

HARMONIZATION OF ISLAMIC LAW IN NATIONAL LEGAL SYSTEM: A COMPARATIVE STUDY BETWEEN INDONESIAN LAW AND MALAYSIAN LAW

Yeni Salma Barlinti¹

Abstract

This article compares Indonesia legal system and Malaysian legal system. The government legalized Islamic law in national legislations, which are in effect for Muslim people. To facilitate dispute settlement, there is a religious court to solve Islamic dispute based on Islamic law. The existence of Islamic law in Indonesia and Malaysia has similarity and differentiation. The similarities among others are: the Muslim-majority in both countries pushes the government to put Islamic law into force, Islamic law must be written into constitution or legislation. It is needed to have legal basis when performing Islamic law, the existence of religious court is very important in dispute settlement related to Islamic law. The influence of western legal system is very strong in national legal system. Nevertheless, the western legal system differs substantially from Islamic legal system, and Islamic law was implemented limitedly based upon western legislation. It was limited to family law. While the differentiations are: the way of implementation of western legal system into national legal system and the form of legislation. Indonesia has one legislation, which is in effect to all of Indonesia people. On the contrary, Malaysia has many enactments, which are different from one to another in each negeri.

Keywords: Indonesia, Malaysia, Islamic law, Legal systems, Comparative study.

I. Introduction

Islamic law is the law regulates many fields. This law in some countries has become legal system such as Egypt and Saudi Arabia, but in others it is just part of national legal system. At the latter, Indonesia and Malaysia were countries use Islamic Law as part of national legal system. It can be seen in national legislations and court system. The government legalized Islamic law in national legislations, which are in effective for Muslim people. To facilitate dispute settlement, there is religious court to solve Islamic dispute based on Islamic Law.

I make comparison between Indonesian legal system and Malaysian legal system due to some reasons. First, Indonesia and Malaysia has Muslim-majority citizen. Indonesia as the world's largest Muslim-majority country has 87.2% Muslim

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Harmonization Of Islamic Law In National Legal System

A

**M. Ilham Muchtar,Desi
Asmaret,Rahmat Mansur,Abdul
Rahim,Abbas,Imron Natsir,Dahlan
Lama Bawa,Hurriah Ali Hasan,M.
Zakaria Al Anshori,Muhammad
Ridwan,Ramli,Thoat Stiawan**

Harmonization Of Islamic Law In National Legal System A:

Harmonizing Law in an Era of Globalization Larry Catá Backer, 2007 The essays in this book highlight the most important ways in which domestic international public and private legal systems interact with each other The initial essays provide a theoretical overview of the study of legal harmonization that is of the nature and character of communication accommodation amalgamation or resistance among legal systems These interactions occur within horizontal relationships between political institutions operating at the same level of authority Vertical relationships between political institutions whose relationships are hierarchical have given rise to different patterns of interaction New legal orders are being created through the adoption of international legal instruments that may reach nation states private entities and individuals Each has the potential for significantly affecting the sources of authority over public and private actors Other essays illustrate the many ways in which communication between legal systems produce very real if very different effects across the world This book is part of the Studies on Globalization and Society Series edited by Raj Bhala Rice Distinguished Professor The University of Kansas School of Law The individual essays may be profitably used to illustrate and discuss harmonization among both legal systems and political systems In particular the essays on South Africa on Mercosur and on Islam raise some distinct challenges and clear issues for scholars and students of globalization both from a legal and a political science perspective Law Politics Book Review

Proceedings of the International Conference On Law, Economics, and Health (ICLEH 2022) Anggraeni Endah Kusumaningrum, Widyorini Indriasti Wardani, Edi Pranoto, Rohmad Pujiyanto, 2023-04-16 This is an open access book ICLEH will bring the theme of Recover Together Stronger Together Through the Development of Law Economy and Health as our commitment to continuously sharing and disseminating the development of knowledge in the field of Social Science and Law Through this conference therefore we do encourage international collaboration idea sharing and networking among experts and participants in the respected field of law economy and health discipliners

