



FOREWORD

As late as thirty years ago, one would not find articles on civil law (I am using the term to mean non-Shariah law applicable in Malaysia) and Islamic law, articles containing comparisons of the two laws on the same subject, not even articles written by civil law lawyers and Shariah scholars, in the same volume. Civil law lawyers would write in English on purely civil law issues and publish them in law journals or books. Shariah scholars, at least in Malaysia, would write, more often, compile materials on religious subjects, especially pertaining to “ibadah”. They do not write academic articles the way civil law lawyers do, what more in English. This is partly due to the fact that civil lawyers do not know Islamic law and Islamic Scholars do not know civil law. Because of this ignorance and misconceptions, civil law lawyers considered Islamic law as outdated, Arab-based, draconian religious law which some Islamic extremists were trying to re-establish. The Islamic Scholars and “ustazs”, on the other hand brushed aside civil law as man-made law that is sinful to follow or even as the law of the unbelievers!

However, such negative perceptions are changing. The civil law lawyers and the Islamic Scholars have now opened up their minds, ears and eyes and are learning the “other law” and comparing it with the law that they are familiar with. This is spearheaded by universities that offer both civil and Islamic law subjects. As a result we now have graduates who are proficient in English, Malay and Arabic, who are exposed to both the civil and Islamic laws and who see the similarities, the fact that both laws complement each other that satisfies the demands of the religion and the modern world. A glaring example is in the area of banking, takaful and finance. Islamic banking, takaful and Islamic finance is nothing but an Islamised

conventional banking, insurance and finance. That it worked out that way is simply because that is the most practical way to create such products in the modern world. The existing conventional products are Islamised through the application of recognized Shariah principles. The net results are similar, if not the same, but they are Shariah-compliant.

This collection of articles is a manifestation of all these. We now have, in the same volume, an article on the development and future possibilities in the relationship between Shariah and Civil laws in the Malaysian legal system, an article on the common law right of private defence, an article of pure Islamic law in “Manhaj and Dawabit Pengeluaran Fatwa” and an attempt to compare and harmonize the two laws as in the articles on the “Letter of Offer”, “Ownership Theory” and “Kecuaian Dan Penentuan Liabiliti Dalam Kes Kemalangan”.

In other words, we see a mixture of Civil and Shariah laws as well as comparative and harmonization attempts of the two, written in Malay and English. In the modern world, the use of English appears to bridge the gap between civil law lawyers and Islamic scholars as more and more Islamic scholars are now proficient in English. The use of English has the advantage of a two-way traffic: both sides can learn from the other, as I see it, not only in substantive law but even in the style of writing. The Islamic scholar writing on pure Shariah topic now writes in the same way as a civil law lawyer or professor writes an article on civil law. To think of it, a major breakthrough has been made, to bridge or harmonize the two laws, may be without us realizing it.

I congratulate the authors of the articles and the Editorial Board Committee of the Malaysia Journal of Shariah and Law for their maiden edition and wish that the journal will one day become an important source of reference to the legal fraternity.



(TUN ABDUL HAMID BIN HAJI MOHAMAD)
Chief Justice of the Federal Court of Malaysia
26 December 2007