JURISDICTIONAL CONFLICT BETWEEN SYARIAH AND CIVIL LAWS IN IKI PUTRA CASE: THE WAY FORWARD FOR MALAYSIAN LEGAL SYSTEM

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Abstract

The existence of Syariah and civil laws that operate side by side in Malaysian legal system has much to do with the historical development of this country, starting from ancient Malay/Islam customary laws until the introduction of English laws during the colonization era. Against this backdrop, this article aims to analyse the conflict of jurisdictions between Syariah and civil laws in Malaysia by focusing on the Iki Putra case. At the onset, this article examines the general overview of the Syariah-civil laws jurisdictional conflicts in Malaysia including the impacts of the amendment on Article 121 (1A) of the Federal Constitution. This is followed by a special analysis on the Iki Putra case particularly on the jurisdictional conflict between the provisions in Syariah criminal code of the State of Selangor and the Penal Code which lies under the federal law. This article uses qualitative methods through document analysis of books, journal articles, newspaper articles, court cases and other internet sources related to Syariah-civil laws jurisdictional conflict in Malaysia and the Iki Putra case. The study in this article found that, despite does not totally stop the jurisdictional conflict between the Syariah and civil laws, the inclusion of Article 121 (1A) in the Federal Constitution that highlights the exclusive jurisdiction of Syariah court have brought some improvements to the application of Syariah law in Malaysia. The Iki Putra case is an example that exemplified this scenario. Nonetheless, based on this case, this article believes that there is always a way forward for the effort to harmonise the Syariah and civil laws in the Malaysian legal system.

Keywords: *Jurisdictional conflict, Syariah and civil laws, Malaysian legal system, Iki Putra case.*

INTRODUCTION

The jurisdictional conflict between Syariah and civil laws in Malaysia which continues to exist until today has attracted much attention and debates from various segments of communities in particular legal scholars and practitioners. The recent judgment made by Federal Court judges in the case of *Iki Putra Mubarrak v Selangor State Government* has reignited similar debates. In its judgment, the Federal Court's nine-judge panel unanimously declared that that Section 28 of the Syariah Criminal Offences (Selangor) Enactment 1995 which provides unnatural sex a Syariah offence is invalid and unconstitutional. This is because such offences fall under Parliament's powers to make laws and not under the state legislatures' law-making powers (Lim, 2021).

Hence, this article aims to analyse the Iki Putra case in more detail to understand the nature of jurisdictional conflict between Syariah and civil laws in

Malaysia and finally to recommend some suggestions for improvement as the way forward. This article is divided into three parts, the first of which will discuss about the overview of Syariah-civil law jurisdictional conflicts in Malaysia including its historical perspectives which have shaped the current Malaysian legal system. In the same vein, this article will also examine the jurisdictions of Syariah and civil courts provided by the Federal Constitution through the amendment of Article 121 (1A). Accordingly, the second part of this article will analyse the judgment of the Iki Putra case and its impacts to the Syariah court's jurisdiction in Malaysia. Finally, this article will propose some improvements mechanisms and new approaches to resolve the ongoing jurisdictional conflicts including the possibilities of harmonising the two legal systems as the way forward.

OVERVIEW OF SYARIAH-CIVIL JURISDICTIONAL CONFLICT IN MALAYSIA

Islam came to the Peninsula of Malaya by the fourteenth century (al-Attas, S.M N., 1969). It is perceived that Parameswara, Malacca's first ruler, had converted to Islam because of his marriage to a Pase (*Pasai*) princess (Tan, 1997). Parameswara was later known as Sultan Iskandar Shah. Malacca became well known as a trading port between India and China. One of the facts that promoted the rapid growth of Malacca was its acceptance of Islam. Its strategic geographical position and Chinese patronage which helped in resisting the claims of nearby Siam were other factors that contributed to the rapid growth. Islam spread rapidly in Malacca and in the entire Peninsula of Malaya, perhaps due to the conversion of Parameswara to Islam (Mohamed Adil, M. A. & Ahmad, N. M., 2014).

