



# Jurisdiction of Appeals Hearing in The Shariah Court

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## Abstract

The Sharia courts in Malaysia are endowed with jurisdiction to hear appeals under enactments. Each hierarchy of Sharia Court that undergoes review has its own jurisdiction to hear such reviews. However, questions arise regarding the extent to which the structure and jurisdiction of judicial reviews in the Sharia Courts are justifiably discussed. Therefore, this article aims to examine the review structure in the Sharia Courts of the states in Malaysia and the jurisdiction of reviews hearing within the Islamic laws. This study adopts a qualitative legal approach using content analysis method. The study finds that Sharia Courts in each state in Malaysia have their own hierarchy of reviews. In addition, the Sharia Courts in Malaysia have the jurisdiction to hear reviews from the Lower Sharia Court to the Higher Sharia Court, and from the Higher Sharia Court to the Sharia Appeals Court. Hence, this article is crucial as a guide for Sharia law practitioners in Malaysia to conduct the review process in Sharia courts.

**Keywords:** Review, Source of Power, Jurisdiction to Hear, Enactment, Sharia court

## Introduction

In the Islamic legal system in Malaysia, the Sharia Courts have been empowered by the Federal Constitution to exercise jurisdiction through the Islamic Administration Enactment or the Sharia Court Enactment of the states. One of the powers provided in these laws is the jurisdiction of judicial review. Jurisdiction is a source of power that the court can utilize at any time to ensure compliance with the legal process to prevent disappointment or oppression and to provide justice to parties for a fair trial between them (Jacob, 1970). In this matter, each level of judicial review in the Sharia Courts has its own jurisdiction as stipulated in the Islamic Administration Enactment and the Sharia Court Enactment of the states (Kassim, 2022). Meanwhile, Sharia Courts in Malaysia have two levels of judicial review (1) from the Lower Sharia Court to the Higher Sharia Court and (2) from the Higher Sharia Court to the Sharia Appeals Court. This article aims to examine the review procedure from the perspective of jurisdiction. The article will analyze the structure and jurisdiction of reviews found in Islamic law. When discussing about jurisdiction, the author will refer to the Islamic Administration Enactment of the State of Johor (2003) as the basis for this study.

Previous studies have discussed the jurisdiction of grants in Sharia Courts in Malaysia Muhammad (2008) and the development of jurisdiction in Sharia Courts for criminal cases in

Malaysia (Nasri, 2018). These previous studies did not specifically focus on the jurisdiction of reviews hearing in Sharia Courts, as discussed by the author in this article. Instead, they focused on the jurisdiction of grants and criminal cases in Sharia Courts. Therefore, this article will address this gap by examining the structure and jurisdiction of judicial reviews in Sharia Courts. This article will also provide knowledge to the general public and legal practitioners, especially Sharia law practitioners. Thus, the article will demonstrate that the Sharia Court has the source of power and jurisdiction for judicial reviews at each level.

### **Research Objective**

- I. Reviewing the structure of review procedures in the Sharia courts in Malaysia.
- II. Analyzing the scope of reviews jurisdiction in the Sharia courts in Malaysia.

### **Research Methodology**

This research is carried out using qualitative methods by analyzing documents to obtain the necessary data. The main source for this matter is from Shariah Court Practice Guidelines. Descriptive and thematic methods are used in analyzing data by expanding the understanding of data by presenting case report. Data is processed and analyzed based on a content analysis approach in accordance with the scope and theme of this writing.

### **Causes of Judicial Review Authority in State Enactments in Malaysia**

The provisions related to Sharia Courts are mentioned in the Federal Constitution. The Federal Constitution grants power to the State Legislative Bodies to enact Islamic laws within the limits that set by the Federal Constitution and subject to Federal Legislation that also bounds the full implementation of Islamic Law (Yaacob, 2009). Following this, the authority for judicial review in this Enactment begins with Article 3, followed by Article 11(4) of the Federal Constitution and formulated by the state Enactments. In this regard, Islamic legislation in each state has specified the sources of power for judicial review in the High Sharia Court and the Sharia Appeals Court as mentioned in the Islamic Administration Enactment or the Sharia Court Enactment of the states, as follows:

Table 1

*Causes of the authority's review of the High Shariah Court and Shariah Court of Appeal in State Enactments*

