

# Administration Of Islamic Matters and Cooperative Federalism in Malaysia

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**Abstract:** *Administration of Islamic matters in Malaysia is a subject that is usually misunderstood. The polemic on the status of Islam as the religion of the Federation but within the realm of power of the states creates confusion among those who are not familiar with the intricacies of the administrative aspect of Islamic matters in Malaysia. A study was conducted a decade ago to understand the relationship between Islam and federalism in Malaysia. One of the findings of this study is that administration of Islamic matters has progressed so much to the extent that, JAKIM, as the federal overseeing body, has established a number of cooperative federalism mechanisms to coordinate, consult and cooperate with the states without taking the states' constitutional power in Islamic matters. The establishment of these cooperative federalism mechanisms was unplanned and unlabelled to the extent that it went unnoticed. This paper is an attempt to unravel the connection between administration of Islamic matters and cooperative federalism in Malaysia by focusing on the role of Department of Islamic Development Malaysia (JAKIM). This paper concludes that the ability of the Muslims in Malaysia and states to adopt and adapt with the religious regulations and restrictions during the Covid-19 pandemic is a culmination of a long-withstanding relationship, among others, cooperative federalism, between JAKIM and the states in the administration of Islamic matters in Malaysia.*

**Keywords:** Administration of Islamic Matters in Malaysia; Cooperative Federalism

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## 1. Introduction

Administration of Islamic matters in Malaysia is a subject that is usually misunderstood. The polemic on the status of Islam as the religion of the Federation but within the realm of power of the states creates confusion among those who are not familiar with the intricacies of the administrative aspect of Islamic matters in Malaysia. A study was conducted a decade ago to understand the relationship between Islam and federalism in Malaysia. The study is important because, so far, whenever there has been a conflict between federal power and state power in the administration of Islamic matters, judicial remedy was the only solution available. This study argues that not all problems in the administration of Islamic matters caused by the constitutional division of powers can be and should be resolved through judicial channels. Some of the problems can be resolved using other methods and this thesis argues that the current inter-governmental arrangements (IGAs) in the administration of Islamic matters in Malaysia may not be able to provide some of the solutions to be problems caused by the

constitutional division of powers and the current IGAs need to be enhanced and strengthened using cooperative federalism mechanism.

Cooperation between levels of governments requires administrative consultation and coordination and involves multiple levels of department and agencies. Any mechanism established, especially a federal one, must recognize the legal and administrative framework that it must work within and realization that the cooperative federalism mechanism is also going to impact other areas. The intergovernmental relations in the administration of Islamic matters in Malaysia is the culmination of the need to cooperate but there was no plan or any road map of execution considering the multi-religious and multi-racial society in Malaysia.

Since there are existing intergovernmental relations in the administration of Islamic matters in Malaysian, establishing a cooperative federalism framework means,

- establishing an overall legal and administrative framework based on the division of powers in the Malaysian constitution.
- putting a clear line of authority and accountability between federal and state Islamic religious departments
- creating a clear framework of administration of Islamic matters that can work effectively and efficiently for Muslims in Malaysia
- establishing a clear framework that can address problems effectively even if the problem affects certain rights of non-Muslims in Malaysia
- forming a clear relationship between federal and state Islamic religious departments with other federal or state departments in dealing with Islamic matters

To provide a potential solution in the form of cooperative federalist framework based on the existing cooperative federalism operation and mechanisms, the legal and administrative structure of Islamic matters needs to be understood. During the analysis, this study will establish the nexus between the federal and state Islamic religious departments within the Malaysian legal framework. No clear connection, legally or administratively, has ever been made between the federal and state Islamic religious departments in the administration of Islamic matters in Malaysia. There is a lack of explanation on how federal Islamic religious departments existed side by side with the state Islamic religious departments for more than two decades when in fact the Federal Government has no power in the administration of Islamic matters. Item 1, State List under the Ninth Schedule of the FC provides that States, not the Federal Government, have the power to enact Islamic laws and administer Islamic matters. The exception to this statement is that the power to administer Islamic matters for the Federal Territories falls under the Federal Government.

One of the findings of this study is that administration of Islamic matters has progressed so much to the extent that, JAKIM, as the federal overseeing body, has established a number of cooperative federalism mechanisms to coordinate, consult and cooperate with the states without taking the states' constitutional power in Islamic matters. The establishment of these cooperative federalism mechanisms was unplanned and unlabelled to the extent that it went unnoticed. This paper is an attempt to unravel the connection between administration of Islamic matters and cooperative federalism in Malaysia by focusing on the role of Department of Islamic Development Malaysia (JAKIM). This paper concludes that the ability of the Muslims in Malaysia and states to adopt and adapt with the religious regulations and restrictions during the Covid-19 pandemic is a culmination of a long-withstanding relationship, among others, cooperative federalism, between JAKIM and the states in the administration of Islamic matters in Malaysia.

