The Muslim and the Law: 
A Brunei Experience

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When Brunei Darussalam first presented its country report as a signatory on the status of the Convention on the Rights of the Child in Geneva in October 2003, the United Nations (UN) Committee commented that there could be conflict in the application of the parallel system of law as practised in Brunei. Perhaps what the UN Committee expert really wanted to know was whether the Sharī'ah Court could deal with cases pertaining to children as effectively as the Civil Court – a system that the experts are more familiar with. This paper discusses the issue of integrating “non-Islamic” law with the Sharī'ah law, with special reference to Brunei. Brunei is a state where two judicial systems that exist with different set ups, organisations and laws are implemented. Brunei’s legal system is based on the English common law. The laws consist of written judgements and legislation enacted by His Majesty and the Legislative Council with judicial power vested in Her Britannic Majesty’s Privy Council, the Supreme Court, the Intermediate Courts, the Subordinate Courts and the Syariah Courts. The Supreme Court comprises of the Court of Appeal and the High Court. The Subordinate Courts involve the Courts of Magistrates. The Supreme Court has competence over all criminal and civil matters, commercial matters such as bankruptcy and companies’ winding up, as well as matters pertaining to the personal status of non-Muslims.

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1 The author served as the Assistant Solicitor General at the Attorney General’s Chambers of Brunei Darussalam until she retired in 2011

2 This is a local spelling of Sharī'ah
The Syariah Courts include the Syariah Appeal Court, the Syariah High Court and the Syariah Subordinate Court. These courts have such jurisdiction, powers, duties and authority as they are conferred by the Syariah Courts Act (Cap 184) as well as any other written law. The Syariah Courts have both criminal and civil jurisdiction. Under the criminal jurisdiction, the Syariah High Court has the power to try any offence punishable under any written law creating Sharī'ah criminal offences, relating to Islamic family law or conferring on the Syariah High Court jurisdiction to try any offence. Under the civil jurisdiction, the Syariah Courts hear and determine all actions and proceedings relating to Islamic matrimonial and family matters, including maintenance of dependents, guardianships, wills and any other matters in respect of which jurisdiction is conferred under any written law.1 Over the years, a number of improvements have been made to the Sharī'ah Court structure and organisation, signifying the ongoing efforts by the authorities, in line with the Titah 2 of His Majesty Sultan Haji Hassanal Bolkiah Mu’izzaddin Waddaulah on the occasion of Brunei’s independence in 1984:

“Brunei Darussalam with the consent and the blessings of Allah ta’âlā, forever remained a Malay Islamic Monarchy, a sovereign nation that is independent and democratic, which is based upon the teachings of Islam according to the ahli Sunnah wal jamā’ah and which has justice, trust and freedom as the foundation…” 3

Again, on the occasion of the Launching of the Writing of the Qur‘ān to replace the cokmar, or mace, of Universiti Brunei Darussalam, His Majesty said:

“We know that there is no law or constitution that is superior to or truer than the Qur‘ān. That is why it has become our responsibility

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1 Brunei Darussalam State Report to the Human Right Council, Geneva, 30 January 2014
2 A royal command or speech
3 Dato Dr Haji Mahmud Saedon Awang Othman, A Review on the Implementation and Administration of Islamic Law in Brunei Darussalam, translated by Sharifah Khadijah Husein Alkaff, Brunei Darussalam: Islamic Da’wah Centre, 2008, p. 3
to pick all that we are capable of implementing from Qur'ânic teachings."\(^1\)

In 1993, His Majesty emphasised the seriousness of the government of Brunei to carry out the teachings of the Qur'an:

"...for the good of our people and of our nation. To date, we have expedited steps according to the guidance and the basis of the Syariah, specifically in government plans and efforts... and in legislation efforts are in full swing to adapt our present system of legislation to the Islamic system of legislation. The implementation... will be according to our present capacity and will be carried out in stages."\(^2\)

At the official opening of the 8th Session of the Council of the Islamic Fiqh Academy on 21 June 1993, His Majesty outlined his vision, ambition and desire to see Islam and its laws thoroughly and extensively practised in Brunei, reiterating that "In the hands of Muslims are wealth and skills including competency in executing the law...," and

