

**FIQH FORENSIC MODULE DEVELOPMENT FOR SYARIAH
OFFICERS IN MALAYSIAN SYARIAH COURTS' CRIMINAL
JURISDICTION**

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UNIVERSITI SAINS ISLAM MALAYSIA

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OFFICERS IN MALAYSIAN SYARIAH COURT'S CRIMINAL
JURISDICTION**

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Thesis submitted in the fulfilment for the degree of
MASTER OF SYARIAH

UNIVERSITI SAINS ISLAM MALAYSIA

OCTOBER 2022

AUTHOR DECLARATION

I hereby declare that the work in this thesis is my own except for quotations and summaries which have been duly acknowledged.

Date: 4th October 2022

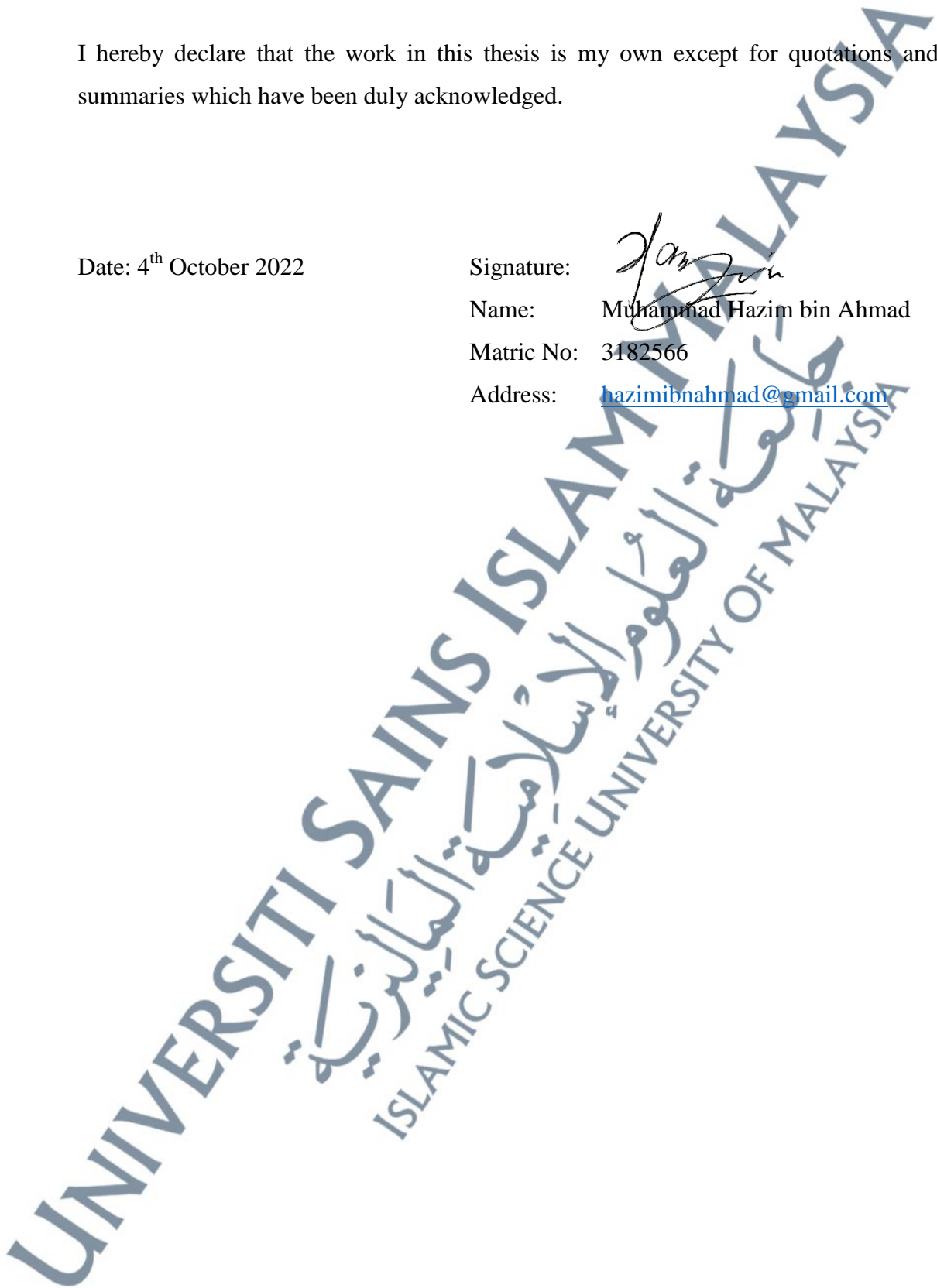
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DEDICATION

For my ardent Supervisors

For my loving Mother

For my supportive Sister

For my wonderful Wife

In loving memory of my diligent Father who has passed away

UNIVERSITI SAINS ISLAM MALAYSIA
جامعة العلوم الإسلامية
ISLAMIC SCIENCE UNIVERSITY OF MALAYSIA

اللَّهُمَّ أَنْفَعْنِي بِمَا عَلَّمْتَنِي، وَعَلِّمْنِي مَا يَنْفَعُنِي، وَأَرْزُقْنِي عِلْمًا يَنْفَعُنِي

“Oh Allah!