The paper begins with a brief overview of the development of federalism to cooperative federalism. This section provides definitions of some important terms in the paper. Then, a brief explanation on the legal and administrative perspectives of administration of Islamic matters in Malaysia is provided. In the context of separation of powers, the power to administer Islamic matters in Malaysia can be divided to executive, legislative and judicial powers. This paper chooses to focus on the federal executive power in the administration of Islamic matters in Malaysia especially the role of Department of Islamic Development Malaysia (JAKIM).

## 2. From Federalism to Cooperative Federalism

Many scholars have provided definitions of ‘federalism’, the ‘federal system’ or a ‘federation’. According to Elazar, the word ‘federal’ itself originates from the Latin word ‘*foedus*’ which means covenant. The establishment of a covenant between levels of government implies that there is a certain agreement or promise between governments relating to the distribution of powers or competencies. Elazar is of the view that,

*...a federal arrangement is one of partnership, established and regulated by a covenant, whose internal relationship reflects the special kind of sharing that must prevail among the partners, based on mutual recognition of the integrity of each partner and the attempt to foster a special unity among them.*

On the contrary, Riker sees federalism as

*‘a bargain between prospective national leaders and officials of constituent governments for the purpose of aggregating territory, the better to lay taxes and raise armies’.*

To Riker, federalism is a political tool between competing powers.

In terms of the distribution of powers between levels of government, the distribution of powers has become more complex. The United States of America, based on article 8 of its constitution, established the modern federal system by specifying the items under the federal government’s power. This pattern is followed with certain modifications by the Australian constitution in Article 51. The Seventh Schedule of the Indian Constitution enumerates the items under the unions’ power, and the state power and there is an additional list called the concurrent list where the powers to administer certain subject matters are shared between the union and the states. The Malaysian Constitution followed the Indian Constitution model in that three lists of subject matters can be found in the Ninth Schedule.

This paper agrees with Saunders that although there is a division of subject matter between levels of governments in a federation this division becomes blurred by a variety of factors including courts’ interpretation of federal power, and intergovernmental cooperation. Watts is of the view that overlaps and interdependence were inevitable in a federal system when each level of government exercised their constitutional power and this situation requires extensive intergovernmental consultation, cooperation, and coordination.

Although there is a distribution of powers between levels of government, interaction between them is unavoidable, especially when there is a subject matter that overlaps between them, or a subject matter that, although different, touches the same group of people in society. This type of interaction is called intergovernmental relations. De Villiers refers Intergovernmental relations as “the formal and informal processes, institutional arrangements, agreements and

structures for bilateral and multilateral cooperation between the respective levels of governments.” Cameron said there are two types of intergovernmental relations in a federation: first, between the federal units and the central government and second, between the federal units.

Several factors shaped intergovernmental relations such as the demography and geography of the units, social factors, and culture (i.e. race and language), history, constitution and institution, politics, and circumstances (i.e. external threats). Watts points out:

*An important factor affecting the character of intergovernmental relations within a federation is the character of the political party regime. Where a single party (or alliance) has dominated politics within both orders of government, as in India in the early decades with the Congress party, in Malaysia with the Alliance party, in Mexico up to 2000 with the predominance of PRI and currently in South Africa and Ethiopia, federal party leaders have had great influence over the party leaders and organizations in the constituent units.*

Intergovernmental relations are formed for the purpose of coordination, consultation, or co-operation. Watts is of the view that when there is a prevalence of interdependence between levels of government and the driving need for intergovernmental institutions and processes, cooperative federalism is unavoidable in many federations. Sawyer explains that the form of cooperative federalism varies depending on the local factors in the federations and the nature of the problems which calls upon the cooperation.

The development of intergovernmental relations in the United States, Canada and Australian has resulted in a new concept called cooperative federalism. Notwithstanding the difference in the way powers are distributed between levels of governments in these federations, the extension of nationwide commercial enterprise, the development of interdependent economy, and the growth of national sentiment have caused extensive inter-governmental relations in the form of co-operation.

The phenomenon of cooperative federalism in the United States of America was first studied and described at length by Jane Perry Clark in her book 'The Rise of a New Federalism'. She distinguished six main methods of cooperation:

- i. informal cooperation - exchange of advice and opinions
- ii. formal agreements - covering specific cooperative activities, such as collection of statistics and research programmes
- iii. interchange and sharing of personnel - e.g. where the same agricultural experts carry out duties for both region and centre, the salary being paid in agreed portions by the two governments
- iv. interdependent laws and legal administration - which may relate to the necessary components in a system of norms or to administrative steps during a policing process
- v. centre grants-in-aid to regions
- vi. centre credits for region taxation.