"...we are increasingly convinced that the present world will witness a more extensive application of the Islamic law as a comprehensive and complete way of life, in all aspects of life and it is precisely on this basis that Brunei Darussalam is currently active in moving towards the Islamisation of its laws."\(^3\)

Then the Brunei Islamic Legal Specialist stated that for Brunei,

"...making Islamic law the basic and the supreme law is not introducing something new nor is it just a recent effort. It is simply an effort to restore the religion to its original status... we must know our true selves and return to Islam in all aspects of life. Brunei

\(^1\) Ibid., p. 3
\(^2\) Ibid., p. 3-4
\(^3\) Dato Dr Haji Mahmud Saedon Awang Othman, *A Review on the Implementation and Administration of Islamic Law in Brunei Darussalam*, p. 4
Darussalam needs to establish a legal and judicial system that is based on Islam.\footnote{Ibid., p. 5}

It was espoused that in order to answer the call for a country that has Islam as a foundation and pillar, its basic law must be Islamic and needs to be adhered to and respected, executed in its entirety, and administered competently, smoothly and wisely.\footnote{Ibid., p. 1} The various Titah of His Majesty resolutely set the tone on Brunei’s state policy in implementing the rules of Allah’s commandments in the Qur’an.

The Making of Laws

In Brunei, the process of making laws falls under the jurisdiction of the Attorney General for civil laws and the Islamic Legal Unit of the Ministry of the Religious Affairs for Islamic laws. The Attorney General is the principal legal adviser to the Government of His Majesty the Sultan and advises on all legal matters connected with the affairs of Brunei or by the Brunei Government. The Attorney General is also responsible for the drafting of legislation. In carrying out the task of legislative drafting, the Attorney General’s Chambers work closely with other ministries and departments.\footnote{ASEAN Law Association, “Legal Systems in Brunei”, accessed 20 February 2017, http://www.aseanlawassociation.org/legal-brunei.html} Brunei passes its laws in accordance with Article 83(3) of the Constitution of Brunei Darussalam. Any new laws that have been approved by His Majesty will be published as Government Gazzette forms and will come into force on the dates His Majesty approve of. Hence, for the time being, a new law will be referred to as an Order rather than an Act.\footnote{Ibid.}

Islam as the official religion in Brunei Darussalam is clearly stated in the Constitution of Brunei Darussalam:
“The official religion of Brunei Darussalam shall be the Islamic Religion: Provided that all other religions may be practised in peace and harmony by the persons professing them.”

Islamic law in Brunei is still governed under the Religious Council and Kadis Courts Act (Chapter 77), an Act which consolidates the law relating to the Religious Council and the Kadis Courts. Apart from this Act, there are other laws enforced in Brunei to govern the conduct of Muslims in the country, including the Syariah Courts Act (Chapter 184), the Syariah Courts Evidence Order of 2001, the Islamic Family Act (Chapter 217), the Islamic Adoption of Children Order of 2001 and the Halal Meat Act (Chapter 183). The making of Islamic laws in Brunei Darussalam is guided mainly by the principles in the Qur’an and the Sunnah, as well as other sources.

In 1980, a Committee of Harmonising Laws In Accordance With Islam was formed. To increase this effort, a Legal Unit chaired by the Chief Qaḍi was established in 1988 by the Ministry of Religious Affairs. The Legal Unit’s task is to mainly replace the earlier committee. In 1993, a committee for the establishment of the Syariah Supreme Court known as the Action Committee Towards the Establishment of Syariah Supreme Court was formed. Another committee known as the Islamic Family Law Legislative Committee was later established in 1995. This committee studies, legislates and prepares Islamic family laws as well as other laws governed by the Kadis Court. The Legal Unit, in 1997, was eventually alleviated to its present position as a separate department in the Ministry of Religious Affairs, now known as the Islamic Legal Unit.