Grant me benefit in what you have taught me, and teach me useful knowledge, and provide me with knowledge that will benefit me.”

Ameen.

Ibn Sahl al-Sarkhasī (d. 483AH/1090CE) said in “*al-Mabsūṭ*”:

وينبغي للقاضي إذا أشكل عليه شيء أن يسأل من هو أفقه منه، ولا يسعه إلا ذلك
“*If the judge is confused about something, he has to seek the advice of someone more knowledgeable than him, and he has no choice but to do so.*”

Ibn al-Simnānī (d. 499AH/1105CE) said in “*Rawḍah al-Qudāh wa-Ṭarīq an-Najāh*”:

وإن القاضي يجب أن يكون عارفا بطرق القضاء قبل حضور الخصوم والدعاوى حتى إذا
حضر حكم بما يجب الحكم به وحمل الأمر على ما يجب، لأن علمه يجب أن يكون
سابقاً لمواضع الحكم وكيفية القضاء وماله أن يفعل وما عليه أن يترك
“*The judge is obliged to know about the court procedure before the disputing parties attend the trial and prosecution, so that if the parties are present, he can judge with what should be judged and bring the matter as it should be brought; This is because his knowledge must precede the subject of judgment, the method of judgment, what he should do, and what he should not do.*”

Ibn al-Munāṣif (d. 620AH/1223CE) said in “*Tanbīh al-Hukkām ‘alā Mākhiḍh al-Aḥkām*”:

يحق على من ولي اليوم القضاء، وابتلي بعظيم هذا البلاء، أن يتقدم في علاج نفسه،
ويجهد لصلاح حاله، ويكون ذلك من أهم ما يجعل من باله... بل يأخذ بالمجاهدة على
نفسه، ويتأهب لما يليق من منصبه، ويسعى في اكتساب الخير وتطلبه. إن كان جاهلاً،
استحضر من يثقه في دينه وعلمه، وحسن نظره؛ واستكثر من الشورى؛ وتفقد أموراً
أبداً وأحواله.

“*It is the prerogative of the person who now presides over the judiciary and has been affected by this enormous tribulation, to advance in treating himself and striving for the rectification of his condition; and this is one of the most significant aspects impacting his decision-making. More than that, he should strive diligently for himself, prepare what is necessary for his position, as well as endeavour to attain and discover goodness. If he is ignorant, he should confer with a person he trusts for his faith, knowledge, and outstanding contemplation; engage in numerous discussions; and continually assess his circumstances.*”

Abu Zakariyya al-Nawawī (d. 676AH/1277CE) said in “*Muqaddimah al-Majmū‘ Sharḥ al-Muhadhdhab*”:

وينبغي ألا يمنعه ارتفاع منصبه وشهرته من استفادة ما لا يعرفه؛ فقد كان كثيرون من السلف يستفيدون من تلامذتهم ما ليس عندهم

“His high position and reputation [in society] should not prevent him from learning things that he does not know; In the past, many of the Salaf (those who were in the first three generations of Islam) asked their own students what they did not know.”

Ibn al-Qayyim al-Jawziyyah (d. 751AH/1350CE) said in “*aṭ-Ṭuruq al-Ḥukmiyyah fī al-Siyāsah al-Shar‘iyyah*”:

والحاكم إذا لم يكن فقيه النفس في الأمارات، ودلائل الحال، ومعرفة شواهد، وفي القرائن الحالية والمقالية، كفقهاء في كليات الأحكام: أضع حقوقاً كثيرة على أصحابها، وحكم بما يعلم الناس بطلانه ولا يشكون فيه، اعتماداً منه على نوع ظاهر لم يلتفت إلى باطنه وقرائن أحواله.

“If the judge is not as knowledgeable of the signs and the evidence of circumstances, as he is in the details of the branches and the general rules, if the judge does not know all the above, he will forfeit many rights of the people, and he will decide about things that are well known that they are null and void, and this is because the judge has depended on the appearance of the circumstances, and disregarded deep thinking.”

