magistrate is empowered to do by this Code or any other Act.

²⁸ See section 7 of the Criminal Procedure Code

Appeals

Any appeal in a civil matter in the Magistrate Court goes to the High Court.²⁹ Such appeals that has right to do so are cases where a Magistrate Court has given a final judgment in any proceedings for the recovery of immovable property or in any proceedings where the amount in dispute exceeds \$500. Leave for appeal is needed from a judge with respect of an interlocutory order, from a final judgment of a Magistrate Court where the amount claimed or the value of the subject matter in dispute does not exceed \$500. Leave from the judge is also required from an order relating to costs and also for any orders that were made by consent of the parties.

It is important for the appellant to keep in mind that he must also fulfill all other conditions of appeal imposed in accordance with the Rules of Court of the Supreme Court Act.

In 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 to extensive or too inadequate.

A Magistrate Court can also, at any time before or during any civil proceeding, request a legal opinion from the High Court if it desires to do so. Either the Magistrate initiates the request or it can also be made on the application of any of the parties. They shall forward a statement of the facts of the case and specify the exact points on which legal opinion is being sought. The High Court will then make a declaration or order in response to the query as it thinks fit.³⁰

Appointment of Judges, Registrars and other relevant persons within the Supreme Courts, Intermediate Courts and Subordinate Courts

The High Court and Court of Appeal judges are appointed by His Majesty the Sultan by instrument under his sign manual and the State Seal.³¹ To become a judge of the Supreme Court, one has to be or has been a judge of a Court having unlimited jurisdiction over civil and criminal matters in some part of the Commonwealth or a Court having jurisdiction in appeals from any such Court. He must also have been entitled to practice as an advocate in such a court for a period of not less than 7 years. The judges of the Supreme Court hold their positions until the age of 65 or at a later time where His Majesty may approve of.

His Majesty may also from time to time appoint someone who satisfies the same conditions as mentioned above for the Supreme Court judges to be a Judicial Commissioner of the Supreme Court.³² The Judicial Commissioner has the power to act as a Judge of the Supreme Court and all things done by him in accordance with the terms

²⁹ Section 17, Subordinate Courts Act

³⁰ Section 22, Subordinate Courts Act

³¹ Section 7, Supreme Court Act

³² Section 11, Supreme Court Act

of this appointment will be deemed to have the same validity and effect as if it has been done by a judge.

An Intermediate Court judge is also appointed by His Majesty. To qualify for appointment, he must have been entitled to practice in a court having unlimited jurisdiction in civil and criminal matters in Brunei Darussalam or some part of the Commonwealth for not less than 5 years.³³

Finally, magistrates are also appointed by His Majesty, in particular a Chief Magistrate who shall have seniority over all other Magistrates and Coroners. His Majesty can also appoint any fit and proper person to be a Coroner who shall have the same power to act as a Magistrate for the purpose of discharging the functions of a Magistrate. Hence, their actions shall have the same validity and effect as if they had been done by a Magistrate.³⁴

Syariah Court

The Syariah Courts in Brunei Darussalam consist of the Syariah Subordinate Courts, the Syariah High Court and the Syariah Appeal Court. These courts will have such jurisdiction, powers, duties and authority as are conferred and imposed by the Syariah Courts Act (Chapter 184) as well as by any other written law.³⁵

For appointment of Judges in the Syariah Courts, Part II of this Act, among others, talks about the appointment of Chief Syar'ie Judge, the Syariah Appeal Court Judges, Syariah High court Judges and Syariah Subordinate Courts Judges.

Section 8(1) of this Act, stated that His Majesty the Sultan and Yang Di-Pertuan may, on the advice of the President of the Majlis Ugama Islam and after consultation with the Majlis, appoint a Chief Syar'ie Judge.³⁶ To be qualified as a Chief Syar'ie Judge, a person must be a citizen of Brunei Darussalam; and he has served as either a Judge of a Syariah Court, or Kadi, or in both capacities, for a cumulative period of not less than 7 years prior to his appointment or that he is a person learned in *Hukum Syara*.³⁷

For Syariah Appeal Court Judges, section 9(1) of this Act, stated that His Majesty the Sultan and Yang Di-Pertuan may, on the advice of the President of the Majlis and after consultation with the Majlis, appoint and re-appoint not more than 5 Muslims to form a standing panel of Judges, for a period of not exceeding 3 years. For each proceeding in the Syariah Appeal Court, the Chief Syar'ie Judge shall elect 2 of them to constitute a quorum of Judges. Again, a person qualified to be appointed as one of the Judges in the Syariah Appeal Court must be a citizen of Brunei Darussalam and he has served as either a Judge of a Syariah Court, or Kadi, or in both capacities, for a cumulative period of not

³³ Section 10, Intermediate Courts Act

³⁴ Section 9-11, Subordinate Courts Act

³⁵ Section 6(1) of the Syariah Courts Act (Chapter 184).