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1 ASEAN Law Association, “Legal Systems in Brunei”
2 The constitution and organisation of religious authorities and the regulation of religious affairs
3 Other sources include *ijma* or consensus of opinion, *qiṣṣa* or analogical deduction, *istihsān* or Equity in Islamic Law, *maslahah mursalah* or consideration of public interest, *urf or custom, istishâb* or presumption of continuity, *saad al-dhara‘i* or blocking the means
4 Ibid.
5 Jawatankuasa Menyesuaikan Undang-Undang dengan Kehendak Ugama Islam
6 Unit Undang-Undang
7 Jawatankuasa Bertindak Ke Arah Penubuhan Mahkamah Agung Syariah
8 Jawatankuasa Penggubalan Undang-Undang Keluarga Islam
Among the duties of this Unit are to study, examine and do research on provisions in the Laws of Brunei currently enforced, to see whether or not there is any conflict with *hukum Syara*, to prepare a proposed draft amendment for any legal provision that conflicts with *hukum Syara* as well as to prepare a draft legislation in accordance with *hukum Syara* if there is no such legislation available yet. This Unit has also appointed secretariat for several committees that were mentioned above. Apart from that, this Unit also gives advices concerning Islamic laws to the Syariah Courts, the Faith Control Unit, the Prosecution, the Investigation, the Family Counselling Sections, the Attorney General’s Chambers as well as other government departments and private firms. As far as the dual system of law and law-making in Brunei Darussalam is concerned, it is very clear that there are different authorities involved and by the establishment and setting up of the different committees throughout the years, these authorities are expected to work closely together. The Attorney General and the Legal Unit of the Ministry of Religious Affairs are two different entities, but both are legal advisers working towards the same goal, that is, drafting laws that would acceptable by the same political master, and for this reason, the two main legal organisations should ideally integrate at least as far as legal drafting is concerned.

**Islam and the Muslim**

Islam is a religion of Allah *ta'ala* that leads mankind towards happiness in this world and the hereafter:

{ This day I have perfected your religion for you, completed my Favour upon you, and have chosen for you Islam as your religion. }  

This verse clearly states that Allah *ta'ala* has perfected Islam as *ad-Dīn* (the Religion) for the needs and the benefits of mankind, for happiness in the

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1 *Hukum Syara* refers to the Sharī'ah law
2 *Unit Kawalan Akidah*
4 The translation of sūrah al-Mā'idah: 3
world and in the hereafter. Islam is perfect for an individual, a family, a society or a country. Islam is the connection between a Muslim and his Lord, the world and the hereafter, the physical and the mental, the soul and the body, the individual and the society, the people and the country, politics and government, the laws, faith and character, the material and the spiritual and so forth. Islam forms the foundation for the achievement of peace, happiness and security in this world and in the hereafter.¹

Daud Abdul Fattah Batchelor stated that an Islamic system of governance per se is an “ideal” system and Muslims worldwide are exhibiting a renaissance of interest in the implementation of Islamic principles and values in their political systems and in their system of governance. Countries may be calling themselves “Islamic” but Islamic values may not have strongly penetrated the consciousness of their leaders and citizens. By emphasising basic Islamic teachings, there could be a natural transfer of Islamic values to the public arena and amongst institutions of the government.² Brunei is no exception in wanting to have that Islamic system of governance. Brunei’s effort in implementing Islam as a national philosophy in all areas and activities is very clear. His Majesty on 9 January 1994 in his Royal Command said:

“We should be compliant and start developing on the basis of values that are pure and sanctioned by the religion. We should never be fanatical about progress to the extent of neglecting noble ethics and morals.”³

System and OWNER
A system is defined as a set of interdependent, interacting components with mutual relationships forming an integrated complex whole, which includes the rules that govern their interactions. Batchelor espoused that

¹ Dato. Dr Haji Mahmud Saedon, A Review on The Implementation and Administration of Islamic Law in Brunei Darussalam, p. 7
³ Dato. Dr Haji Mahmud Saedon, A Review on The Implementation and Administration of Islamic Law in Brunei Darussalam, p. 64
the system will comprise a body structure developed according to Islamic principles and a “soul” of government officers and citizens who will ideally be conversant in Islamic values. By applying a “systems thinking” approach – which uses a style of reasoning and problem solving through understanding the system properties, including the system’s structural and social and human behavioural aspects – a more successful outcome can be achieved. Such an approach can help practitioners to see how to change systems effectively, and to act in tune with the natural processes of the real world.¹