Article 1793 of “*Majallah al-Aḥkām al-‘Adliyyah*” provided that:

المادة (١٧٩٣): ينبغي أن يكون القاضي، واقفاً على المسائل الفقهية وعلى أصول المحاكمات ومقتدراً على فصل وحسم الدعاوى الواقعة تطبيقاً لهما.

Article 1793: The judge must have knowledge of Islamic law and jurisprudence and of the rules of procedure, and must be able to decide and settle actions in accordance therewith.

ACKNOWLEDGEMENTS

In the name of Allah, the Most Gracious, the Especially Merciful

All praise is due to Allah, and we ask for His guidance and forgiveness. We seek shelter with Allah from the evil of our own hearts and our sinful actions. Whoever Allah guides has no one who can mislead him, and whoever He misleads has no one who can guide him. I testify that no one has the right to be worshipped other than Allah, and that Muhammad is His slave and His Messenger. He sent him to govern over other faiths with guidance and the true Religion. Allah is enough of a witness. He has sent him near the day of judgement in order to bring joyful news and to be a warner, and to guide the people to the way of Allah by His permission. Thus, Allah guided many people away from misguidance and onto the correct path through the Prophet. May Allah Almighty bless the Prophet, his family, and companions, those who migrated and supported him.

To begin:

I would like to convey my sincere gratitude and appreciation to my supervisors, Dr. Ahmad Syukran, Dr. Hasnizam, and Dr. Hendun, for their unwavering direction, critical remarks, and support during my research. Each and every one of you, particularly Dr. Ahmad Syukran, has been an incredible mentor to me. I would also want to express my gratitude to Dr. Naji Arafat (FS UTM) and Ms. Ruqayyah (ISI USIM) for providing me with the chance to get further information in formal and informal forensic science education along my path to accomplish this Master of Syariah. I am thankful for the financial support I have gotten for my studies from my family, particularly my mother and sister, as well as my pay as a Graduate Research Assistant and Research Enumerator at USIM. Not to mention, I would want to express my gratitude to the professors, associate professors, and lecturers in the Faculty of Syariah and Law at USIM for their academic assistance throughout this journey. My family deserves special thanks. No words can describe my appreciation to my late father, Mr. Ahmad, my loving mother, Mrs. Hanita, and my supportive sister, Mrs. Hamizah, whose love, prayers, and sacrifices have been with me throughout my life; without them, I would not be where I am today; to my mother and father-in-law, Mrs. Faridah and Mr. Ramli; and to all of my family members for all of the sacrifices that you have made on my behalf. My strength has been derived from all of your prayers for me. I would want to express my gratitude to all of my friends, specifically Mr. Ainul Hakim, Ms. Syahirah, Ms. Izzah, and Ms. Tasneem who have encouraged and supported me on my path to complete my study. I would want to convey my heartfelt thanks and admiration to my wonderful wife, Mrs. Nuraliya, with whom I have spent many sleepless nights and who has always been my pillar of strength in times when there's no one to respond my queries.