Her identification of the abovementioned methods of cooperation may be inferred as the outcome from a new approach to federalism introduced in US after the Second World War. Cooperative federalism also assumes a division of structures but, at the same time, it accepts “a system of sharing that ranges from formal federal-state agreements covering specific programs to informal contacts on a regular basis for the sharing of information and experience.”

Fernando pointed out that not all cooperative federalism practice in the US can be followed by Malaysia due to difference in constitutional division of powers and system of government. US have cooperative federalism mechanism in various areas such as environment, climate change and telecommunications. In Malaysia, the bulk of the powers are held by the Federal Government, leaving the states with small area of power such as forestry, agriculture and local government.

Saunders is of the view that purposes of collaboration between governments in Australia can be identified as “coordination, including consultation; consistency or harmonization; and financial assistance”. Cooperative federalism in Australia can be categorized into two: cooperation within the constitutional framework and cooperation outside the constitutional framework but which conforms to the constitution. The Australian Constitution provides for cooperation between the Commonwealth government and the states based on three most significant provisions: first, section 51 on the referral power; second, section 96 on the grants power, and third, section 105A on the constitutional framework for intergovernmental borrowing. Section 51 grants power to the Commonwealth Parliament to enact legislation on matters referred to it by the States’ Parliament. This is a mechanism where, through cooperation, uniformity in legislation, administration and adjudication can be reached in areas otherwise outside Commonwealth powers. Section 96 empowers the Commonwealth Parliament to grant financial assistance to any state subject to any terms as it thinks fits. Section 105A is the authority for the establishment of the Loan Council. This section authorizes the Commonwealth to enter into agreements with the states.

French identified several mechanisms of cooperative federalism in Australia:

- i. Intergovernmental agreements providing for uniform legislation enacted separately by each participating polity and interlocking legislation by Commonwealth, State and Territory parliaments which may involve adoption of a standard law enacted by one polity
- ii. Delegation of legislative power by the Commonwealth under the territories power and by the Commonwealth under section 51 of the Constitution
- iii. Referral of state legislative power to the Commonwealth on a particular subject or to support a particular statute
- iv. Executive cooperation
- v. Judicial cooperation

In a federation, cooperation between levels of governments usually occurs when one level of government has the power on a subject matter but requires cooperation from another level of government in the execution of its power. In the context of environment, Malaysia shares the similar experience with Australia whereby the subject matter is not explicitly provided in the constitution. The Malaysian federal government has the power to enter international treaty, based on Item 1, Federal List, relating environment but there is no explicit provision on environment in the Federal List, Ninth Schedule of the FC. To fulfil its international obligation, the Federal Government enacts the Environmental Quality Act in the year 1971. To implement the provisions of the said Act, the Malaysian Federal Government requires the cooperation from the state governments because environment encompasses of land, water and forest which are state matters. All the states’ government Malaysia are ‘compelled’ to cooperate by virtue of art 81 of the FC which provides,

The executive authority of every state shall be so exercised—

- i. as to ensure compliance with any federal law applying to that State; and
- ii. as not to impede or prejudice the exercise of the executive authority of the Federation.

In other words, despite the constitutional distribution of powers between the federal and the state governments in Malaysia, the State Governments cannot obstruct or refuse to cooperate with the Federal Government in the exercise of the executive (and legislative) authority of the Federal Government. Article 81 of the FC provides for the constitutional obligation to the states to cooperate which may ensure the smooth-running of the Federal and State Governments machineries. On the other hand, the provision ‘forced’ the states to cooperate in federal matters which may have financial implications upon the states.

Despite the use of cooperative federalism, Saunders highlighted that cooperative federalism leads to a lack of governments’ transparency and accountability. In order to establish a cooperative federalist framework in Malaysia in the administration of Islamic matters, lessons from abroad would serve as a caution in the process of establishing such framework.

### **3. Administration of Islamic Matters in Malaysia – Legal and Administrative Perspectives**

This paper uses the term ‘Islamic matters’ and not ‘Islamic Law’ for a number of reasons; first, Islamic matters, in the context of the thesis refers to matters enumerated either in the Federal List or State List that is contain or imbued with Islamic principles; second, the connotation of Islamic law may refer to syariah or codified Islamic legislation. Both have narrower scope as compared to the term ‘Islamic matters’.

The administration of Islamic matters is mentioned under Item 1, State List of the Ninth Schedule of the Federal Constitution (FC). Briefly, the scope of state power in the administration of Islamic matters is limited to personal laws, creation of offences, distribution of inheritance, establishment and procedures of the Syariah Court and the determination of matters relating to the precepts of Islam. Even though the FC provides the states with the power to administer Islamic matters under Item 1 in the State List, it does not prevent the Federal Government from enacting laws on other Islamic matters such as banking, and on Islamic education.