Since Islam came to the soil of Malacca, it rapidly changed the law. Historians and legal writers have unanimously agreed that the influence of Islamic law together with Malay customs contributed largely to the application of law in Malacca. *Hukum Kanun Melaka* or the Malacca law is one of the best examples that could prove this claim. The significance and contribution of this law, in certain extent, had largely shaped the drafts of other Malay laws in other respective states in the Peninsula of Malaya. This could be seen in Johore Law, Pahang Laws, Kedah Laws and the *Undang-undang Sembilan Puluh Sembilan* (Ninetynine Laws of Perak), where most of the provisions in these laws originated from the *Hukum Kanun Melaka* (Ahmad Ibrahim and Ahilemah Joned, 1995). The recognition to Islamic law was even more evident when it was acknowledged as law of the land for Malay States based on the case of *Ramah v Laton* [1927] FMSLR 116 and *Reg v Willans* (1858) Ky 16.

The golden era of Islamic law in Malay States however come to its diminishing trend when the British arrived since 1795. The British residential and advisory systems through administrative and legal approaches based on 'divide and rule' concept have indirectly influenced the system of the Malay state government and the people are forced to obey it (Saat, 2010). Ever since, the Islamic law and the Syariah Court have gradually been isolated, their role reduced and their jurisdiction limited to personal matters only such as marriage, divorce and inheritance. The modus operandi used by the British by prioritising English law and procedure in the administration of justice

makes local civil law adapted from English civil law dominate all state administration of justice (Che Pa, H., Nor Muhammad, N. H., & Mustar, S., 2016).

English law has been adopted due to the absence of written codification of Islamic law in some matters related to freedom and human rights. Syariah Courts only function to hear about Muslim matters and are not considered to have become part of civil law. The civil court has broad jurisdiction, surpassing the jurisdiction of sharia judicial institutions. Interference in the jurisdiction of the Syariah court is common by making decisions that differ from the judgment of the Syariah court. The civil court will refer to binding precedents, while the Syariah court will refer to Islamic authoritative sources (Abu Bakar, Z. R., 2007).

The jurisdiction of the Syariah court become less significant because cases related to Muslims can be intervened by the civil court as happened in *Ainan bin Mahamud v. Syed Abu Bakar* [1939] MLJ 209. In this case, the decision of the Syariah court has been revised by the civil court judgment which subsequently recognised the child of a Muslim woman four months after marrying a Muslim man as a legitimate child of that man. In addition, civil court intervention also occurred in the court of appeal case *In re Maria Hertogh* [1951] MLJ 64. The civil court in this case made a decision based on the principle of English domicile law which caused a marriage that had been declared valid according to Islamic law to be declared to be invalid. The intervention of the civil court in the jurisdiction of the Syariah court in the pre-independence period has caused a contradiction in the judgments made by the civil court judges because they do not have knowledge of Islamic law before making a decision, making the decision made not in accordance with the requirements of Islamic law (Shuaib, F. S., 2008).

After achieving independence, the interventions of the civil court on the jurisdiction of the Syariah court still continue as in the case of *Re Maria Menado* (1964) MLJ 266 where the approach used by the civil court is not in line with the decision of the Syariah court against the prohibition order issued by the Syariah court. In the case of breach of Muslim engagement contract, *Nafsiah v. Abdul Majid* [1969] 2 MLJ 175, the civil court used English contract law as the basis of judgment and had jurisdiction to hear Muslim personal and family law cases, including Islamic engagement contract matters. In the case of *Commissioner for Religious Affairs, Trengganu & Anor v. Tengku Mariam & Anor* [1970] 1 MLJ 222 the Federal Court has ruled that they are bound by the decision of the Privy Council in matters of Islamic waqf and have the authority to decide the case. This decision of the civil court overruled the decision of the mufti on the grounds of being bound by the doctrine of binding precedent which had been decided by the Privy Council.