Harmonization of Islamic Law in National Legal System Yeni Salma Barlinti, 2006

New Frontiers in Asia-Pacific International Arbitration and Dispute Resolution Shahla Ali, Bruno Jetin, Luke Nottage, Nobumichi Teramura, 2020-12-10 International Arbitration Law Library Volume 59 The eastward shift in international dispute resolution has already involved initiatives not only to improve support for international commercial arbitration ICA and investor state dispute settlement ISDS but also to develop alternatives such as international commercial courts and mediation Focusing on these initiatives and their accompanying case law and trends in the Asia Pacific region this invaluable book challenges existing procedures and frameworks for cross border dispute resolution in both commercial and treaty arbitration Specially assembled for this project an outstanding team of experienced and insightful arbitrators and scholars describes pertinent developments including ICA and ISDS in the context of China's Belt and Road Initiative the Singapore Convention on Mediation the shift to virtual hearings and other challenges from the COVID 19 pandemic mistrust of the application of the rule of law in certain East Asian jurisdictions growing public concern

over ISDS arbitration tensions between confidentiality and transparency and potential regional harmonisation of the public policy exception to arbitral enforcement The contributors chart evolving practices and high profile cases to make informed observations about where changes are needed as well as educated guesses about the chances of reforms being successful and the consequences if they are not The main jurisdictions covered are China Hong Kong Japan Malaysia India Australia and Singapore The first in depth study of recent trends in dispute resolution practice related to business in the Asia Pacific region the book s practical analysis of new resources for dealing with the increasing competition among countries to become credible regional dispute resolution hubs will prove to be of great value to specialists in the international business law sector Lawyers will be enabled to make informed decisions on which venue and dispute resolution methods are the most suitable for any specific dispute in the region and policymakers will confidently assess emerging trends in international dispute resolution policy development and treaty making

Islamic Finance in the Financial Markets of Europe, Asia and America Faiza Ismail, 2022-08-30 Among international financial centres IFCs London is known as the Western hub of Islamic Finance on account of its well developed legal infrastructure However Brexit has threatened London s status and consequently the financial services industry is moving to Dublin to continue operating in the Euro region Similarly Islamic finance IF service providers in the UK are also looking to Dublin for expansion of this niche area in euro member states This is the first book to be written about Islamic finance operations in the Eurozone The book offers an in depth description of International Financial Centres and the growth of Islamic Finance compares the growth of Islamic finance in London Dubai and Kuala Lumpur outlines the implications of Brexit for financial service providers in London in general and Islamic investors in particular and also presents a case study of Ireland to establish the latter as the most appropriate country to promote IF in the Eurozone The time is particularly right for a book exploring the potential of Ireland to emerge as a Eurozone hub of Islamic finance as a result of Britain s exit from Europe The book will cater to the needs of readers studying IF in the disciplines of economics business law and religion A secondary market includes practitioners such as policymakers lawyers fund managers accountants regulators and international investors who will be interested in exploring the benefits that the UK and Ireland have to offer the Islamic finance industry

Debating the Law, Creating Gender Irene Schneider, 2020-10-20 In Palestine family law is a controversial topic publicly debated by representatives of the state Sharia establishment and civil society Yet to date no such law exists This book endeavors to determine why by focusing on the conceptualization of gender and analyzing law in the making and the shifts in debates 2012 2018 In 2012 a ruling on khul divorce was issued by the Sharia Court and was well received by civil society but when the debate shifted in 2018 to how to harmonize international law with Islamic standards the process came to a standstill These developments and the various power relations cannot be properly understood without taking into consideration the terminology used and redefined in these debates

Constitutionalism in Islamic Countries: Between Upheaval and Continuity Rainer Grote, Tilmann

Röder,2012-01-11 Constitutionalism in Islamic Countries Between Upheaval and Continuity examines the question of whether something similar to an Islamic constitutionalism has emerged out of the political and constitutional upheaval witnessed in many parts of North Africa the Middle East and Central and Southern Asia In order to identify its defining features and to assess the challenges that Islamic constitutionalism poses to established concepts of constitutionalism this book offers an integrated analysis of the complex frameworks in Islamic countries drawing on the methods and insights of comparative constitutional law Islamic law international law and legal history European and North American experiences are used as points of reference against which the peculiar challenges and the specific answers given to those challenges in the countries surveyed can be assessed The book also examines ways in which the key concepts of constitutionalism including fundamental rights separation of powers democracy and rule of law may be adapted to an Islamic context thus providing valuable new insights on the prospects for a genuine renaissance of constitutionalism in the Islamic world in the wake of the Arab spring

Introduction to International Criminal Law M. Cherif Bassiouni,2013 This title covers the history nature and sources of international criminal law the *ratione personae* *ratione materiae* sources of substantive international criminal law the indirect enforcement system the direct enforcement system and much more **Understanding Sharia** Rafiq S.