Although the Federal Government does not have any expressed power in relation to Islamic matters, after the 1980s, a few Islamic institutions were established with some legal implications upon the development of Islam in Malaysia. The establishment of these several national Islamic institutions did not only rely on the interpretation of article 3(1) of the FC. Besides article 3(1), article 12(2) of the FC allows the States or Federal Government to establish, maintain or assist in establishing or maintaining Islamic institutions and to provide or assist in providing instruction on Islam and to incur the necessary expenditure for these purposes. Another effect of article 3(1) of the FC is that the Federal and State Governments through annual Supply Acts and Enactments are authorized to spend money on the administration of Islamic matters.

Currently, each state in Malaysia has four institutions administering Islamic matters: the State Islamic Religious Council is the advisor to the Sultan and responsible for the policy of Islamic administration, the State Islamic Religious Department is the executor of the policies and decisions of the state Islamic religious council and of Islamic laws passed by the respective State Legislative Assembly, the State Islamic Judiciary Department handles the administration of justice and the State Department of *Mufti* is in charge of *fatwa*.

Federal institutions involved in the administration of Islamic matters in Malaysia include the Conference of Rulers; the National Council of Islamic Affairs; and the National Fatwa Council. The Department of Islamic Development (JAKIM), is placed under the Prime Minister’s Department and acts as the secretariat of the National Council of Islamic Affairs and the National Fatwa Council. Another two departments in charge of Islamic matters under the Prime Minister’s Department are the Syariah Judiciary Department of Malaysia (JKSM) and the Department of Awqaf, Zakat and Hajj of Malaysia (JAWHAR). In addition, the Attorney General’s Chambers (AGC) under the Prime Minister’s Department has an important role in legislations pertaining to Islamic matters.

#### 4. Federal Executive Powers In The Administration Of Islamic Matters

Table 1 summarises the organisational structure of the administration of Islamic matters for the whole Federation.

**Table 1: Organisational Structure of the Administration of Islamic Matters in Malaysia at the Federal and State Levels**

Conference of Rulers		
National Council of Islamic Affairs		
National Fatwa Committee		
<b>Federal Islamic Religious Department under the Prime Minister’s Department</b>	<b>State Islamic Religious Institution &amp; Departments</b>	
Department of Islamic Development Malaysia (JAKIM)	Islamic Religious Council	State Government
Syariah Judiciary Department of Malaysia (JKSM)		Islamic Religious Department
Department of Awqaf, Zakat and Haj (JAWHAR)		Department of Islamic Judiciary
		Department of <i>Mufti</i>

As indicated in Table 1, the Conference of Rulers is at the top of the structure of administration in Islamic matters due to the power granted by the FC. The Conference of Rulers created two additional bodies to assist them in Islamic matters: National Council of Islamic Affairs (MKA) and National Fatwa Council. The former consists of Chief Ministers of the states while the latter consists of Muftis of the states. Both Councils have additional members appointed by the Conference of Rulers.

The Federal and State Islamic Religious Departments exist side by side. The former do not have any legal power over the latter. Despite the Federal Islamic Religious Department not having any legislative or executive powers over the States in the administration of Islamic matters, there are certain areas which require intergovernmental relations between them.

According to Khairil Azmin, there are three reasons why the Malaysian Federal Government is involved in the administration of Islamic matters despite the constitutional division of power allocating such powers to the states. The first reason is the legislative and judicial power of the Federal Government over the religious administration in the Federal Territories as stated in Item 27, federal List, Ninth Schedule of the Federal Constitution (FC). Secondly, the FC’s provisions relating to Islam imply the general obligation of the Federation to safeguard Islam and thereby provide justification for the Federal Government to assist, enable and facilitate the Muslims in Islamic matter within constitutional boundaries. The third reason is on the grounds of maintaining public order where the Federal Government hopes its involvement in religious affairs would enable them “to guide, if not regulate, Islamic activities in the country so that Islam will not become a source of inter-ethnic instability.” The Federal Government believes

Islamic matters need regulating, control and even coercion in order to maintain communal stability and public order.