<b>Bil</b>	<b>State Law</b>	<b>Jurisdiction of Review (Sharia High Court)</b>	<b>Jurisdiction of Review (Sharia Appeal Court)</b>
1.	Administration of Islamic Religion Enactment (State of Selangor) 2003	Section 66 (1) & (2)	Section 68 (1) & (2)
2.	Administration of Islamic Religion Enactment (State of Johor) 2003	Section 66 (1) & (2)	Section 68 (1) & (2)
3.	Administration of Islamic Religion Enactment (State of Melaka) 2002	Section 54 (1) & (2)	Section 56 (1) & (2)
4.	Administration of Islamic Religion Enactment (State of Negeri Sembilan) 2003	Section 66 (1) & (2)	Section 68 (1) & (2)
5.	Administration of Sharia Courts Enactment (State of Perlis) 1991	Section 9C (1) & (2)	Section 13 (1) & (2)
6.	Islamic Law Administration Act (Federal Territories) 1993	Section 51 (1) & (2)	Section 53 (1) & (2)
7.	Administration of Islamic Religion Enactment (Penang) 2004	Section 66 (1) & (2)	Section 68 (1) & (2)
8.	Sharia Court Enactment (Terengganu) 2001	Section 16 (1) & (2)	Section 18 (1) & (2)
9.	Sharia Court Enactment (State of Sabah (2004)	Section 16 (1) & (2)	Section 18 (1) & (2)
10.	Sharia Court Enactment (Kedah Darul Aman) 2008	Section 14 (1) & (2)	Section 16 (1) & (2)
11.	Sharia Court Ordinance (State of Sarawak) 2001	Section 15 (1) & (2)	Section 17 (1) & (2)
12.	Administration of Islamic Law Enactment (Pahang) 1991	Section 52 (1) & (2)	-
13.	Sharia Court Enactment (Perak) 2018	Section 21 (1) & (2)	Section 24 (1) & (2)

Source: Administration Enactment/Shariah Courts Enactment in the States.

Table 1 above shows that the states in Malaysia have sources of power for judicial review as stipulated in the Islamic Administration Enactment or the Sharia Court Enactment of their respective states. However, some states implement the State Islamic Administration Enactment, which are Selangor, Johor, Melaka, Negeri Sembilan, Perlis, Federal Territories, Penang, and Pahang. Those states that use the Sharia Court Enactment are Terengganu, Sabah, Kedah, Sarawak, Kelantan, and Perak. Therefore, the sources of power for judicial review in the High Sharia Court and the Sharia Appeals Court for each state are the same in terms of content.

### **Structure of Sharia Court Review**

The administration of Islamic law in the states of Malaysia provides for the establishment of Sharia courts. Overall, the Sharia Courts in Malaysia consist of the Lower Sharia Court and the High Sharia Court. Meanwhile, the Sharia Appeals Court has the authority to hear appeals in civil and criminal cases decided by the High Sharia Court and the Lower Sharia Court (Joned, 1997). It can be said that the structure of judicial review in Sharia Courts in Malaysia has two hierarchies. In general, these hierarchies can be categorized as follows:

- a) Review from the Lower Sharia Court to the High Sharia Court
- b) Review from the High Sharia Court to the Sharia Appeals Court

The Sharia Courts were separated from the State Islamic Religious Departments and became independent in terms of management administration in 1996. The administrative leadership of the Sharia Courts is led by a Chief Sharia Judge and assisted by the Sharia High Court Judges, Chief Registrar, Lower Sharia Court Judges, Sulh Officers, Registrars, Assistant Registrars of the Sharia Court, and other staffs (Rahman, 2010). Overall the hierarchy of Sharia Courts that hear reviews in Malaysia can be summarized as follows:

i) First-level review court:

The High Sharia Court functions as the headquarters that administer and led by a Chief Sharia Judge. Additionally, this court also functions to hear cases within its jurisdiction, including cases reviewed from the Lower Sharia Court (Rahman, 2010).

ii) Second-level review court:

The Sharia Appeals Court is ruled by a chairman and two members of the appeal panel consisting of Sharia Appeals Court Judges that being appointed by the State Islamic Religious Council. It is only with the consent of the Sultan to serve as members of any proceedings in the Sharia Appeals Court of the states. In other words, the Chairman of the committee in the Sharia Appeals Court has different identities among states among jointed and non-jointed territories. In most non-jointed territories such as Johor, Pahang, Terengganu, Kelantan, and Kedah, the chairman is the Chief Sharia Judge of the State and assisted by two panel members. Similarly, in Perak, the Chief Sharia Judge shall appoint one of the judges as the chairman of the Sharia Appeals Court. As for the jointed territories like Selangor, Negeri Sembilan, Melaka, Federal Territories, Penang, and Sabah, the chairman is led by a Chief Sharia Judge at the National level concurrently as the Director General/Chief Sharia Judge, Sharia Judiciary Department of Malaysia, who functions as the highest-ranking official in the Sharia judiciary system in Malaysia. The Director-General is the Chairman of the Sharia Appeals Court panel, consisting of several Sharia Appeals Court Judges based in the Federal Territories of Putrajaya (Rahman, 2010).