³⁶ Section 8(1) of the Syariah Courts Act (Chapter 184).

³⁷ Section 8(2) of the Syariah Courts Act (Chapter 184).

less than 7 years prior to his appointment, or that he is a person learned in *Hukum Syara*³⁸.

Section 10(1) of this Act provides for appointment of Syariah High court Judges whereby His Majesty the Sultan and Yang Di-Pertuan may, on the advice of the President of the Majlis and after consultation with the Majlis, appoint Judges of the Syariah High Court. To be qualified as one, a person must be a citizen of Brunei Darussalam; and has, for a cumulative of not less than 7 years prior to his appointment, served as either a Judge of a Syariah Subordinate Court, or Kadi, or registrar, or Syar'ie Prosecutor, or in more than one of such capacities; or that he is a person learned in *Hukum Syara*³⁹.

And for appointment of Syariah Subordinate Courts Judges, section 11 of this Act provides that His Majesty the Sultan and Yang Di-Pertuan may, on the advice of the President of the Majlis and after consultation with the Majlis, appoint Judges of the Syariah Subordinate Courts.

Under this Act, the Chief Syar'ie Judge and Syariah High Court Judges shall hold office until the age of 65 years or until such later time as may be approved by His Majesty the Sultan and Yang Di-Pertuan⁴⁰. However, any Syar'ie Judges including the Chief Syar'ie Judge, may at any time resign from his office by sending to His Majesty the Sultan and Yang Di-Pertuan a letter of resignation under his hand, through the Majlis or the Chief Syar'ie Judge, but he may not be removed from his office or his service terminated except in accordance with the provisions of subsections (3), (4) and (5) of section 12(1) of this Act.

As mentioned earlier, Syariah Courts in Brunei Darussalam consists of Syariah Subordinate Courts, the Syariah High Court and the Syariah Appeal Court each with its own jurisdictions.

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 it jurisdiction to try any offence, and may impose any punishment provided therein⁴¹.

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

- (i) betrothal, marriage (including *ta'at balik*), divorce, *khulu'*, *fasakh*, *cerai ta'liq*, determination of turns, *li'an*, *illa* or any matrimonial matter;
- (ii) any disposition of or claim to any property arising out of any matter set out in the above paragraph.

³⁸ Section 9(2) of the Syariah Courts Act (Chapter 184).

³⁹ Section 10(2) of the Syariah Courts Act (Chapter 184).

⁴⁰ Section 12(1) of the Syariah Courts Act (Chapter 184).

⁴¹ Section 15(a) of the Syariah Courts Act (Chapter 184).

- (iii) maintenance of dependants, legitimacy (*ithbatun nasab*) or guardianship or custody (*hadanah*) of infants;
- (iv) division of or claims to *harta sepencarian*;
- (v) wills or gifts during *maradal-maut* of a deceased Muslim;
- (vi) gift *inter vivos* (*hibah*), or settlement (*sulh*) made without adequate monetary consideration or value by Muslim;
- (vii) *waqaf* or *nazar*;
- (viii) division of and inheritance of property, testate or intestate;
- (ix) determination or 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.⁴²

For Syariah Subordinate Courts, 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 therefor⁴³.

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 money⁴⁴. This jurisdiction may, from time to time, be increased by His Majesty the Sultan and Yang Di-Pertuan on the recommendation of the Chief Syarie Judge, by notifying it in the *Gazette*⁴⁵.

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 jurisdiction⁴⁶. 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. Whenever leave is granted by the Syariah Appeal Court, it shall hear and determine the questions allowed to be referred for its decision and make any order which the Syariah High Court might have made, and as it thinks just for the disposal of the appeal.

⁴² Section 15(b) –do-.

⁴³ Section 16(1)(a) of the Syariah Courts Act (Chapter 184).

⁴⁴ Section 16(1)(b) Ibid.

