

BOOK REVIEW

Mohd Nadzri Bin Haji Abdul Rahman Ibrahim, UNDANG-UNDANG TATACARA MAL MAHKAMAH SYARIAH – PRINSIP DAN AMALAN (Kuala Lumpur: Anugerah Cekal Sdn Bhd, 2013) (Second Edition) 360 pages.

*ⁱNorman Zakiyy, ⁱHasnizam Hashim

ⁱSenior Lecturer, Faculty of Syariah and Law, Universiti Sains Islam Malaysia.

* (Corresponding author) E-mail: zakiyy@usim.edu.my

In principle, civil procedure consists of court rules with the overriding purpose of enabling the court to process a civil case right from the process of commencement of action to its disposal in an efficient and expeditious manner. At this point in time, however, there is a scarcity of publications in Malaysia on the subject of civil procedure (*tatacara mal*) of the Syariah courts. In comparison, there are sufficient texts on the subject of civil procedure of the civil courts and also on the substantive aspects of Syariah laws. Such a situation demands serious attention especially when Syarie lawyers and undergraduate students enrolled for courses relating to Syariah or Law (or a double-degree programme of Syariah and Law) are in need of a book on civil procedure in the Syariah Court that incorporates the substantive aspects of civil litigation and drafting skills.

Undang-Undang Tatacara Mal Mahkamah Syariah – Prinsip dan Amalan (Civil Procedure of the Syariah Court – Principles and Practices) is a magnificent book written in *Bahasa Melayu*. This book is authored by Mohd Nadzri Bin Abdul Rahman Ibrahim, currently the Senior Director (Judiciary), Department of Syariah Judiciary of Malaysia (JKSM). It contains 360 pages and was published for the second time in 2013 by Anugerah Cekal Sdn Bhd, Kuala Lumpur, Malaysia. Interestingly, the author, Mohd Nadzri has shared his valuable past experience while serving as a Syariah High Court judge. Thus, this is a timely book on Syariah civil procedure that is worth reading, for it contains valuable works of the author who painstakingly prepared valuable written materials especially for the benefit of Syarie judges and Syarie lawyers in understanding the civil procedure of the Syariah Court.

This book is unique in its own way. A thorough review of this book shows that the author has shared his vast experience and practical knowledge by integrating among others, sources of Syariah Law, civil procedures of the Syariah court, reported Syariah cases, English civil cases and Malaysian civil cases in the writing of this book. Interestingly, a great number of cited cases found in this book are taken from reputable texts such as the Current Law Journal (CLJ) and Malaysian Law Journal (MLJ), King's Bench Division (KB) and All England Reports (All ER), in addition to the cited cases in Jurnal Hukum (JH). Such endeavour is believed to serve the purpose of educating readers in understanding the civil procedure of the Syariah Court from a wider perspective. Such an effort is laudable in the light of the author's effort towards bridging the gap between Syariah Law and Civil Law. The book itself is seen as a product which promotes the integration of *Naqli* (divine knowledge) and *Aqli* (conventional knowledge) as well as the harmonisation between Syariah and Law, and in this sense, procedural laws.

The author has skillfully presented this book in a practical, concise, easy to understand, and step-by-step manner. This book contains 17 chapters. Each chapter has a clearly defined intention which gives the book an excellent reference book or even a textbook feel, especially for undergraduate students taking procedural courses relating to Syariah or/and Law. The book begins by inviting readers to the structure of the Syariah Courts and the civil procedural laws regulating the conduct of cases in the

Syariah Courts. The second chapter reminds readers about the preliminary matters prior to commencing a civil action. The author further guides readers on the use of relevant court forms, summons and applications. the manner of determining the parties in dispute and their rights. This is followed by a fairly in-depth explanation on the service of originating process, issues relating to interpleader and typical problem faced by Syarie practitioner namely, how to manage defect pleadings. The author, equipped with vast experiences in his former judicial capacity, shared his experiences on the techniques of writing notes of evidence and the grounds of judgment. Interestingly, readers are guided on a step-to-step basis on trial management (pre-trial, trial and post-trial management) in subsequent chapters and the court's practices relating to interlocutory proceedings, ex parte applications and injunctions (chapters 7-13). In Chapter 17, the author reminds the readers of the importance of referring to Syariah law in the event of a lacunae found in the civil procedure rules.