Abdulla,Mohamed M. Keshavjee,2018-04-30 I B Tauris in association with the Institute of Ismaili Studies Sharia has been a source of misunderstanding and misconception in both the Muslim and non Muslim worlds Understanding Sharia Islamic Law in a Globalised World sets out to explore the reality of sharia contextualising its development in the early centuries of Islam and showing how it evolved in line with historical and social circumstances The authors Rafiq S Abdulla and Mohamed M Keshavjee both British trained lawyers argue that sharia and the positive law flowing from it known as *fiqh* have never been an exclusive legal system or a fixed set of beliefs In addition to tracing the history of sharia the book offers a critique concerning its status today Sharia is examined with regard to particular issues that are of paramount importance in the contemporary world such as human rights criminal penalties including those dealing with apostasy blasphemy and adultery commercial transactions and bio medical ethics amongst other subjects The authors show that sharia is a legal system underpinned by ethical principles that are open to change in different circumstances and contexts notwithstanding the claims for transcendental permanence made by Islamists This book encourages new thinking about the history of sharia and its role in the modern world ISLAMIC LAW IN A GLOBAL CONTEXT : DIPLOMACY, HUMAN RIGHTS, ECONOMY, AND THE

ENVIRONMENT M. Ilham Muchtar,Desi Asmaret,Rahmat Mansur,Abdul Rahim,Abbas,Imron Natsir,Dahlan Lama Bawa,Hurriah Ali Hasan,M. Zakaria Al Anshori,Muhammad Ridwan,Ramli,Thoat Stiawan, All praise and gratitude to Allah SWT for His abundant grace guidance and blessings enabling the successful completion of this book Islamic Law In A Global Context Diplomacy Human Rights Economy And The Environment May peace and blessings always be upon the Prophet Muhammad his family companions and followers until the end of time This book aims to provide a comprehensive

understanding of Islamic law both theoretically and practically in social life It systematically discusses the foundations of Islamic law its sources the methodology of istinbath and its relevance to social dynamics and contemporary developments This book is expected to serve as a useful reference for students lecturers researchers and the general public seeking to deepen their study of Islamic law It not only presents normative aspects but also provides contextual analysis so that Islamic law can be applied wisely and relevantly to the needs of the community

Legal and Regulatory Aspects of Abrahamic Finance Paldi, Camille Silla, Lieberman, Phillip, Kabir Hassan, Mohammad, Lifshitz, Isaac, 2025-09-17 Faith based finance presents a unique approach to financial systems by aligning economic practices with religious values and ethical principles As global interest in ethical and sustainable finance grows exploring the common financial teachings of the Abrahamic religions offers a compelling opportunity for innovation and cooperation across religious and cultural lines By drawing on shared values such as fairness social justice and responsible stewardship this approach has the potential to shape financial norms and expand across to inclusive economic systems A unified framework rooted in the principles of Judaism Christianity and Islam could foster greater interfaith understanding while contributing to the development of more equitable and morally grounded financial institutions Legal and Regulatory Aspects of Abrahamic Finance explores the legality and regulatory aspects of Abrahamic finance This book uses methods of interreligious dialogue that facilitate cooperation between different faiths Covering topics such as religion finance and faith based practices this book is an excellent resource for professors academics government officials economists finance professionals and more

ICLSSE 2020 Putu Indra Christiawan, Eko Budiyo, Ardyanto Tanjung, S Sriyanto, Robbi Rahim, 2021-01-04 As an annual event The 2nd International Conference on Law Social Sciences and Education ICLSSE 2020 continued the agenda to bring together researcher academics experts and professionals in examining selected theme by applying multidisciplinary approaches In 2020 this event will be held in 10 November at Universitas Pendidikan Ganesha The conference from any kind of stakeholders related with Education Political Law and Social Related Studies Each contributed paper was refereed before being accepted for publication The double blind peer reviewed was used in the paper selection