### **Procedure of Judicial Review From The Perspective of Jurisdiction in Sharia Courts**

In the Sharia justice system in Malaysia, each level of judicial review in the Sharia Courts has its jurisdiction to hear reviews as provided in the Islamic Administration Enactment or the Sharia Court Enactment of their respective states. Generally, the jurisdiction to hear reviews in each state in Malaysia is similar. When discussing the jurisdiction in Sharia courts in this article, the author will use the Administration of Islamic Law (State of Johor) in the year of

2003 as the basis for specific discussions related to the jurisdiction of judicial review. The author chose the Administration of Islamic Law (State of Johor) 2003 because this enactment is still enforced in the Sharia courts in Johor, and all states in Malaysia still use the same administration enactment as goes with Johor without any amendments. However, the author will analyze this enactment from the perspective of the jurisdiction of judicial review at each level as follows:

### **1. Jurisdiction to Hear Reviews In The High Sharia Court**

The High Sharia Court is giving the power to hear about supervision and review from any decisions made by the Lower Sharia Court. The author will make a comparison of the jurisdiction to hear about supervision and review in the High Sharia Court as follows:

#### **Clause (66). Jurisdiction of supervision and review of the High Sharia Court.**

- (1) The High Sharia Court shall have jurisdiction of supervision and review over all Lower Sharia Courts and may, if it appears necessary to the High Sharia Court in the interest of justice, either on its own motion or at the request of any party or interested person. It is at any stage in any matter or proceeding, whether civil or criminal, in any Lower Sharia Court, summon and examine any record concerning that matter or proceeding and may give such directions as it may deem necessary in the interest of justice.
- (2) When the High Sharia Court summons the record of any matter or proceeding under subsection (1), all proceedings in the Lower Sharia Court relating to that matter or proceeding shall be temporarily suspended until further order of the High Sharia Court.

The provision above illustrates the jurisdiction to hear about supervision and review of the High Sharia Court of the State of Johor as stipulated under Section 66 (1) & (2) of the Administration of Islamic Law (State of Johor) 2003. The jurisdiction to hear reviews is applicable if there are errors in any proceedings or decisions made by the Lower Sharia Court. Any party that believes a decision made by the Lower Sharia Court - whether in the proceeding stage or after the decision in criminal or civil cases – that contains errors, can file a review application in the High Sharia Court within 30 days after the decision is made. In this matter, the High Sharia Court can investigate or examine complaints and facts submitted by the applicant based on the law or Sharia law and make a fair decision for all parties. The Lower Sharia Court must implement the orders given. Meanwhile, cases that are under review in the High Sharia Court should be suspended until further notice from the High Sharia Court. Therefore, it is clear that the High Sharia Court has the jurisdiction to review decisions that contain errors, as stipulated in the enactment.

The outcome of review cases using the jurisdiction provisions of the High Sharia Court can be seen in a case that related to inheritance. Such as in the case of *Rosminah binti Kiamad v. Aisah binti Kiamad [2020] JH 52 BHG 2*, the petitioner filed a review in the High Sharia Court of the State of Sabah in Sandakan to obtain an order to cancel the distribution of inheritance. The petitioner's reasons for canceling the inheritance order were: 1) the petitioner claimed not to be informed by the deceased's heirs about the application for the distribution of inheritance, 2) the petitioner claimed that the current value of the land exceeded

RM100,000.00, and the Sharia Lower Court in Sandakan did not have the jurisdiction to hear the case, and 3) the petitioner claimed that the deceased had donated the land to the petitioner during his lifetime through a transfer of ownership form. The Honorable Judge of the High Sharia Court of Sabah, examined the main issue of whether the process, proceedings, and decisions complied with the law and Sharia law. The judge stated in his judgment that the trial judge did not thoroughly investigate the status of the relationship that qualifies a person to inherit the deceased's estate based on marriage, descent, or blood relationship. In addition, the trial judge and the Deputy Registrar did not pay attention to the status of the adopted child of the deceased, and the petitioner should have been made one of the parties when the respondent made a claim. Therefore, the judge approved this review on the grounds that the trial judge failed to follow the processes outlined by the law and Sharia law. The Honorable Judge of the High Sharia Court of Sabah ordered a rehearing of this case, especially regarding ownership rights, heir status, and jurisdiction. Thus, the petitioner in this case used the jurisdiction under Section 16 (1) & (2) of the Sharia Court Enactment (State of Sabah) 2004 to file a review in the High Sharia Court of Sabah in Sandakan.