Dr. Abdul Aziz Bari is of the view that the Federal Islamic Religious Departments are administrative departments and they exist without interfering with state powers in the administration of Islamic matters. Although these departments do not have any explicit power provided under the FC, section 2(1) of the Ministerial Functions Act 1969 provides that the *Yang di-Pertuan Agong* may, by way of notification in the Gazette, confer upon a Minister any function in respect of a particular department or subject. By virtue of this provision, it is the usual that after every General Election, the Prime Minister will announce his Cabinet line-up along with their respective specified portfolios. This announcement will then be published in the Government Gazette. Therefore, a minister can be appointed to look after Islamic affairs even though the Federal Government has limited jurisdiction over the matter. Dr. Arik Sanusi, the then Head of Harmonization Unit in the Attorney General’s Chamber is of the opinion that the Minister in charge of Islamic affairs does not have any legislative power in the administration of Islamic matters. The Minister has only administrative and financial power in the administration of Islamic matters at the federal level.

There are several Islamic religious agencies under the Minister in charge of Islamic Affairs under the Prime Minister’s Department and these agencies can be categorised into three groups as shown in the table below:

**Table 2: Islamic Religious Departments and Agencies under the Prime Minister’s Department**

Prime Minister’s Department		
<i>Core Agencies</i>	<i>Islamic Religious Departments of the Federal Territories</i>	<i>Supporting Bodies</i>
Department of Islamic Development Malaysia (JAKIM)	Islamic Religious Council of the Federal Territories (MAIWP)	Malaysia Dakwah Foundation (YADIM)
Syariah Judiciary Department of Malaysia (JKSM)	Islamic Religious Department of the Federal Territories (JAWI)	Malaysia Foundation for Islamic Economic Development (YAPEIM)
Department of Awqaf, Zakat and Haj (JAWHAR)	Department of Syariah Judiciary of the Federal Territories	Institute of Islamic Understanding Malaysia (IKIM)
	Department of <i>Mufti</i> of the Federal Territories	<i>Lembaga Tabung Haji</i>
	Department of Syariah Prosecution of the Federal Territories	Malaysia Foundation of Waqaf (YWM)

The supporting bodies such as IKIM, YADIM and YPEIM are involved in the development of Islam outside the scope of Islamic matters contained in Item 1, State List, Ninth Schedule of the FC for example, in *dakwah*, economic development and research activities. IKIM is incorporated as a company under the Companies Act 1965 and has its own Board of Directors while YADIM, YWM and YAPEIM are established under the Trustee Act 1949. A meeting involving all departments and agencies under the Prime Minister’s Department is held once a month and there is also a weekly post-cabinet meeting attended by all departments related to Islamic matters including JAKIM, JKSM, JAWHAR, YADIM, YWM, YAPEIM and IKIM. This was explained by the then Director General of JKSM, Tan Sri Ibrahim Lembut.

When asked why the federal Islamic religious departments are placed under the Prime Minister’s Department, Tuan Haji Naser Disa from the Attorney General’s Chambers (AGC) answered: “because the Prime Minister is executing his function on behalf of the *Yang di-Pertuan Agong* as the Head of the executive in Malaysia.” This is true based on the concept of

the constitutional monarchy whereby the monarch's power is limited by the constitution. However, the *Yang di-Pertuan Agong* is not the Head of Islam for the Federation, His Royal Highness is only the Head of Islam in his own state and for the states without a Malay Ruler. These states are Penang, Malacca, Sabah, Sarawak, and the Federal Territories.

The administrative explanation as to why Federal Islamic Religious Departments are placed under the Prime Minister's Department may be due to the fact that the Prime Minister is the Chairman for the National Council of Islamic Affairs (MKI), established by the Conference on Rulers. The secretariat of the MKI, which was previously a small section in the Prime Minister's Department, has expanded to cater to a wide range of Islamic administrative of Islamic matters in Malaysia.

According to the website of the Prime Minister's Department, there are four functions of the Department that relate to Islamic matters: first, to enhance procedural uniformity and practice in matters relating to *wakaf* and *zakat* throughout the country and to increase monitoring and policy coordination and regulation regarding pilgrimage activities; second, to enact Islamic law for a uniform administration of Syariah Courts to be implemented by the states; third, to prepare and implement administration of law based on Islamic law justly and effectively through passed legislation; and fourth, to formulate a firm *fatwa* based on *Al-Quran*, *Sunnah*, *Ijma'* and *Qiyas* and other recognised sources and to establish capable Islamic teachers who practice *Ahli Sunnah wal Jamaah*.

Despite not having any legislative power, the Federal Islamic Religious Departments are perceived as coordinators, consultants, financiers and, sometimes, problem solvers. This is supported by views shared by Federal and State Islamic Religious Department officers. They understand that the administration of Islam is the prerogative of the State Government and outside the scope of power of the Federal Government. Tuan Haji Abdul Walid believed the religious agencies at the federal level act only as 'initiators' and coordinators. Coordinating the states' administration of Islamic matters means to ensure that the administration of Islamic matters between states is not chaotic. For the purpose of this paper, JAKIM will be discussed in the next section to demonstrate how the administration of Islamic matters and cooperative federalism works between the states and JAKIM.

