

SYARIAH COURTS ENACTMENT 2004
(No. 6 of 2004)

SYAR'IE LAWYER (STATE OF SABAH) RULES 2021
(G.N.S. 19 of 2021)

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SYARIAH COURTS ENACTMENT 2004

SYAR'IE LAWYER (STATE OF SABAH) RULES 2021

In exercising of the powers conferred by section 32(2) of the Syariah Courts Enactment 2004 [No. 6 of 2004], the State Chief *Syar'ie* Judge makes the following Rules –

PART I PRELIMINARY

Citation and commencement

1. (1) These Rules may be cited as the *Syar'ie* Lawyer (State of Sabah) Rules 2021.

(2) These Rules come into operation on the date of its publication in the *Gazette*.
[26.08.2021]

Interpretation

2. (1) In these Rules, unless the context otherwise requires-

“advocate and solicitor” has the meaning assigned to it under the Advocates Ordinance [Sabah Cap. 2];

“audit report” means audit report from the accredited auditor which is recognized by the Committee;

“Chief Registrar” means the Chief Registrar appointed under Section 10 of the Enactment;

“Committee” means the *Syar'ie* Lawyer Special Committee established under rule 3;

“Court” or “Syariah Court” has the meaning assigned to it under the Enactment;

“Enactment” means the Syariah Courts Enactment 2004 [No. 6 of 2004];

“examination” means the examination conducted by the Committee under rule 11;

“Register of *Syar’ie* Lawyer” means Register of *Syar’ie* Lawyer referred to in rule 14;

“State Chief *Syar’ie* Judge” means the Sabah State Chief *Syar’ie* Judge appointed under section 5 of the Enactment;

“Syariah High Court Judge” means Syariah High Court Judge appointed under section 7 of the Enactment;

“*Syar’ie* Judge” means a Judge as interpreted under subsection 2(1) of the Enactment.

“*Syar’ie* Lawyer” means a person who is admitted as a *Syar’ie* Lawyer under these Rules;

(2) A person shall be deemed to have Sabah connections for the purposes of these Rules if, and only if, he is a Malaysian citizen or permanent resident who –

- (a) has been born in Sabah;
- (b) has been ordinarily resident in Sabah for a continuous period of not less than five years or more; or
- (c) satisfies the State Chief *Syar’ie* Judge that he is, at the time when the question whether he has Sabah connections is relevant, domiciled in Sabah.

PART II

ESTABLISHMENT OF SYAR’IE LAWYER COMMITTEE

Establishment of the Committee

3. There shall be established a Committee to be called “the *Syar’ie* Lawyer Special Committee” which will deal with all matters relating to *Syar’ie* Lawyer in Sabah.

Membership of the Committee

4. (1) The Committee shall consist of-

- (a) a Syariah High Court Judge determined by the State Chief *Syar’ie* Judge, as the Chairman;

- (b) the Sabah State Attorney General or his representative;
- (c) the Chief *Syar'ie* Prosecutor;
- (d) a *Syar'ie* Lawyer;
- (e) a person who is knowledgeable in Hukum *Syarak*.

(2) The Chief Registrar shall be the Secretary to the Committee.

(3) The Committee members mentioned in subrule (1) shall be a Muslim.

(4) The Committee members appointed under subrule (1)(d) and (e) shall be appointed by the State Chief *Syar'ie* Judge and shall hold office for a period of three years and are eligible for reappointment.

(5) Members of the Committee and the Secretary of the Committee may be paid such allowance for every meeting.

Termination of appointment and resignation

5. (1) The Committee members appointed under subrule 4(1)(d) and (e) may at any time be terminated by the State Chief *Syar'ie* Judge without giving any reason.

(2) The Committee member may resign at any time by serving a notice to the Chairman of the Committee.

Meeting of the Committee

6. (1) The Chairman of the Committee shall preside over meeting of the Committee and, if the Chairman is absent, the members present may elect anyone among themselves to preside over the meeting.

(2) Three members present shall form a quorum at any meeting of the Committee.

(3) Decisions of the meeting of the Committee shall be made by *Syura*.

(4) Subject to these Rules and any directions of the State Chief *Syar'ie* Judge, the Committee may regulate its own procedure.

Functions of the Committee

7. The Committee shall have the following functions:-

(1) to conduct such interview and/or examination for any person who is qualified under rule 8 and completed his pupillage under rule 10 to be admitted as a *Syar'ie* Lawyer as the Committee may deem fit and to provide for all other matters which are necessary or incidental to the interview or examination, including:

- (a) preparing the interview or question for the interview or the syllabus of the examination;
- (b) fixing the date and place for the interview or examination;
- (c) evaluating and assessing answers in such interview and marking answers in the examination;

(2) to control disciplinary of *Syar'ie* Lawyer;

(3) issuing *Syar'ie* Annual Legal Practising Certificate;

(4) to revoke or suspend the *Syar'ie* Annual Legal Practising Certificate of a *Syar'ie* Lawyer;

(5) to regulate the registration of *Syar'ie* Law Firms; and

(6) to carry out other functions as directed by the State Chief *Syar'ie* Judge from time to time.