Proceedings of the International Conference on Cultural Policy and Sustainable Development (ICPSD 2024) Abdul Kadir Jaelani, Irwansyah Irwansyah, Fokke Fernhout, Adolfo Antonio Paolini, Mohd Rizal Palil, Hilaire Tegnau, Okid Parama Astirin, Sutarno Sutarno, Patricia Covarrubia, Bobur Sobirov, Robbi Rahim, 2024-12-23 This is an open access book Cultural policy plays a crucial role in shaping societies influencing cultural expressions and advancing sustainable development Laws and regulations related to culture both at the national and international levels play a key role in regulating and protecting cultural heritage and supporting a healthy cultural ecosystem The First International Conference on Cultural Policy and Sustainable Development ICPSD aims to explore the impact of cultural policies in democratic and nondemocratic regimes This conference will serve as a platform for scholars policymakers and practitioners to exchange ideas share experiences and discuss strategies to promote cultural diversity creativity and

sustainability in different political contexts Internationally various agreements such as the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions underscore the importance of cultural policies in supporting sustainable development and promoting cultural diversity UNESCO Convention 2005 n d At the national level laws such as the Cultural Law in Indonesia establish a framework for the protection and development of culture as well as provide a legal basis for inclusive and sustainable cultural policy making Law Number 5 of 2017 concerning the Advancement of Culture n d In democratic regimes cultural policies are often developed through participatory processes reflecting the values and aspirations of diverse communities These policies aim to support cultural expression protect cultural heritage and promote cultural rights thereby contributing to social cohesion and inclusive development However challenges such as funding limitations cultural commodification and the impact of digital technology require ongoing dialogue and innovation in policy approaches On the other hand cultural policies in nondemocratic regimes are often used as tools for political control censorship and the promotion of state ideology Nevertheless cultural practitioners and activists in these contexts demonstrate resilience and creativity in navigating restrictive environments often using digital technology to amplify their voices and preserve cultural identity In various countries existing legislation greatly influences the implementation of cultural policies and sustainable development In Indonesia for example Law Number 5 of 2017 concerning Culture serves as the main foundation for the development of sustainable cultural policies This law promotes the protection preservation development utilization and fostering of culture as an integral part of national development Law Number 5 of 2017 concerning the Advancement of Culture n d Cultural Policy and Sustainable Development are interrelated concepts and are the main focus of this conference where appropriate cultural policies can strengthen sustainable development reinforce cultural identity and improve the quality of life for communities In the context of the conference theme Cultural Policies in Democratic and Nondemocratic Regimes it is important to consider the differences in cultural policy approaches between these two types of regimes This forum aims to facilitate communication among Law Faculty Academics worldwide with the agenda of the 1st International Conference on Cultural Policy and Sustainable Development ICPSD Cultural Policies in Democratic and Nondemocratic Regimes

A Critique of Creative Shari'ah Compliance in the Islamic Finance

Industry Ahmad A Alkhamees, 2017-09-18 Ahmad Alkhamees defines Creative Shari'ah compliance as compliance with the letter but not the objectives of Shari'ah In recent years Islamic finance industry practises have come under scrutiny with strong critiques levelled against many institutions that claim to provide Shari'ah compliant products and services which in fact undermine the spirit and the objectives of Shari'ah This book significantly contributes to the sphere of Islamic finance in three main ways First it critically appraises justifications of creative Shari'ah compliance practises Second it examines how Shari'ah supervisory board SSB governance practises and the inconsistent fatwas issued by SSBs contribute to the issue of creative Shari'ah compliance Most importantly it suggests regulatory mechanisms which regulators can employ in Islamic

countries such as Saudi Arabia and in secular countries such as the United Kingdom to deal with the issue of creative Shari ah compliance

The Application of Hudud in Indonesia Manotar Tampubolon, 2025-10-22 This timely and thought provoking book takes a close look at how hudud punishments those set by Islamic law are interpreted negotiated and put into practice within Indonesia s diverse legal landscape Focusing specifically on Aceh the only province allowed special autonomy to enforce Islamic criminal law the book delves into the complex tensions that arise between national laws local religious goals and international human rights standards By combining legal analysis case studies and a sociopolitical perspective it offers a deep understanding of how Islamic principles are adapted in a modern democratic context The primary audience includes legal scholars academics in Islamic studies and university students who are eager to grasp the practical and theoretical challenges of weaving Sharia based penal codes into a constitutional framework By shedding light on the relationship between religious authority and state power this work adds to the ongoing discussions about legal pluralism constitutionalism and the role of Islam in public law within today s Muslim majority societies

Shari'a As Discourse Lisbet Christoffersen, Jørgen S. Nielsen, 2016-04-01 This volume exposes some of the various issues raised in relation to Muslim communities in Europe by putting the intellectual and legal traditions into dialogue It brings together a number of scholars of Shari a and Islamic law with counterparts from the parallel European disciplines of hermeneutics philosophy and jurisprudence to explore how the processes of theological legal thinking have been expressed and are being expressed in a more or less common intellectual framework It provides a valuable reference for all those interested in exploring how Muslims and non Muslims view Shari a law looking at ways the European legal systems can provide some form of accommodation with Muslim customs