Imam Taufiq stated that in the Qur’ān, good governance is based on īmān, or Faith. Those who have faith are not only those who obey and adhere to the rules created by the government, public and private sectors, but they also fully submit their hearts, speeches and actions to comply with the rules and regulations. Their hearts are always in the remembrance of Allah,² and their faiths manifested in good actions. In the context of good governance, īmān becomes an important basis in seeing all rules are adhered to and implemented. Imam Taufiq also put forth a view on the Islamic value of iḥsān, saying that people possessing such traits will always give good services to everyone and will be kind in doing so. Accountability, which is an indicator for what a person has done, is related to taqwā, or consciousness of Allah. Taqwā will keep a person’s behaviour in check and thus, restraining himself from committing any immoral or unlawful behaviour upon himself or his institution. In short, with iḥsān and taqwā based on īmān, people can control, manage and keep their own actions in check, although there are no punishments, no monitors or queries from others surrounding them.³

Sumaya Mohamed and Shadiya Baqutayan, as cited by Batchelor, described how social change in Islam takes place at three levels: on the individual, the community and the Ummah and thirdly, on the universal

¹ Batchelor, Integrating Islamic Principles and Values into the Fabric of Governance
² The translation of sūrah al-Insāf: 2-4
level. Individually, the process occurs in stages beginning with Islam, then \( \text{\textit{iman}} \) and finally in pristine practices (\textit{ihsan}), with the individual represented at each stage as a Muslim, \( \text{\textit{mu'min}} \), and ultimately a \( \text{\textit{muhsin}} \), based on a well-known \textit{Jibrâ'îl hadith}.\(^1\) Batchelor said that the Muslim Ummah, including its governance element and citizens, should be considered an organic integrated whole since Prophet Muhammad\( \text{\textregistered} \) described that “believers” are “like one body; if the head is in pain, the whole body suffers and if the eye is in pain, the whole body suffers.” \(^2\) Batchelor, citing James Gibson, John Ivancevich & Robert Konopaske’s Organizations, likens the description as a nature of a systems management approach since it “views the organisation as a unified, purposeful system of interrelated parts.” \(^3\) Batchelor also talks about “change management” in line with the Western theory that “when a group undergoes a change, it is not the organisation that changes, but rather the behaviours of individuals”. This statement made by Batchelor is completely in line with the following verse in the Qur\(\text{\textasciitilde{n}}\):

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\{\text{Allah will not change the condition of the people until they change what is within themselves.}\}^{4}
\]

Amin Abdul Aziz stated that an Islamic system of governance is essentially a series of interrelated processes pertaining to the act of governing in an Islamic manner, and where the interrelations between those processes are established via the common expectations of its actors, and all of which subsist within an Islamic conceptual framework. He went on to say that the processes are the core components in the activity of governance, defining and directing the method by which the operational functions of the organisation are to be implemented. Amin argued that although the

\(^1\) Batchelor, \textit{Integrating Islamic Principles and Values into the Fabric of Governance}  
\(^2\) The translation of hadith narrated by Nu\'man Ibn Bashir and later by Bukhârî, Hadith no. 6011.  
\(^3\) Batchelor, \textit{Integrating Islamic Principles and Values into the Fabric of Governance}  
\(^4\) The translation of s\textit{ûrah Al-Ra\’d}: 11
processes are operational in nature and functional in purpose, their practicalities are still subjected to the skills of the implementer.¹

The Human Agency

In the same paper, Amin emphasised that the efficacy of processes and procedures are dependent on the human agency and that “[e]ven the best of processes will still remain confined to the procedural world until made alive by the human agency”.² He continued that

“…because a system of governance is basically a series of interrelated processes, how each process relates to each other is critical for the proper functioning of the organisation and that the relations between the processes… are always determined by the people who participate in the activities of those processes… the failure or success of any endeavour is always anchored to the human agency.”³

As is commonly known, the refusal or the inability of an employee to perform a certain process, for instance, or a general breakdown among employees to cooperate between interconnected processes, are all operational impediments from achieving the organisation’s goals. Looking at the functions of both the Attorney General’s Chambers and the Islamic Legal Unit of the Ministry of Religious Affairs, the two organisations, though separate, should be acting as one when they are sitting together as a joint committee and coming up with a law acceptable to both. Within this mode, a full integration of the two major organisations in the Brunei government seems very possible.

