



Integrity and Fairness in the Pursuit of Justice

Tan Sri Harun M. Hashim was born on 31st May 1929 and throughout his life, he had an illustrious career in government agencies and the judiciary. He joined the Kelantan Civil Service and served as Assistant District Officer in 1948 and magistrate in 1954. Tan Sri Harun M. Hashim later joined the Judicial and Legal Service serving as a deputy public prosecutor and federal counsel in the Attorney General's Chambers. He was the President of the Sessions Court, and while serving as Kedah/Perlis State legal adviser he was appointed as the first Director of the newly set up Anti-Corruption Agency in 1967.

Tan Sri Harun M. Hashim who was appointed a High Court judge in 1971, and President of the Industrial Court in 1980 was very instrumental in bringing changes in the judicial system. In 1998, he was appointed as Supreme Court judge, the office he held until his retirement in 1994. After retirement, he continued to be active in the legal fraternity and was appointed a member of the Syariah/Law Committee of the Islamic Development Department of Malaysia (JAKIM) and a judge and permanent panel member of the Federal Territory Syariah Court of Appeal. In 1996, he was appointed Dean of Ahmad Ibrahim Kulliyah of Laws, International Islamic University and he left us on 30th September 2003 at the age of 74. IIUM was indeed blessed to have him serving as a lecturer and the Dean of the Kulliyah.

This IIUM Law Journal Special Feature discusses the contribution of Tan Sri Harun M. Hashim to the legal development of Malaysia in diverse areas. As an academic work, the discussion is not confined to the judgment of Tan Sri but includes the legal areas in its own right. In addition, the discussion not only look at the subject as a historical interest, but to highlight the significance of the work of Tan Sri as an administrator, a judge and an academic. The work also highlights his character as a man of integrity and who believed in discharging justice with

fairness. His life as an administrator, a judge and an academic are exemplars of these characteristics. The Special Feature also contains several other articles that look into other related compelling areas of law such as human rights, land law and *waqf*.

The first article focuses on the life of Tan Sri Harun M. Hashim where it investigates details of the life, education and career of the late Tan Sri. The article which was written by Najibah Md. Zin and Khadijah Mohd. Najid provides an insight into the colourful journey of Tan Sri Harun, covering not only his life experience, education background, career path and achievements but also highlighting the position of the late Tan Sri as a father, a grandfather, a mentor and a friend.

The second article which was written by Haji Mohd Na'im bin Hj Mokhtar and Hanifah Haydar Ali Tajuddin discusses on Islam and Islamic legal system in Malaysia. It explores the position of Islamic law with its special position, and the need for the related institutions to continue to be enhanced to stay pertinent. The authors highlighted the main challenges in coordinating the law at the federal level as some states interpret that such coordination would need them to divest the state inherited power over Islam and its laws. This article traces the legal history and development of Islamic law of today where it is found that although Islam and its laws are derived from the supreme law in the country, it must constantly overcome its challenges to remain relevant and significant.

The title for the third article is *This Land of Ours – Balancing Private Ownerships and the Public Interest*, was written by three authors, namely, Sharifah Zubaidah Syed Abdul Kader, Nor Asiah Mohamad and Zuraidah Hj. Ali. It examines Tan Sri Harun M. Hashim's judgments in cases relating to the law of property, particularly land law and the law of trust. This study reveals that Tan Sri Harun M. Hashim had contributed to a vast spectrum of knowledge revolving around land and trusts which is in line with Islam, customs, and values. He had addressed and contributed to the development of legal principles in land law including charge, caveat, prohibitory orders, as well as equity and trust principles.

The fourth article written by Nik Ahmad Kamal Nik Mahmood examines the contribution of Tan Sri Harun M. Hashim as the first head of the Anti-Corruption Department in 1967. The article entitled *Fighting the Menace of the Society – Pursuing the Corrupt* describes the history of the anti-corruption law and agencies created before and after independence focusing on the agencies' organisational and structural development. There is also a brief discussion on the period when Tan Sri Harun M. Hashim helmed the anti-corruption agency. Since independence, the government had tirelessly carried out efforts to combat corruption with the formation of the Criminal Investigation Department (Special Crime) and the Anti-Corruption Section (ACS) and then consolidated into one body called the Anti-Corruption Agency (ACA) with the passing of the Anti-Corruption Agency Act 1982. This was later replaced by The Malaysia Anti-Corruption Commission Act 2009, which came into effect on 1 January 2009 together with the formation of the Malaysian Anti Corruption Commission which is an independent, transparent, and professional body to effectively and efficiently manages the nation's anti-corruption initiatives.