Likewise, in the case of *Myriam v. Mohamed Ariff* [1971] 1 M.L.J. 265, the civil court judge has decided that the civil court still has jurisdiction over Muslims (even though the authority has been given to the Syariah court) in matters related to child custody. These scenario indicated that the civil court is not parallel to the jurisdiction of the Syariah court and there was a tendency of the civil court to interfere with the jurisdiction of the Syariah court by using the approach of English legal principles. This

situation has caused a conflict of different jurisdictions in an issue of Islamic law between the Civil and Syaria Courts (Shuaib, F. S., 2008).

ARTICLE 121(1A) AND ITS IMPLICATIONS TO COURTS JURISDICTION IN MALAYSIA

The different jurisdiction between the Syariah court and the civil court often raises conflicts, and it is not a new issue. Most of the time, the civil court often interfered with the jurisdiction of the Syariah court. This issue has been going on for so long. However, the amendment made in 1988 through the addition of subsection (1A) to Article 121 of the Federal Constitution was a good move to resolve the conflict. Article 121(1A) provides the exclusive jurisdiction of the Syariah court thus it is incomplete to discuss jurisdictional conflict issues without rereferring to this provision (Mohamad, A. H., 2017; Yahya, I., 2017; Mohamed Adil, M. A, 2018a). This is because this amendment was made to remove the High Court's jurisdiction over matters that are under the jurisdiction of the Syariah court. Literally, this means that the High Court can no longer interfere in the jurisdiction of the Syariah court. (Ahmad, N. M. et. al., 2019).

The amendment of Article 121A (1A) has restored the rights of Muslims that have been lost for a long time even though Islamic law is the *lex loci* and it has an impact on the legal system in Malaysia. Among the impacts of this amendement are the civil courts are not allowed to interfere with the jurisdiction of Syariah courts and the Syariah court shall have exclusive jurisdiction through separation of powers between the civil and Syariah judicial institutions (Che Pa, H., Nor Muhammad, N. H., & Mustar, S., 2016).

In addition, the Syariah court becomes an independent and exclusive body in conducting adjudication matters without the need for the intervention of the civil court. The purpose of this separation of jurisdictions is to resolve legal conflicts between the civil and Syariah courts. Most recently, based on this provision, a judge is a High Court in Georgetown, Penang has rejected 57-year-old woman’s attempt to challenge the Syariah court’s decision on her application to renounce Islam (Free Malaysia Today, 2023).

Indeed, the Article 121 (1A) amendment has indirectly given judicial recognition to all judgments made by the Syariah Court to avoid any interference or conflict of judgments later (Mansor, M. H., 2021). Although exclusive authority has been given to the Syariah court, the effect of the amendment of Article 121(1A) remains in some matters for example in determining that applications such as Letters of Inheritance and Probate must be made in the civil court. The Syariah court has no authority to issue, except in matters related to faraid. The concept of justice between Civil Court judgments which touch on Muslims is different from the principles of Islamic justice based on God's revelation, while British justice is a concept derived from the ideas of judges and legislators.

The reality is that the civil court can still interfere with the jurisdiction of the Syariah court since Article 121 of the Federal Constitution actually still gives room for

the civil court to interfere with the power of judicial review over all courts and partial courts, including the Syariah court. This shows the real fact that the Syariah court still does not have absolute power and exclusive jurisdiction in its judgment because the civil court can still intervene in the affairs of the Syariah court in the event of a judicial review (Mohamed Adil, M. A. 2018a). Overall, the main effect of the amendment is to avoid conflict between the Syariah Court and the Civil Court in making a decision in the future as has happened in several cases such as the issue of property inheritance, the status of illegitimate children, wills, child custody and embracing Islam. Accordingly, if a matter falls within the jurisdiction of the Syariah Court, the Civil Court will not have jurisdiction to hear the matter (Ahmad, N. M. et. al., 2019).