## 5. Department of Islamic Development Malaysia (JAKIM)

JAKIM was established as a secretariat for Majlis Kebangsaan Hal Ehwal Islam (MKI). Previously, it was called the Religious Division of the Prime Minister's Department. When the Federal Territory was created in 1974, the secretariat of MKI became the Religious Division of the Prime Minister's Department. The Islamic Religious Council of the Federal Territory was also put under the same division. On 21 May 1985, the Religious Division became the Division of Islamic Affairs in the Prime Minister's Department (BAHEIS). The Cabinet agreed, on September 1996, that the Division of Islamic Affairs under the Prime Ministers' Department would be upgraded into a full-fledged department with a new name, the Department of Development of Islam Malaysia (JAKIM), beginning 1 January 1997.

The then Director General of JAKIM (interviewed in year 2010) pointed out that the position of JAKIM under the Prime Minister's Department is an advantage because the Minister in charge of Islamic affairs is placed under the Prime Minister's purview. In addition, the Chief Secretary for all the departments under the Prime Minister's Department is the National Chief

Secretary. Therefore, JAKIM can deal directly with the Prime Minister’s Department, unlike other departments under other ministries.

The then Director General of JAKIM further explained that, in the early period of the establishment of JAKIM, the department’s core functions were to coordinate Islamic matters in three areas, namely, the administration of Islamic matters, legislation and Islamic education. Currently, JAKIM plays an important role in the coordination and standardisation of Islamic law, the coordination of Islamic administration and the development of Islamic education in Malaysia.

In terms of coordination with States Islamic Religious Departments in certain areas, the table below illustrates how it operates.

**Table 3: Intergovernmental Relations between JAKIM Officers and States’ respective Islamic Religious Departments’ Officers**

JAKIM’s sectors/divisions	State Islamic Religious Departments’ Officers	Subject Matters
Law Coordination Division	Religious Enforcement Officers	Enforcement of Syariah criminal offences
	Syariah Court Prosecutor	Prosecution of Syariah Criminal Offence in the Syariah Court
<i>Halal</i> Hub Division	Officers in charge of administration and enforcement of <i>halal</i> certification	Administration and Enforcement of <i>Halal</i> Certification
Management of Mosques Division	Management of Mosques Section	Mosque programmes
Family, Social & Community Development Division	Family Law Section (Chief Registrar and Registrar of Muslim Marriage, Divorce and <i>Ruju</i> )	Islamic family law

Evidence of intergovernmental relations can be seen in the Annual Coordination Meetings held between JAKIM and State Islamic Religious Officers of the respective areas. For example, a meeting of all states’ Chief State Religious Enforcement Officers and Chief Syariah Court Prosecutors was held on 28<sup>th</sup> May 2014 and a conference of all states’ Chief Registrars and Registrars of Muslim Marriage, Divorce and *Ruju*’ was held on 11-13<sup>th</sup> November 2013.

One of the positive outcomes from the coordination in the administration of Islamic matters between JAKIM and State Islamic religious officers is the establishment of the Guideline for the Enforcement of Syariah Criminal Offences, which was launched during the officiating ceremony of the Third Religious Enforcement Officers and Syariah Court Prosecutors Conference on 21-23<sup>rd</sup> November 2007. This Guideline was the fruit of collaboration between JAKIM and State Islamic Religious Departments with the aim to explain the States’ Syariah Court Criminal Procedures touching on the procedures for receiving information, conducting investigations and preparing investigation papers. The original draft of the Guideline was prepared by JAKIM and improved by a special committee organised by the Syariah Section of the Attorney General’s Chamber (AGC) comprising of representatives from the Prosecution and Drafting Sections of AGC, the Coordination of Law and Enforcement Division of JAKIM, JKSM, the Police, and Islamic Religious Department officers from Selangor, the Federal Territories, Perak and Sabah. The Guideline was later agreed upon at the All Chief Religious Enforcement Officers and Chief Syariah Court Prosecutors Meeting, Conference of All Directors of States Islamic Religious Departments and approved in the MKI Meeting, chaired by the Prime Minister on 7<sup>th</sup> June 2007, to be applied uniformly throughout Malaysia. Based on the explanation above, JAKIM and States’ Islamic Religious Departments have established

certain structures for intergovernmental relations in the administration of Islamic matters, namely in legal enforcement on Islamic criminal offences.

Apart from the FC, there are – from the point of view of an administrator involved in the administration of Islamic matters at the federal level – other points of reference concerning powers and policy on the administration of Islamic matters in Malaysia.