ABSTRAK

Jabatan Kehakiman Syariah Malaysia (JKSM) telah mengeluarkan Arahan Amalan no. 4 Tahun 2020 pada 21 Disember 2020. Arahan Amalan ini berkaitan kebolehterimaan keterangan forensik di Mahkamah Syariah, dan ianya mempunyai lakuna dalam aspek substantif dan prosedur. Selain itu, Mahkamah Syariah juga tidak mempunyai garis panduan atau rujukan yang menyeluruh mengenai pembuktian forensik. Hal ini diburukkan lagi dengan pegawai Syariah yang tidak mempunyai kurikulum mahupun latihan dalam mengendalikan bahan bukti tersebut. Ini telah menyebabkan kekurangan pengetahuan, keupayaan dan kecekapan untuk mengendalikan bukti forensik dan keterangan pakar. Akibatnya, tiada tafsiran perundangan terhadap peruntukan undang-undang mengenai bukti pakar, eksibit dan bukti forensik telah dikendalikan secara cuai, stigma negatif terhadap bukti qarinah, dan kesediaan untuk menerima bukti saintifik adalah minimum. Masalah-masalah ini memerlukan 'penawar' bagi mengelakkannya menjadi lebih teruk. Akibatnya, matlamat utama kajian kualitatif ini adalah untuk membangunkan 'penawar' tersebut. Objektif kajian ini adalah untuk menganalisis cabaran yang membawa kepada keperluan pembangunan "modul Fiqh Forensik", meneliti kandungan modul tersebut berdasarkan kepada sumber-sumber yang dipilih, dan menghasilkan "modul Fiqh Forensik" untuk pegawai-pegawai Syariah di Mahkamah Syariah. Dokumen-dokumen daripada sumber primer dan sekunder telah digunakan sebagai data dalam kajian ini. Data telah dianalisis menggunakan analisis kandungan kualitatif dan penaakulan induktif. Hasil kajian ini menunjukkan bahawa Malaysia memerlukan modul akademik sains forensik yang komprehensif dalam parameter undang-undang Syariah. Ini sepadan dengan penemuan banyak penyelidikan terdahulu. Kajian ini juga telah mengenal pasti enam topik penting yang mesti dibincangkan dalam "modul Fiqh Forensik" iaitu pertama "Pengenalan Fiqh Forensik"; kedua, "Kebolehterimaan dan Pemakaian Sains Forensik dalam Pembuktian"; ketiga, "Kelayakan dan Kredibiliti Pakar Forensik Menurut Perspektif Fiqh dan Perundangan Syariah di Malaysia"; keempat, "Pengurusan Siasatan Tempat Kejadian Jenayah Serta Tatacara Melaksanakan Intipan, Penyiasatan, Serbuan, dan Tangkapan"; kelima, "Pengurusan dan Pengendalian Bahan Bukti Saintifik"; dan keenam, "Keterangan dan Pendapat Pakar Forensik Di Mahkamah Syariah: Amalan dan Prosedur". Dua pakar dalam bidang telah memeriksa dan mengesahkan kandungan modul. "Modul Fiqh Forensik" telah dibina menggunakan "Model Pembangunan Modul Sidek". Pekali untuk kesahan kandungan "modul Fiqh Forensik" ialah 0.92. Kajian ini mencapai objektifnya dan menjawab persoalan kajiannya tentang "modul Fiqh Forensik". Kajian tambahan diperlukan untuk meluaskan skop kajian. Ini termasuk, tetapi tidak terhad kepada, memeriksa komponen forensik dalam penulisan perundangan dan kehakiman tradisional Islam, meneroka setiap komponen penting teori Fiqh Forensik, dan mewujudkan modul penyelidikan dengan penilaian kesahan, kebolehpercayaan, dan keberkesanan.

ABSTRACT

The Department of Syariah Judiciary Malaysia (JKSM) released Arahan Amalan no. 4 of 2020 on 21 December 2020. This Practice Direction pertains to the admission of forensic evidence in the Syariah Court, and it is deficient in both substantive and procedural elements. In addition, the Syariah Court lacks exhaustive guidelines or references pertaining to forensic evidence. This is exacerbated by Syariah officials who lack both curriculum and training in dealing with such evidence. As a result, there is a lack of understanding, aptitude, and competency in dealing with forensic evidence and expert testimony. Consequently, there is no legal interpretation of the legislative provisions regarding expert evidence, exhibits and forensic evidence have been handled negligently, qarinah evidence is stigmatised, and the readiness to accept scientific evidence is minimal. These problems need a 'remedy' to prevent worsening. As a result, the primary goal of this qualitative study is to develop the 'remedy'. The purpose of this study was to analyse the challenges that led to the necessity for the development of the "Fiqh Forensic module", examine the module's content based on the selected sources, and produce a "Fiqh Forensic module" for Syariah officers in Syariah Court. Documents from both primary and secondary sources have been utilised as data in this study. The data were analysed utilizing qualitative content analysis and inductive reasoning. The results of this study indicated that Malaysia needs a comprehensive academic module on forensic science within the parameters of Syariah law. This matched the findings of numerous earlier researches. This study has also identified the six essential topics that must be covered in the "Fiqh Forensic module", which area, first, "Introduction of Fiqh Forensic"; second, "Admissibility of Forensic Science as Evidence and its Application"; third, "Qualifications and Credibility of Forensic Experts in Malaysia from the Perspective of Islamic Jurisprudence and Syariah Law"; fourth, "Crime Scene Management and Procedures for Spying, Investigating, Raiding, and Arresting a Suspect"; fifth, "Handling of Scientific Evidence and its Management"; and sixth, "Evidence Practices and Procedures in Syariah Courts, as well as the Opinion of Forensic Experts". Two experts in the subject have examined and validated the module's content. The "Fiqh Forensic module" was constructed utilising the "Sidek's Module Development Model". The coefficient for the content validity of the Fiqh Forensic module is 0.92. This study attained its objectives and answered its research questions about the "Fiqh Forensic module". Additional research is needed to broaden the scope of the study. This includes, but is not limited to, examining forensic components in traditional Islamic legal and judicial writing, exploring each essential component of Fiqh Forensic theory, and establishing research modules with assessments of validity, reliability, and efficacy.