On the other hand, according to Former Chief Justices of Malaysia Tun Abdul Hamid Mohamad (2017), the Syariah-civil jurisdictional conflict does not solely happen because the civil court always attempt to intervene the Syariah court's jurisdiction but also because the tendency of the State's legislative body to intentionally contravene the limits set by the Federal Constitution (see also (Mohamed Adil, M. A. 2018a). This happen due to the 'misunderstanding', 'intention to expand the jurisdiction of the court in the name of Islam', and to the extent that there has been State government which intended to take over the Federal power and jurisdiction relating criminal laws (Mohamad, A. H., 2017). In addition, this conflict of jurisdiction also occurs because the jurisdiction of the Syariah court is only limited to hearing of offenses committed by Muslims alone. If a Syariah criminal offense occurs involving non-Muslims, then the Syariah court is no longer eligible to hear the case (Mohamad, A. H., 2017; Yahya, I., 2017).

THE IKI PUTRA CASE

The case of *Iki Putra Mubarrak v Selangor State Government & Anor* involves an application filed by the Applicant pursuant to Article 4(4) of the Federal Constitution to obtain from a Federal Court Judge, a permission to challenge the validity of Section 28 of the Syariah Criminal Enactment (Selangor) 1995. This case is among recent cases that have overlapping jurisdictions of civil and Syaria laws. The decision of the Federal Court in this case has sparked a long debate especially among legal practitioners and academics.

Fact of the Case

In August 2019, Iki Putra was charged in the Selangor Shariah High Court under Section 28 of the 1995 Selangor state law read together with Section 52 for attempted offences, where he was alleged to have in November 2018 in a house in Bandar Baru Bangi attempted to commit sexual intercourse against the order of nature with other men (Lim, 2021). In his trial at the Selangor Syariah High Court, he pleaded not guilty and challenged the validity of the provision in the Federal Court on the grounds that the Selangor State Legislature did not have the authority to make the provision. The petition for this case was filed under the original jurisdiction of the Federal Court, which is related to the challenge of the competence of the relevant legislative body as

provided in Article 4(3) and Article 128(1). Laws made incompetently can be annulled under Article 4(1).

The petition was heard by Yang Amat Arif-Yang Amat Arif (YAA) Tengku Maimun, Rohana Yusuf, Azahar Mohamed, Abang Iskandar, Zawawi Salleh, Nallini Pathmanathan, Vernon Ong, Zabariah Mohd and Hasnah Hashim. YAA Tengku Maimun wrote the majority judgment and 2 other judges, YAA Azhar and YAA Zabariah wrote separate judgments upholding the decision from the YAA Tengku Maimun judgment (Wook, I., Ghulam Khan, I. N. & Md Yusof, A. F., 2023). In the Federal Court's judgments on 25 February 2021, two lists in the Federal Constitution's Ninth Schedule were examined, with these two lists stating the different matters that the federal government and state governments have powers to make laws on. In the Federal Constitution's Ninth Schedule, List I which is also known as the Federal List states what the federal government via Parliament can make laws on, while List II which is also the State List states the matters which state governments through their respective state legislative assemblies can make laws on (Lim, 2021).

Issues

Essentially, the court case was about whether the Selangor state government should not have made a state law — via Section 28 — which makes unnatural sex a Shariah criminal offence, if unnatural sex is a matter which comes under Parliament's power to make laws on instead, based on the Federal Constitution.

Applicant's Argument

Among the applicant's arguments is that 'in essence' the provision in Section 28 of Syariah Criminal Enactment (Selangor) 1995 has also been provided as an offense under Section 377A of the Penal Code. Next, the Selangor State Legislature ("SSL") has exceeded its jurisdiction when making provisions in List II of the Ninth Schedule that have violated Article 74 of the Federal Constitution because it is under the jurisdiction of the Federal and not the State. In general, criminal law is the jurisdiction of the federal government under the Federal List. Under the State List, the Federal Constitution has specifically provided for a long (but limited) list regarding the jurisdiction of the state and the Syariah Court in criminal offences, namely "...creation of punishment of offenses by persons professing the religion of Islam against the precepts of Islam..." (Mohamed Hadi, 2021).

Courts' Decision

The court ruled that the provision of Section 28 of the Selangor State Syariah Criminal Enactment 1995 related to the crime of sodomy is unconstitutional and illegal. The Federal Court judges unanimously granted the Applicant's application without costs.