**Table 4: Other Sources of Power and Policy for the Administration of Islamic Matter in Malaysia**

No.	Federal	State
1.	Conference of Rulers	Decree of Sultan as the Head of Islam
2.	National Council of Islamic Affairs	State Islamic Religious Council
3.	Cabinet's decision	Decision of Exco Meeting
4.	Act of Parliament	State Enactment / Ordinance
5.	Decision of the National Fatwa Council	Decision of the State Fatwa Committee
6.	Decision or Order of other federal bodies e.g. Attorney General's Chambers,	Decision of other state agency e.g. State Secretary, State Treasury
7.	Order from the Minister (in charge of Islamic affairs) in the Prime Minister's Department	Order from the Chief Minister or Secretary of the State Islamic Religious Council
8.	Written directives from federal agencies e.g. Treasury	Written directive from the State Secretary

JAKIM's policy is very much guided by *fatwa* to comply with Syariah and the FC and other existing laws. In handling certain religious issues at the federal level, whatever JAKIM's stand, JAKIM would refer to any *fatwa* issued by the National Fatwa Council despite the *fatwa* produced by the Council having no legal standing unless gazetted by the States. However, to the Director General of JAKIM, the fact that *fatwa* has no legal binding effect is not an issue because, to JAKIM, the decision made by the National Fatwa Council, including those made in the *Muzakarah* of the Council, fulfils the requirement of Islamic law.

Even if there is no *fatwa*, JAKIM's stand will be based on the decision of one of the two research panels. According to the then Director general of JAKIM, if the issue is regarding Islamic faith, JAKIM refers to *Panel Kajian Akidah* or *PKA* (Research Panel on Islamic faith) and if the issue is regarding *syariah*, JAKIM will refer to existing *fatwa*. If there is no *fatwa*, JAKIM will refer the matter to *Panel Kajian Syariah* or *PKS* (Research Panel on Syariah). If none of the Panels has yet decided (on the new issue), JAKIM will produce a proposal paper and bring it to the attention of both Panels. When the Panels decide, that decision will be JAKIM's stand.

National policy planning on the administration of Islamic matters comes from JAKIM but in order for the policy to be seen as State policy, JAKIM uses diplomacy so that the states feel that they too have ownership of the policy and do not feel like the Federal Government is forcing the policy upon them. In executing its function as coordinator of Islamic laws between states in Malaysia, JAKIM has established a Technical Committee on Civil and Syariah Laws for the purpose of assisting, studying, reviewing and drafting Islamic law models towards uniformity and coordination of Islamic laws in Malaysia.

## 6. Uniformity of Islamic Laws - Technical Committee on Civil and Syariah Laws

The idea to create a uniform Islamic law among states in Malaysia is not something new. The federal system entered Malaysian history in 1895. The aim of creating a federation was to reduce interstate legal, administrative, and other variations between the four Malay states. With

the amalgamation of four Malay states in the Malaya Peninsula, a new federal entity, the Federated Malay States, was created. The practice of cooperation, coordination, and consultation between the four states were important elements practised in the Federated Malay States during the British colonial rule. For example, Willer is of the view that the passing of the Muhammadan Marriage and Divorce Registration Enactment 1900 by the four Malay states marked the beginning of uniformity and coordination in Islamic law.

Hooker stated that through meetings between the State Council and Federal Council, the British gradually introduced the codification of Islamic personal law and minor *Syariah* criminal offences. The codification of Islamic matters began, in Mahmood Zuhdi's view, in the Straits Settlements and the resulting template for Islamic legislation was later introduced to the Malay States. This method of drafting a template legislation to be followed by other states is an example of a cooperative federalism mechanism used until today in the administration of Islamic matters in Malaysia.

After the creation of the Federation of Malaya 1948, Selangor was the first state to enact its own Islamic law, namely, the Administration of Islamic Law Enactment which contained all provisions relating to the administration of Islamic matters in the state. No other law was enacted on Islamic matters until the Federal Territories enacted their own Islamic Family Act in 1984. States gradually enacted separate laws for family and *syariah* criminal offences but these laws differ between states.

In line with the purpose of the National Council of Islamic Affairs (MKI), in its 32<sup>nd</sup> Meeting on 12 February 1988, the MKI decided to form a Committee to Study Civil and Syariah Laws (hereafter the Committee) in Malaysia, headed by Dato' Dr. Abdul Hamid Othman (the then Director of BAHEIS). On 6 May 1988, the Committee proposed to establish a Technical Committee of Civil and Syariah Laws chaired by the late Prof. Emeritus Tan Sri Datuk Ahmad Ibrahim. The function of the Technical Committee was to expand the jurisdiction of the Syariah Courts, to preserve the dignity of Syariah Courts and to draft, uniform and standardize Islamic laws in Malaysia.