Challenges in Integrating

What is then the role and the challenges of a Muslim in the context of engaging in legal issues in a “non-Islamic” context? How are these

² Ibid.
³ Amin Abdul Aziz, “Identifying roles and Protecting Rights”
challenges addressed towards integrating the “non-Islamic” laws with Islamic values? What is the role of the individual in those circumstances? Will they be draftsman first or Muslims first? Cases in point will be illustrated using two specific case studies. These case studies show that the individuals involved in the interrelated processes of drafting laws are responsible for making possible the integration of the different organisational functions within an Islamic system of governance. The case studies concerned laws affecting *dharar syar'ie* (domestic violence) and nationality of children born of Bruneian mothers. These cases affect, in reality, a number of women and children in Brunei, which could have long lasting impact, if not addressed.

**The Case Studies**

1. Domestic Violence and *Dharar Syar'ie*

The Married Women Act of 1999\(^1\) provides for the welfare of married women and contains provisions on the rights and duties of a husband and a wife, the maintenance of wives as well as the attachment of earnings in cases applied for. There was at that time no specific provision on domestic violence and no provision that can protect a woman as a victim in a household where domestic violence occurs.

Occurrences of *dharar syar'ie* cases in Brunei have increased consistently as seen in the following chart. The figures show the statistics of domestic violence between 2000 until 2007, where the majority of cases are wife abuse, revealing a 40% increase in the occurrence of wife abuse cases in 2006 when compared to that in 2000.\(^2\)

The constant, rising figures caused an alarm with the relevant agencies and resulted in a discussion on ways to address the problem in a more specific manner. Provisions of the Penal Code\(^3\) are available to deal with

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1. Laws of Brunei Revised Edition 2014
3. Laws of Brunei Revised Edition 2014
offences of hurt incurred by any victim, including a victim of a domestic violence. In 2010, the Married Women Act was amended to include a provision to deal specifically with the issue of domestic violence, which comes in as Part 2A under the title “Protection of Family”.\(^1\) The Islamic Family Law of 2001\(^2\) was enacted to make provisions concerning marriage, divorce, maintenance, guardianship and other matters connected with an Islamic family life and similarly, this law lacked any provision addressing domestic violence. This issue was dealt with by the passing of an amendment - also in 2010 - as Part 5 A entitled “Protection of Family”, but instead of using the term “domestic violence”, the amendment refers to “\textit{dharar syari'ie}”. The term used in the two laws may differ but the acts amounting to the offence of domestic violence or \textit{dharar syari'ie} are identical.

\[\text{Figure 1. Domestic Violence Statistics in Brunei Darussalam between 2000 and 2007}\]

\(^{1}\) Ibid
\(^{2}\) Ibid.
In a discussion regarding the drafting of these two pieces of provisions, the Family Law Legislative Committee, who sat with representatives of both the Attorney General and the Islamic Legal Unit,¹ was posed with the legal question as to whether there should be one piece of law to be styled as “Domestic Violence Act” or two separate but similar pieces of amendment, bearing in mind that the provision of “a protection order restraining a perpetrator from committing further violence against a family member” may not be truly Islamic in effect. Providing for a restraining order is a Western concept affording a better comprehensive protection to a victim who has lodged a complaint against a perpetrator who is invariably a family member or a member of the same household and is seen to be an effective mechanism in stopping the victim from being further abused. However, this concept would not be acceptable to a judicial system based on the Islamic law as the concept of three-day limit of not speaking to each other is unacceptable between Muslims, let alone between a husband and a wife. The decision was then taken to take a drastic step of having almost similar legal provisions addressing the same issue of domestic violence or in the case of the Islamic law, addressing *dharar syar’ie*.

The opportunity of having one law capable of solving the problem was totally lost here because for some particular reasons the organisations involved, as presented by the draftsman or the Islamic legal adviser in the case of the Ministry of Religious Affairs decided that having one law addressing the same issue will not look “Islamic” enough and that the issue must be solved in such a manner that results in making amendments both in the Married Women Act Chapter 190 and in the Islamic Family Law Act Chapter 217. How did this decision come about? Could it be that the individuals involved failed to foresee what the positive outcome could be when they integrate in their decisions to come up with one law capable of dealing with a law applicable to all those who are concerned, be they Muslims or otherwise? After all, the end result was exactly the same and there were the same solutions that have the potential to protect Muslim and

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¹ The author was a member of this Committee
non-Muslim victims from domestic violence. The opportunity of integrating the legal institutions was a foregone conclusion.