A Critique of the Strata Management Act's 'Social Legislation' Purpose written by Jing Zhi Wong is the fifth article under this Special Feature has identified the Act's broad legislative purpose and the latter provided a normative rationale which justified why it should be read as taking precedence over other legislations. The writer further proposed that the court should

reconsider a restatement of its findings on the ‘social legislation’ purpose of the Strata Management Act 2013.

In Malaysia, workers are protected under relevant employment legislations that provide basic minimum rights. The sixth article is written by Noor Shuhadawati Mohamad Amin entitled *Balancing the Right of Gig Economy Workers in the Context of Collective Bargaining*. It stressed that although Malaysia’s freedom of association is embodied in the Federal Constitution, the rights of the gig economy workers, more often than not, are neglected. This is evident from the exclusion of this category of workers from the definition stated in the employment legislations. With this exclusion, gig economy workers are denied from establishing and joining trade union. According to the author, Tan Sri Harun M. Hashim has made significant contributions especially in the establishment of the Industrial Court itself where his discerning thoughts were penned down in two landmark cases involving issues on collective bargaining and the power of Industrial Court.

The seventh article by Fariza Milaqrshiah Mahmud discusses preliminary review of the prevailing approaches of constitutional interpretation applied in the notable judgments by the Malaysian apex court. Bearing the title, *A Review of the Malaysian Jurisprudence in Constitutional Interpretation*, this article highlighted that such application of the various approaches of constitutional interpretation does not always correspond to the philosophy underlying them. Such inconsistency in the understanding of the approaches and their application can cause distortion in the jurisprudence of interpreting the Constitution. The author concludes by offering practical insights regarding Malaysia’s jurisprudence in constitutional interpretation.

The article on *Optimising Waqf Law for Effective Administration: A Comparative Analysis of the Trustee Act 1949 and State Waqf Enactments* which was written by Zati Ilham Abdul Manaf, Khadijah Mohd. Najid, Muhammad Amrullah and Najhan Ibrahim focuses on improving the governance and administrative responsibilities of *waqf* administrators in Malaysia. A comparative analysis was made focusing on the duties of trustees under the Trustee Act 1949 and those of *mutwalli* and *nazhirs* under the *waqf* management and the finding suggest for further improvement in terms of administration and governance of the latter.

In light of Malaysia’s continuous effort in combating COVID-19, the article written by Hafidz Hakimi Haron, Nadiyah Arsat, and Muhammad Ashraf Fauzi focuses on negative views relating to vaccination. The article on *COVID-19 Vaccine Hesitancy in Malaysia Issues, Challenges and Way Forward* identifies major factors that contributed to vaccine hesitancy and this includes misleading religious belief and sentiment and misinformation and disinformation. The purpose of this article is to recommend the legal framework on Malaysian vaccination to be strengthened as the continued hesitance may have huge impact on good health and sustainable growth.

The launching of the National Community Policy by the Malaysian government deals with a few issues including healthy lifestyle. The tenth article written by Norlaili Mat Isa and Mahyuddin Daud relates this with the topic of *Nurturing Sustainable Communities in Affordable Housing Programmes in Malaysia* has highlighted the need to provide adequate housing which has become current issues and challenges which affects a healthy lifestyle in the community. It concluded with the need to have sports facilities into affordable housing programmes in order to foster sustainability.

The last article on *Recognition and Enforcement of Indonesian Sharia Arbitration Awards in Foreign Countries: Challenges and Opportunities* by Abdul Jamil, Farid Sufian bin Shuaib and Dodik Setiawan Nur Heriyanto focuses on the development of Shariah based economic system in Indonesia which give rise to the forming of the Basyarnas award. The authors examine efficacy of the award especially in the event of a dispute where the prevailing party must be able to use a Basyarnas arbitration award for enforcement and execution in the country where the losing party's assets are situated. Under the New York Convention on the Enforcement of Foreign Arbitral Awards, Basyarnas arbitration awards should not only be recognised and enforced in the court of the country of origin but also in jurisdictions where the losing parties' assets are located. This study concludes that Basyarnas arbitration awards should also be recognised and enforced in countries with common law systems. The Basyarnas arbitration awards can be recognised in other countries if the award does not conflict with public policy in the enforcing state.

It is our hope that the IIUM Special Feature *In Memory of Tan Sri Harun M. Hashim* will be a worthwhile addition to the existing legal material on pertinent issues that Tan Sri Harun M. Hashim had developed throughout his tenure in judiciary, as public servant and academic.

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Guest Editors
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