Grounds of Judgment

After going through judgments by the Federal Court in three other relevant court cases, Justice Tengku Maimun said that the nine-member panel is of the view that

these judgments show that the issue is not about the "co-existence" of federal and state laws, but instead more about the independent application of the two streams of laws — civil and Shariah laws — within their respective jurisdictions. The judge then concluded that it could be put forward that when Parliament and the state legislature make laws on the same subject matter of criminal law, the two laws cannot co-exist even if the offence is said to be against the precepts of Islam, due to the "preclusion clause" in Item 1 of the State List.

"Given the above, the natural consequence is that the subject-matter upon which section 28 of the 1995 Enactment was made falls within the preclusion clause of Item 1 of the State List. "As such, it is our view that the said section was enacted in contravention of item 1 of the State List which stipulates that the state legislatures have no power to make law 'in regard to matters included in the Federal List'. To that extent, section 28 of the 1995 Enactment is inconsistent with the Federal Constitution and is therefore void," the judge said when noting that Section 28 in the Selangor state law had went against the Federal Constitution.

Justice Azahar, on the other hand, noted that there are three categories of Shariah criminal offences in Malaysia that would remain valid as state laws, despite the "preclusion clause", namely offences relating to *"aqidah"* or the Muslim faith (including wrongful worship, deviating from Islamic belief, teaching false doctrines), offences relating to the sanctity of Islam and its institution (including insulting the Quran, failure to perform Friday prayers, disrespecting Ramadan and not paying zakat), offences against morality (including consuming intoxicating drinks, khalwat or close proximity and zina or sexual intercourse outside marriage).

"As can be seen, these are offences in relation to Islamic religion practiced in this country that must conform to the doctrine, tenets and practice of the religion of Islam. In short, I refer to these offences as religious offences," he said, adding that this is a non-exhaustive list of examples of religious offences that can be validly enacted by state legislatures, based on the facts of each case. "In my opinion, all these offences are purely religious in nature that is directly concerned with religious matters or religious affairs," he said, citing Article 74(2) when saying that these religious offences which regulate Muslims' beliefs and practices can only be created through laws passed by state legislatures and that such religious offences would not fall under the category of "criminal law" in the Federal List. He noted that such religious offences come under the Shariah courts' jurisdiction and only apply to Muslims.

Justice Azahar pointed out that Section 28 of the Selangor state law which only applies to Muslims is punishable by a maximum sentence of jail up to three years, fine up to RM5,000, or whipping up to six strokes or any combination, while Section 28 would not apply to non-Muslims and the non-Muslims could instead be charged in the civil courts under the Penal Code's Section 377 which is punishable with a maximum jail term of up to 20 years and also fine or whipping. With Article 8 of the Federal Constitution providing for all persons to be equal before the law and no discrimination against citizens only on grounds such as religion, the judge had said it would be hard to deny that a non-Muslim would be discriminated in such a situation

as a Muslim would have the benefit of a lesser sentence for a substantially similar offence. Hence, according to Justice Azahar, this was among the reasons why he concluded that Section 28 is invalid as it was ultra vires or went beyond the Federal Constitution, noting that the state legislature had made Section 28 when it had no power to make law on the unnatural sex offence and that "only Parliament could enact such a law".

Implication of the Case

The decision of the Federal Court in the Iki Putra case will have an impact on the state's Syariah criminal enactment. First, states can no longer enact laws related to sexual intercourse contrary to natural law, such as adultery or *ityan al-bahimah*. The President of Syarie Lawyer Association of Malaysia, Musa Awang in a statement stated that the decision of this Iki Putra case will open the 'floodgate' up space for any other party to challenge other provisions contained in the State Syariah Criminal Enactment (Ali, 2021). This shows that as long as there is provision for a criminal offense in Federal law, it is very difficult for the state government to enact laws related to Syariah criminal offenses even if the offense is in the category of offenses committed by Muslims against the prohibitions in Islam.