الملخص

قد أصدرت إدارة ماليزيا القضائية الشرعية (JKSM) التوجيه الإجرائي رقم ٤ لسنة ٢٠٢٠ بتاريخ ٢١ ديسمبر ٢٠٢٠. يتعلق هذا التوجيه الإجرائي بقبول الأدلة الجنائية في المحكمة الشرعية، وهو منقوص من النواحي الموضوعية والإجرائية. بالإضافة إلى ذلك، تفتقر المحكمة الشرعية إلى إرشادات أو مراجع شاملة تتعلق بالأدلة الفورينسك. ويتفاهم ذلك بسبب افتقار الموظفين الشرعيين إلى المناهج والتدريب في التعامل مع هذه الأدلة. نتيجة لذلك، فقد أدى إلى نقص في المعارف والقدرات والكفاءات في التعامل مع أدلة الجنائية وآراء الخبراء. وبالتالي، لا يوجد تفسير قانوني للنصوص التشريعية المتعلقة بآراء الخبراء وأدلة الفورينسك التي تم التعامل معها بإهمال، ويتم تهميش أدلة القرائن، والاستعداد لقبول أدلة العلم التجريبي ضئيل. تحتاج هذه المشاكل إلى "علاج" لمنع تفاقمها. لذلك، فإن هذه الدراسة الوصفية تهدف بشكل أساسي إلى تطوير هذا العلاج. وكان الغرض من هذه الدراسة هو تحليل التحديات التي أدت إلى ضرورة تطوير "وحدّة الفقه الفورينسك"، وفحص مضمون الوحدة بناء على المصادر المختارة، واستحداث "وحدّة الفقه الفورينسك" في المحكمة الشرعية لضباطها. تم استخدام وثائق من المراجع التراثية والتبعية كبيانات في هذه الدراسة. تم تحليل البيانات بطريقة التحليل المحتوى الوصفي وطريقة الاستنتاجي الاستقرائي. بينت نتائج هذه الدراسة أن ماليزيا بحاجة إلى وحدّة أكاديمية شاملة في علم الفورينسك ضمن معايير القانون الشرعي. وقد وافق ذلك ما توصلت له العديد من الأبحاث السابقة. حددت هذه الدراسة أيضاً المواضيع الأساسية الستة التي يجب أن تغطّيها "وحدّة الفقه الفورينسك"، وهي أولاً، "المدخل إلى الفقه الفورينسك"؛ ثانياً، "العمل بقبول الأدلة الجنائية كوسيلة للإثبات"؛ ثالثاً، "مؤهلات ومصداقية خبراء الفورينسك في ماليزيا من منظور الفقه الإسلامي وقانون الشريعة"؛ رابعاً، "إدارة مسرح الجريمة وإجراءات التحسس والتفتيش والهجوم على المتهم والقبض عليه"؛ خامساً، "التعامل مع الأدلة الجنائية وإدارتها"؛ وسادساً، "الأساليب والإجراءات الإثبات في المحكمة الشرعية، وكذلك بآراء خبراء الفورينسك". قام اثنان من الخبراء في هذا المجال بتفحص مضمون الوحدة والتحقق من صحته. تمت صياغة مضمون "وحدّة الفقه الفورينسك" وفق — "تطوير الوحدة النمطية لصديق". معاملة صدق مضمون "وحدّة الفقه الفورينسك" هي ٠.٩٢. وقد حققت هذه الدراسة أهدافها وأجابت عن تساؤلاتها البحثية حول "وحدّة الفقه الفورينسك". هناك حاجة إلى إجراء المزيد من البحث لتوسيع نطاق الدراسة. ويشمل هذا، على سبيل المثال لا الحصر، تدقيق النظر في مؤلفات الأدلة الجنائية في الموروث الشرعية والقضائية الإسلامية، والاطلاع على جميع المؤلفات الجوهرية عن نظرية فقه الفورينسك، وتأسيس الوحدّة البحثية بتقييمات للصلاحيّة والموثوقية والفعالية.

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CLJ (Sya)	Syariah Reports published by CLJ Malaysia
ed.	editor/edition/edited by
JH	Jurnal Hukum published by Department of Syariah Judiciary Malaysia
JKSM	Jabatan Kehakiman Syariah Malaysia/Department of Syariah Judiciary Malaysia
LNS	Legal Network Series published by CLJ Malaysia Sdn Bhd
MLJ	Malayan Law Journal published by Malayan Law Journal Sdn Bhd
n.d.	no date/no year
no.	number
p.	page
pp.	pages
ShLR	Shariah Law Reports published by Malayan Law Journal Sdn Bhd
vol.	volume

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