After JKSM was formed in 1998, the function of the Technical Committee became more specific, as follows:

- a) to draft an Islamic law model towards uniformity between the States;
- b) to study and review existing Islamic laws according to current needs;
- c) to study and review existing laws towards the harmonization of civil and syariah laws;
- d) to provide views on current issues relating to Islamic law.

A few smaller committees were established under the Technical Committee to deal with specific issues. These committees are the Working Committee on the Administration of Muslim Estate, the Working Committee on the *Wasiat* Law, the Working Committee on *Wakaf* Law and the Working Committee on Intergovernmental Relations between the States. The formation of the last Working Committee indicates the understanding of the Technical Committee of the necessity for establishing good intergovernmental relations between the Federal Government and the States in the administration of Islamic matters in Malaysia.

A number of sub-committees were also created to deal with certain Islamic matters on an ad-hoc basis, for example, the Sub-committee on the Coordination of Civil Procedures, the Sub-Committee on Muslim Inheritance Law, the Sub-Committee on Apostasy Law, the Sub-Committee on Polygamy and the Sub-Committee on Syariah Criminal Procedures.

Beginning in 1991, an Annual Conference on the Coordination of Civil and Syariah Laws is held. The Annual Conference involves high-ranking officials involved in the administration of Islamic matters in all states in Malaysia. They are the Muftis, the State Legal Advisors, the State Syariah Court Chief Judges, the Director of State Islamic Religious Departments and the Chairman or the Secretary of State Islamic Religious Councils. This Annual Conference serves as a mechanism to coordinate between officers from the Attorney General Chamber (the State Legal Advisors are appointed from the Chamber) and the states' Islamic religious officers.

JAKIM and AGC prepared six drafts of the abovementioned enactments and these proposed legislations were tabled in a Conference of Rulers Meeting in March 2000. After a few meetings and discussions between relevant parties, five of the proposed Islamic laws (except the Syariah Criminal Offences Enactment) were accepted by the members of the Conference of Rulers on 22 March 2001 to be adopted by the states in Malaysia.

The road towards uniformity of Islamic law in Malaysia has not been without challenge. Laws on the administration of Islam throughout Malaysia can only be uniform when all State Islamic Religious Authorities agree to make them so. Since the Head of Religion for each state is either the Sultan or the *Yang di-Pertuan Agong*, the best channel to do so is via the Conference of Rulers meeting. According to the then Director general of JAWHAR in 2010, any involvement of the Federal Government in this matter would be considered an attempt to take over matters that are the sole power of the Sultan of respective the states and this would cause a disruption in relationship between the Federal and State governments.

Some states still wanted to hold on to their power in Islamic matters even though the Federal Islamic Religious Departments have established a coordinated administrative system for Islamic matters that does not touch upon any legislative powers on Islamic matters. From Selangor's perspective, the then Director of JAIS was of the view that the effort to unify state Islamic laws did not fully achieve its aims because insufficient or inaccurate explanation was given to the Sultans as the Heads of the Islam in their respective States. The Chairman of MAIS is of the view that not all Islamic matters should be uniformed.

To summarize, the British started to uniform Islamic laws between the states in the Malay Peninsula starting with codification of laws for Muslims in the Straits Settlements. The template legislation scheme from one Malay state was gradually followed by other states. Decades after Independence 1957, the Technical Committee of Civil and Syariah Laws began the effort to establish uniform Islamic law for all the states in Malaysia. As commented by Tan Sri Syeikh Ghazali, uniformity of Islamic law between all states strengthens the application of Islamic law in Malaysia.

## 7. Conclusion

Currently, among the Muslim populated countries in the world, Muslims in Malaysia have shown greater adaptability in facing the Covid-19 pandemic. The ability of the Muslims in Malaysia and states to adopt and adapt with the religious regulations and restrictions during the Covid-19 pandemic is a culmination of a long-withstanding relationship, among others, cooperative federalism, between JAKIM and the states in the administration of Islamic matters in Malaysia.

There is a need to strengthen the current cooperative federalism in the administration of Islamic matter in Malaysia because, although Islamic matters are state matters, in certain situations, the

implementation of state powers in Islamic matters requires federal cooperation. Without federal cooperation, such Islamic matters under state power remain a mirage. Such cooperation between state Islamic religious department and relevant federal authorities needs to be strengthened so that the execution of powers by both levels of government benefits the people and does not create more problems.

There is a need to strengthen the current cooperative federalism mechanism in the administration of Islamic matters in Malaysia because the current administrative framework was established on need basis. Therefore, it is sporadic and created to address certain problems without a proper framework or foundation in the whole scheme of administration of Islamic matters. Thus, the existing cooperative federalism mechanisms were created to solve specific situations without considering the whole constitutional and administrative framework of the administration of Islamic matters in Malaysia.

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