Overall, it is observed that one chapter flows easily to the next, making it an extremely easy read. Most importantly, it is observed that the author has arranged the chapters in such a way to enable readers to grasp the fundamentals of commencing civil action in the Syariah courts, in addition to providing guidance on how to fill up sample court documents and good drafting skills. Thus, this book demonstrates a practical approach in educating readers to understand the basics of pleadings and other relevant cause papers, and how to draft them accordingly (according to the sample court forms). Commentaries and sample court forms found throughout this book are educative to readers with little knowledge on civil litigation.

In the academic world, it is observed that a typical course outline for a procedural course would include the introduction on the modes of commencing a civil action, and the drafting of cause papers. And the delivery of the general teaching and learning process of a procedural course would include a combination of formal lectures, exercises, group work, using authentic materials, informal activities and various textbooks. Practical experience will be fostered throughout the delivery of the course. It is observed that this book can be used by Syariah and/or Law teachers in the teaching and learning process. In addition, this book may also be used as a source of reference in developing assessment strategies which involves formative and summative ways.

Syariah and/or Law teachers may also find the information in this book useful in terms of designing ways to attain the Programme Learning Outcome (PLO) of a general double degree Syariah and Law programme. In this respect, knowledge of practical skills such as drafting of pleadings, relevant court procedures and advocacy skills are essential. Assessing the benefits of this book from the perspective of Programme Educational Objective (PEO) of a double degree Syariah and Law programme will also show that the materials in the book can be used by the Syariah and/or law teachers in their endeavour to produce Syariah and Law graduates who are able to synthesise and apply the fundamental legal principles, practice and procedures of Shariah and Law to the relevant issues, locally and globally.

Based on the above observation, this book has the prospect of being promoted at the varsity level as an excellent reference book on civil procedure of the Syariah Court. Thus, this book is an invaluable source of reference which assist the effort of both Syariah and Law teachers in the teaching and learning of a procedural course.

Notably, this book relies heavily on the *Enakmen Tatacara Mal Mahkamah Syariah (Negeri Sembilan) 2003* and does not cover exhaustively the enactments on civil procedure of the Syariah Courts in other states in Malaysia. However, such emphasis does not reduce the quality of the book since most of the basic laws applicable in the Syariah courts in Malaysia have been made uniformed. In addition, it refers to the abolished Subordinate Court Rules 1980 [P.U. (A) 97/1990] and the Rules of High Court [P.U. (A) 50/1980] instead of the combined Rules of Court 2012 [P.U. (A) 205/2012]. Nevertheless, such references do not hamper the efforts of readers, especially Syariah or Law students or even Syarie or

Civil lawyers to make a comparison or cross-reference between these abolished statutes and the current Rules of Court 2012.

In brief, the author of the book deserves to be commended for his unrelentless and arduous work in making this book as useful as possible for all levels of readers. The author has endeavoured to cover all relevant matters necessary for the understanding of procedural laws applicable in the Syariah Court and to present in a user-friendly manner. Thus, it has filled the vacuum of the current situation faced by Syariah and Law students as well as Syarie lawyers in search for a ready reckoner for civil procedure in the Syariah Court. Nevertheless, it must be borne in mind about the importance of technology in the dispensation of justice in both the Syariah Courts and the Civil Courts. The current E-Syariah Official Portal of Department of Syariah Judiciary of Malaysia (JKSM) offers assistance to the public with regards to information relating to E-forms, status of cases, court procedures and schedule of court cases. The existence of such portals shows the importance of emphasising the use of technology in civil litigation. In fact, on-line case registration via the E-Syariah application is nothing new as it has been made compulsory via Practice Direction No.1 of 2011. Thus, the author of this book may take a keen interest to update this book periodically by taking into consideration the development in the landscape of civil litigation in Malaysia as well as on a global basis which relies heavily on the use of technology such as electronic documentation of court documents.

On the basis of the above review, it is our humble opinion that this book is an excellent reference book not only for Syariah and Civil judicial officers and Syariah lawyers; but also for Syariah and Law lecturers; and their students at the varsity level. Furthermore, students may treat this book as a reliable reference in Syariah Civil Procedure and also throughout their industrial training periods in Syariah legal firms or Syariah courts.