## **2. Jurisdiction to Hear Review in The Sharia Appeal Court**

The Sharia Appeal Court is empowered to hear reviews from decisions or proceedings made by the High Sharia Court. The author will analyze the jurisdiction to hear reviews in the Sharia Appeal Court as follows:

### **Clause 68. Jurisdiction of supervision and review of the Sharia Appeal Court**

- (1) The Sharia Appeal Court shall have jurisdiction of supervision and review over the High Sharia Court and may, if deemed necessary for the interest of justice, either on its own motion or at the request of any party or interested person, at any stage in any matter or proceeding. It is whether civil or criminal, in any High Sharia Court as it shall summon and examine any record concerning that matter or proceeding and it may give such directions as it seems necessary in the interest of justice.
  
- (2) When the Sharia Appeal Court summons the record of any matter or proceeding under subsection (1), all proceedings in the High Sharia Court relating to that matter or proceeding shall be suspended until further order of the Sharia Appeal Court.

The provision above indicates that the jurisdiction to hear reviews of the Sharia Appeal Court of the State of Johor is stipulated under Section 68 (1) & (2) of the Administration of Islamic Law (State of Johor) 2003. The Sharia Appeal Court of the State of Johor has been given the authority by law to conduct reviews of cases decided by the High Sharia Court, whether the decisions were made during proceedings or when the decisions were issued. The jurisdiction to hear reviews is applicable if there are errors in any proceedings or decisions made by the High Sharia Court. Any party that believes a decision made by the High Sharia Court, whether in the proceeding stage or after the decision in criminal or civil cases - contains legal or Sharia law errors - can file a review application in the Sharia Appeal Court within 30 days after the decision is made. In this matter, the Sharia Appeal Court can investigate or examine complaints submitted by the applicant based on the law or Sharia law and make a fair decision for all parties. The High Sharia Court must implement the orders given. Meanwhile, cases that are under review in the Sharia Appeal Court should be temporarily suspended until further

notice from the Sharia Appeal Court. Therefore, it is clear that the Sharia Appeal Court has the jurisdiction to review decisions that contain errors, as stipulated in the enactment.

The outcome of review cases using the jurisdiction provisions of the Sharia Appeal Court can be seen in cases related to claim of matrimonial property. In the case of *Mohd Nazar bin Mohd Yakin v. Liza Roberts binti Abdullah (2019 JH 48 BHG1)*, the petitioner filed a review application in the Sharia Appeal Court Kuala Lumpur when the Honorable Judge, the High Sharia Court Federal Territories, Kuala Lumpur, decided to reject the petitioner's application to obtain a copy of the trial judge's handwritten notes for the trial proceedings. The petitioner stated in his affidavit that the copy of the trial (on 4/11/2014) judge's notes received by him was dubious as it should be more detailed. The petitioner had written and orally requested the court to obtain the handwritten notes of the trial judge regarding the proceedings. Yet, the Honorable Judge of the High Sharia Court rejected this application. The petitioner filed a review in the Sharia Appeal Court. The Sharia Appeal Court panel considered that the actions of the Honorable Judge was correct because a typed copy of the trial notes had been prepared and handed over to the petitioner, and the panel agreed that the original handwritten notes of the trial judge were confidential. In addition, the Honorable Judge of the High Sharia Court has discretionary power under Section 234 of the Sharia Court Procedure Act (Federal Territories) 1998, where the court has the discretion to supply any trial notes to any party. Therefore, the Sharia Appeal Court panel unanimously rejected this review on the grounds that the petitioner had no merit. Thus, the Judge of the Sharia Appeal Court in this case used its jurisdiction under Section 68 (1) & (2) of the Administration of Islamic Law (State of Selangor) 2003 to close on this case.

### **Conclusion**

The jurisdiction of hearing reviews is a procedure established in the enactments of states in Malaysia. Based on this, this jurisdiction comes into effect if there is a party aggrieved by a court decision, and that decision contains any legal or Sharia law errors. With the jurisdiction to hear supervision and reviews at each level of the Sharia court, an applicant can file complaints through an affidavit in the court that hears the review, either in the High Sharia Court to hear reviews from the decisions of the Lower Sharia Court, or in the Sharia Appeal Court to appeal from any decisions made by the High Sharia Court.

This writing contributes to the discovery of the scope of the jurisdiction of reviews for decisions that contain errors and parties aggrieved by those decisions to file applications at the appropriate level of the Sharia Court based on the Administration of Islamic Law or the Sharia Court Enactment of their respective states. This indicates that the jurisdiction to hear reviews has evolved and received legal updates to further strengthen the Sharia justice system in Malaysia. However, the practice in today's Shariah courts has evolved beyond the scope of appeals discussed by scholars. This shows that the system is progressive in accepting legal reforms to strengthen the Islamic justice system in Malaysia further. In this regard, it is hoped that this writing will provide exposure to Shariah legal practitioners, especially for judges who hear reviews that annulment of decision in Shariah courts at present should be based on legal sources and the views of Islamic jurists (fuqaha).

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