In addition, the decision of the Federal Court is also a preliminary impression of "closing the door" to the proposal to implement laws related to hudud and qisas in this country. This is because hudud offenses such as stealing (sariqah), robbery (hirabah), qisas offenses such as murder (al-qatl) are also found in the Penal Code (Nordin et. al., 2021). The decision in the Iki Putra case is like a domino effect. This is because it not only affects other provisions in the Selangor State Syariah Criminal Enactment but will also involve all other states that have the same provision. However, it is more important to look at the entire judgment of the Federal Court which emphasises the importance of Federalism in the Federal Constitution.

Articles 73-95E of the Federal Constitution explain the relationship between the Federal and State governments. This provision has established jurisdiction between the Federal and State governments in enacting laws. The Ninth Schedule of the Federal Constitution has also outlined matters that are within the jurisdiction of the Federal and State governments as well as joint jurisdiction. Through this provision, it can be clearly seen that if there is a conflict in any law made then the law enacted by the Federal government will prevail over the law made by the State government. This means that the law of the state will be invalid to the extent that the conflict exists.

In Article 76 of the Federal Constitution, it was also stated that the Federation can make laws on behalf of the State government according to the Second List, Ninth Schedule if it aims to create uniformity in the law as it currently exists, namely the National Land Code and the Local Government Act 1976. In addition, Article 76A provides that the Parliament can make any law that gives power to the State government to enact laws that are within the jurisdiction of the Federal government. As a result, it can be seen that through the judgment made in the case of Iki Putra, any sharia criminal law that is similar or contrary to the Federal Constitution is null and

void. Therefore, it is appropriate for the state government to revise the law that has been enacted to avoid the risk of being challenged in Court. This is because the State Syariah Criminal Enactment for example Selangor was in 1995 which has not been renewed or amended after 28 years have passed. The review can examine whether there are provisions that need to be added, removed, and amended (Nordin et. al., 2021).

THE WAY FORWARD

As the way forward, legal practitioners have proposed some forms of recommendations that can be done, namely;

1. Focus on the current structural changes in the legal framework. One example is the appointment of Islamic Judges to judge cases related to the importance of Islamic law in the civil court, in addition to the establishment of only one form of Court. The participation of judges of both chambers will allow to coordinate the jurisdiction of both chambers in hearing such cases.

2. Use existing provisions but need to be improved by the responsible party so that the law is consistent and so that there will be no conflict of jurisdiction in the future.

3. Allow Non-Muslims to appear in Syariah courts as Parties. The law needs to provide flexibility to allow non-Muslims to appear in Sharia courts as parties so that the wishes and needs of both parties can be heard by the judge. This can reduce friction between disputing parties, help the sharia court in understanding the needs of the parties and increase the trust and confidence of the parties in the sharia court.

4. In matters involving syariah questions or syariah courts, it is proposed to allow the involvement of the Chief Judge of the Shariah Court in the composition of the Court of Appeals and allow the involvement of civil court judges in syariah courts in the same matters. Such involvement allows the interests of Muslim and non-Muslim parties to be preserved in both courts. In this way, it gives more meaning to the co-existence of these two entities in the administration of the national justice system.

In addition, Tun Abdul Hamid Mohamad (2017) suggests that if there are syariah issues in a case in a civil court where the case is outside the jurisdiction of the syariah court because:

i. one or all of the parties in the case are not Muslim; or
ii. there are constitutional issues; or
iii. there are civil law issues (eg land law, company law or common law principles) in addition to sharia issues such as waqf,
iv. then the civil court must sit together with a sharia court judge.

If the case is a High Court case, a Syariah High Court Judge can be borrowed. If the case is in the Court of Appeal or in the Federal Court, we can borrow a Chief

Syarie Judge where the court is sitting. The role of the syar'ie judge is to advise the civil court judges on a syariah issue. The civil court judge will adopt the syar'ie judge's decision on the syariah issue in deciding the case. We do not need to create new positions. Existing syar'ie judges can be borrowed. Such cases arise very rarely, perhaps only a few times a year. It will not involve reducing the jurisdiction of the sharia court because the cases are indeed outside the jurisdiction of the sharia court. In fact, it will increase the authority of sharia judges and will give sharia court judges exposure to the experience of sitting in civil courts (Mansor, M. H., 2021).