⁴⁵ Section 16(2) Ibid.

⁴⁶ Section 20(1) Ibid.

Apart from having its original jurisdiction, the Syariah High Court shall have supervisory and revisionary jurisdiction over all Syariah Subordinate Courts⁴⁷. Similarly, the Syariah Appeal Court shall have that same power over the Syariah High Court⁴⁸.

Other Relevant Legal Departments

The Attorney General's Chambers

The Attorney General is the principal legal adviser to the Government of His Majesty the Sultan and shall advise on all legal matters connected with the affairs of Brunei Darussalam or by the Government of Brunei Darussalam.⁴⁹ He is assisted by the Solicitor General and counsels, in advising the Government and representing the Government in civil and criminal cases. The Attorney General is also responsible for the drafting of legislation. In carrying out the task of legislative drafting, the Attorney General's Chambers work closely with other Government Ministries and Departments.

The Attorney General is vested with the power under the Constitution to institute, proceed and discontinue once instituted, any criminal proceedings. All criminal prosecutions are instituted in the name of the Public Prosecutor. In carrying out this duty, the Attorney General is not subject to the direction or control of any other person or authority. He is assisted by Deputy Public Prosecutors in the conduct of criminal trials held in the Supreme Court and the Subordinate Courts.

The Attorney General basically has the exercisable power to institute, conduct or discontinue, at his discretion, any proceedings of an offence other than proceedings before a Syariah Court or a Court Martial, subject to the provisions of any other written law.

In addition, the Public Prosecutor and his Deputies also advise, and direct prosecution undertaken by the police and other law enforcement departments including rendering advice in their investigations.

Apart from carrying out the above duties, the Attorney General's Chambers also provides services to the public by maintaining the following registries; Companies, Business names, Trade Marks, Industrial designs, Inventions, Power of Attorney, Marriages, Bills of Sales.

There are five legal divisions in the Attorney-General's Chambers: Civil Division, Criminal Justice Division, International Law Division, Legislative Drafting Division and the Registry Division.

⁴⁷ Section 19 Ibid.

⁴⁸ Section 21 Ibid.

⁴⁹ Article 81 of the Constitution

Syariah department

In 1980, a Committee of Harmonizing Laws In Accordance With Islam⁵⁰, was formed. To increase this effort, a Legal Unit⁵¹ chaired by the Chief Kadi was established in 1988 by the Ministry of Religious Affairs its task mainly to replace the earlier committee. In 1993, a Committee for the establishment of Syariah Supreme Court known as the Action Committee Towards the Establishment of Syariah Supreme Court⁵² was formed. Another committee known as the Islamic Family Law Legislative Committee⁵³ was later established in 1995, its tasks are to study, legislate and prepare Islamic family laws as well as other laws governed by the Kadis Court. This Legal Unit, in 1997, was eventually alleviated to its present position as a separate department in the Ministry of Religious Affairs now known as the Islamic Legal Unit.⁵⁴

Among the duties of this Unit are to study, examine and do research on provisions in the Laws of Brunei now enforced to see whether or not there is any conflict with *Hukum Syara'*; prepare proposed draft amendment for any legal provision that conflict with *Hukum Syara'* and prepare draft legislation in accordance with *Hukum Syara'* if there is no such legislation available yet. This Unit is also appointed secretariat for several committees that had been mentioned above. Apart from that, this Unit also gives advice concerning Islamic laws to the Syariah Courts, the Faith Control Unit (Unit Kawalan Akidah), the Prosecution Section, the Investigation Section, the Family Counseling Section, the Attorney General's Chambers as well as other government departments and private firms.⁵⁵

⁵⁰ *Jawatankuasa Menyesuaikan Undang-Undang dengan Kehendak Ugama Islam.*

⁵¹ *Unit Undang-Undang.*

⁵² *Jawatankuasa Bertindak Ke arah Penubuhan Mahkamah Agung Syariah.*

⁵³ *Jawatankuasa Penggubalan Undang-Undang Keluarga Islam.*

⁵⁴ Prof. Dato Dr. Haji Mahmud Saedon A. Othman, *Ke Arah Pelaksanaan Undang-Undang Di Negara Brunei Darussalam*, Jurnal Undang-Undang Syariah Brunei Darussalam, Januari-Jun 2002 Jilid 2 Bil. 2 p.

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⁵⁵ <http://www.perundangan-islam.gov.bn/tugas/index.htm>