Legal Aspects of Economic Integration in Africa Richard Frimpong Oppong, 2011-07-07 Richard Frimpong Oppong challenges the view that effective economic integration in Africa is hindered by purely socio economic political and infrastructural problems Inspired by the comparative experiences of other regional economic communities and imbued with insights from constitutional public and private international law he argues that even if the socio economic political and infrastructural challenges were to disappear the state of existing laws would hinder any progress Using a relational framework as the fulcrum of analyses he demonstrates that in Africa s economic integration processes community state inter state and inter community legal relations have neither been carefully thought through nor situated on a solid legal framework and that attempts made to provide legal framework have been incomplete and sometimes grounded on questionable assumptions To overcome these problems and aid the economic integration agenda that is essential for Africa s long term economic growth and development the author proposes radical reforms to community and national laws

Country Reports on Human Rights Practices, 2002

Global Crime Philip L. Reichel, 2019-07-08 A definitive resource for understanding such far reaching and often interconnected crimes as cyber theft drug trafficking human smuggling identity theft wildlife poaching and sex tourism While many international corporations have benefited from

the global economy and distribution of information globalization has also had serious negative consequences This important reference work offers students and general readers a critical understanding of how technology governments political unrest war and economic strife contribute to an increase in global crime This A Z encyclopedia covers key people events and organizations and includes key documents that will help readers to understand the numerous problems created by the many transnational crimes that are growing in severity and frequency around the world Entries address perpetrators and their methods victims who really profits and law enforcement responses In addition to cyber theft and sales of weapons and narcotics the set provides a detailed look at global crimes not typically covered such as corruption fraudulent medicine illegal sports betting organ trafficking maritime piracy trafficking in cultural property and wildlife and forest crime Although some historical events and people are included the focus is on recent and contemporary topics Islamic Law and International Human Rights Law Mark Ellis, Anver M. Emon, Benjamin Glahn, 2012-10-11 Deepening the discussion of the relationship between Islamic law and human rights this volume gathers leading experts in both fields to examine how each system protects and limits fundamental freedoms From gender equality to freedom of religion the book explores the main flashpoints in the debate examining the operation of the law in context

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Table of Contents Harmonization Of Islamic Law In National Legal System A

1. Understanding the eBook Harmonization Of Islamic Law In National Legal System A
 - The Rise of Digital Reading Harmonization Of Islamic Law In National Legal System A
 - Advantages of eBooks Over Traditional Books
2. Identifying Harmonization Of Islamic Law In National Legal System A
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Harmonization Of Islamic Law In National Legal System A
 - User-Friendly Interface
4. Exploring eBook Recommendations from Harmonization Of Islamic Law In National Legal System A
 - Personalized Recommendations
 - Harmonization Of Islamic Law In National Legal System A User Reviews and Ratings
 - Harmonization Of Islamic Law In National Legal System A and Bestseller Lists
5. Accessing Harmonization Of Islamic Law In National Legal System A Free and Paid eBooks
 - Harmonization Of Islamic Law In National Legal System A Public Domain eBooks
 - Harmonization Of Islamic Law In National Legal System A eBook Subscription Services
 - Harmonization Of Islamic Law In National Legal System A Budget-Friendly Options
6. Navigating Harmonization Of Islamic Law In National Legal System A eBook Formats
 - ePub, PDF, MOBI, and More
 - Harmonization Of Islamic Law In National Legal System A Compatibility with Devices
 - Harmonization Of Islamic Law In National Legal System A Enhanced eBook Features
7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Harmonization Of Islamic Law In National Legal System A
 - Highlighting and Note-Taking Harmonization Of Islamic Law In National Legal System A
 - Interactive Elements Harmonization Of Islamic Law In National Legal System A

8. Staying Engaged with Harmonization Of Islamic Law In National Legal System A
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Harmonization Of Islamic Law In National Legal System A
9. Balancing eBooks and Physical Books Harmonization Of Islamic Law In National Legal System A
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Harmonization Of Islamic Law In National Legal System A
10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
11. Cultivating a Reading Routine Harmonization Of Islamic Law In National Legal System A
 - Setting Reading Goals Harmonization Of Islamic Law In National Legal System A
 - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Harmonization Of Islamic Law In National Legal System A
 - Fact-Checking eBook Content of Harmonization Of Islamic Law In National Legal System A
 - Distinguishing Credible Sources
13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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