In addition, State governments do not need to worry because it does not in the least reduce the jurisdiction of the Syariah courts, but rather increases the powers of Syariah judges. The Federal Government also has nothing to lose. All political parties should support because there is no politics in this matter and it will solve problems that have not been overcome so far while benefiting all parties. Muslims and non-Muslims will benefit from this rule. If in the past non-Muslims (including the Islamic Religious Council) did not have an avenue to be heard in court if the issue involving them was a syariah issue because the case was under the jurisdiction of the syariah court and they were not Muslim and could not appear in the court , today the case will be heard in a civil court assisted by a sharia court judge.

If this were to be done, only a few amendments need to be made to the Constitution and the Court of Justice Act 1964. This rule will also not involve any additional expenses. This proposal is the only and easiest way for us to overcome the problems we have faced since Independence. The amendment to Article 121(1)(A) of the constitution has improved the situation a little but the mentioned problem continues to be faced. As long as we do not make this amendment, this problem will continue (Mohamad, A. H., 2021 & Mohamed Hadi AH, 2021). Meanwhile, the approach of using the term "harmonisation" leads to a wise approach in response to the clash that occurred between the two jurisdictions of the court (Mohamed Adil, M. A. 2018b). It is also important to ease jurisdictional conflicts that have occurred after a long time (Mohd Zin, N., 2017). Some legal figures have proposed that the civil court and Syariah court are unified (Mohamad, A. H., 2017; Yahya, I 2017 and Mohd Zin, N., 2017). The basis of this approach is to ensure that both Syariah and civil court judges can sit together in determining the decision, especially in cases that need guidance from Islamic law to judge it. The approach makes Malaysia as a single legal system needs to be evaluated on aspects of Islamic and universal justice and does not involve religious matters whether a person is Muslim or not (Yahya, I., 2017).

In addition, the form of punishment found in the Penal Code should be harmonised with the Syariah law in the existing criminal law contained in the Penal Code is indeed part of Islamic criminal law. Use of punishment which fulfills the spirit of Islamic law needs to be the core of the implementation framework the law contained in the Penal Code so that it is in line with the requirements of the Sharia in addition to ensuring that the harmonisation process can be achieved (Mohamed Adil, M. A., 2018).

CONCLUSION

The conflict between the civil and Syariah courts continues to this day, with the Iki Putra case illustrating the civil court's interference with the jurisdiction of Syariah law. However, there are two sides of view with the position of the offense of sodomy whether it is under the civil court alone, or both courts have jurisdiction to try it. The debate about which courts have jurisdiction over Syariah crimes shows that it is not entirely within the jurisdiction of civil courts. The intention of the framers of the Constitution clearly shows that Syariah crimes are not included under the definition of "criminal law" found in the Federal List.

When there is a conflict of jurisdiction between the Syariah court and the civil court, the recognition of the jurisdiction of the Syariah court is clearly guaranteed when it involves an issue whose "subject matter" is clearly related to Islamic law/Syariah law. This is because, in most cases, the court looks at the "pith and substance" or "remedy approach" when there is a dispute over an issue from the point of view of the clash of legislative powers between the state and the federal government as in the Iki Putra case.

This article has highlighted that in reality, the effort to dignify the legal institution of the Syariah court has passed a difficult journey of 35 years starting with the amendment of Article 121 (1A) in 1988. All the sincere efforts of the legislators to see the Syariah court develop in line with the civil court have been on the right track. Nevertheless, continuous efforts need to be made to empower the Syariah court institutions either at the state or federal level. This effort is needed to increase the credibility and level of professionalism of all parties involved, starting with staff, prosecutors, judges and Syarie lawyers. So, it is important to ensure that everyone understands Islamic law and the principles of universal justice, so that they gain a better understanding of how Islamic law works and what are its goals. This responsibility does not only rest on the shoulders of Islamic judicial institutions, but it is an integrated responsibility and commitment from the Executive and government in general.

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