2. The Brunei Nationality Act (1961), Chapter 15

This particular case involves a number of organisations having its different functions and processes but all having the same goal that is the ability to allow for a citizenship to be granted to an applicant who is a minor. The Brunei Nationality Act of 1961 is an Act to make provision for the status of a subject of His Majesty the Sultan and Yang Di-Pertuan, on the acquisition and loss of such status. Under Section 6 (1) of the Act, a minor child of any subject of His Majesty may be registered upon application made in the prescribed manner by a parent or guardian of the child. A minor has been defined in the same Act as a person who has not attained the age of 18 years according to the Gregorian calendar. Up to 16 August 1975, this law did not cause any particular problem but on that day an administrative circular was then issued which has very far reaching consequences and if not addressed would have caused very serious consequences and everlasting impact on children and families affected by that administrative circular. The August 1975 circular basically brought a certain interpretation that disallows minors born of Bruneian mothers and non-Bruneian fathers to be registered through the application of their mothers as “parent” was interpreted as “father”. In effect, the administrative circular has “overruled the Brunei Nationality Act.

As a result of this circular, between 1995-1998 there were said to be about 900 “stateless” children whose mothers are outright citizens of Brunei. Being stateless, these children had difficulty getting access to certain facilities that are taken by granted by those minors whose fathers are Bruneian. Statelessness connotes problems of access to schools, medical services and employment. As a result of the ever-growing concern as well as a trend of many Bruneian women getting married to non-Bruneian men, a special committee was set up in 1999 with a mandate to address the

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1 Laws of Brunei Revised Edition 2014
issue of the growing numbers of the stateless children. The Committee, tasked with reviewing the policy that came about as a result of the administrative direction, was made of representatives of the Ministry of Home Affairs, the Ministry of Culture, Youth and Sports, the Attorney General's Chambers and the Legal Adviser from the Ministry of Religious Affairs. From the legal aspect, the solution was simple in that one has to look up the dictionary to find the definition of “parent” and determine whether the definition is exclusively limited to “father”. If it is not, then a father or a mother could apply for a citizenship for their child, and it does not mean that both parents should apply jointly. From the view of the Ministry of Culture, Youth and Sports, as the guardian of issues pertaining to children, they were very concerned with the few hundred minors waiting in line for their problem concerning schooling to be solved by the Ministry.

With the representative from the Ministry of Religious Affairs, their concern was to ensure that nothing un-Islamic arises by giving these stateless group of children a right to apply for citizenship through their natural mothers. The three main organisations considered the possible outcome very carefully, bearing in mind the policy of citizenship eligibility have been through fathers only for a very long time and any changes could be seen as drastic. Each Muslim representative of the organisations have put forth the compassion component in taking the decision but they were very much guided by the Legal Islamic Adviser. Once it was made very clear that it was in the best interest of stateless children to be ‘owned by a country’, and it was an Islamic thing to do, the decision could only go one way. On 30 March 2002, children of Bruneian mothers and non-Bruneian fathers were allowed to apply through their mothers and this practice continues. In this case study, there was room for full integration of all the organisations involved and each member of the Committee managed to look beyond their own terms of reference and their “office responsibility” and came up with a solution that is acceptable to all organisations involved. The Muslims in the

1 The author was a member of the Special Committee
organisations have won over and making it possible for organisational integration at this juncture to be wholesome and complete.

**Conclusion**

It is clear that the efficacy of processes and procedures, especially in the field of law and justice, are dependent on the human agency. Failure and success of any endeavour is always anchored to the individuals of any organisations. However, organisations do play an important role to ease integration to ensure that the system of governance is truly Islamic. The complexity then is the interactions between individuals and their respective organisations. Individual Muslims can transfer Islamic values to an organisation. Naturally, they would face many challenges that are surmountable. Despite these challenges, organisational integration is possible when individual Muslims submit their egotistical selves for the greater good of the Ummah before their own interests.