PART III SYAR'IE LAWYER

Eligibility of *Syar'ie* Lawyer

8. Subject to rules 9 and 10, any person who fulfil the following requirements is eligible to be admitted as a *Syar'ie* Lawyer-

- (a) is a Muslim;
- (b) a Malaysian citizen;
- (c) has reached the age of twenty-one years;

- (d) is of good character supported with a declaration by two referees
- (e) has not been convicted of any offences by any Syariah Court or Civil Court in Malaysia or outside Malaysia;
- (f) has not been adjudicated bankrupt;
- (g) is not disbarred, disqualified or suspended in his capacity as an Advocate and Solicitor;
- (h) has passed examination and/or the interview or both as required by the Committee; and
- (i) a person who has Sabah connections.

Academic qualifications

9. (1) Subject to rule 8, a person shall hold academic qualifications in the following–

- (a) a Bachelor of Law and a Bachelor of Syariah Degree from the Islamic International University or equivalent to it; or
- (b) a Bachelor of Syariah Degree which is recognized by the Government of Malaysia from any local or international higher educational institution or other qualification equivalent to it and subject to subrule (2); or
- (c) a Bachelor of law from any university or any higher educational institution recognized by the Government of Malaysia and admitted as an advocate and solicitor registered under the Advocates Ordinance [*Sabah Cap.2*] subject to subrule (2).

(2) A person who is eligible under subrule (1) (b) and (c) shall hold either one of the Certificate as follows–

- (a) Diploma in Administration Islamic Judiciary from the International Islamic University or equivalent to it; or
- (b) Post Graduate Diploma in Syariah and Legal Practise or equivalent to it from any university or any higher educational institution recognized by the Government of Malaysia.

Pupillage

10. (1) Subject to rules 8 and 9, prior to the admission as a *Syar'ie* Lawyer, a person shall complete the twelve months pupillage as a pupil in any *syar'ie* legal firm or with any advocate and solicitor who is practising as a *Syar'ie* Lawyer.

(2) Notwithstanding subrule (1), the Committee may, in its discretion, exempt a person from the whole or part of any period of pupillage, upon application made to the Committee supported by satisfactory evidence that there are special circumstances justifying the exemption.

(3) Training in chambers shall be supervised by a *Syar'ie* Lawyer who is and has been in active practice in the state of Sabah for a total period of not less than five years immediately preceding the date of commencement of his training.

Examination or interview

11. (1) Upon completion of his pupillage under subrule 10 (1) the pupil through the *Syar'ie* Lawyer where the chambering has taken place shall notify in writing to the Committee confirming that he had completed his pupillage.

(2) The Committee shall call the pupil for an interview and/or sit for the examination or both at the stipulated date and the place designated by the Committee.

(3) The Committee may object the pupil who is absent from the interview or does not sit for the examination or both on the stipulated date and at such place as the Committee may determine without any reasonable reason.

(4) The Committee may change the date or place of the interview or examination at the request of the pupil with reasonable reason given by him.

(5) Upon passing of an interview or the examination, the Committee shall issue a Certificate of completion.

Application

12. (1) An application for admission as *Syar'ie* Lawyer shall be filed by Notice of Application together with an Affidavit in Support to the Syariah High Court and shall annex to such application—

- (a) proof of his eligibility, academic qualifications, completion of pupillage and completion of examination or interview under Rule 8, 9, 10 and 11; and
- (b) two recent testimonials as to his good character.

(2) Copy of the application and of the documents in support thereof shall be delivered to the State Attorney-General and the Committee.

(3) The fee for every application is fifty ringgit.

Admission as *Syar'ie* Lawyer

13. (1) The admission of *Syar'ie* Lawyer shall be heard in open court with the attendance of the State Attorney General or his representative and the Committee for their approval or objection to the application.

(2) If the State Chief *Syar'ie* Judge is satisfied that—

- (a) an applicant under rule 12 is eligible under Rule 8, 9, 10 and 11 to be admitted as a *Syar'ie* Lawyer;
- (b) that he is in all respects a fit and proper person to be so admitted, he shall by order direct that upon payment of fee two hundred ringgit, the Chief Registrar shall cause the name of the applicant to be entered on the Register of *Syar'ie* Lawyer.

Register of *Syar'ie* Lawyer

14. (1) The Secretary of the Committee shall maintain a record of registration of all *Syar'ie* Lawyer which shall be known as “the Register of *Syar'ie* Lawyer”.

(2) The Register of *Syar'ie* Lawyer shall contain all the following particulars—

- (a) name;
- (b) identification card number;
- (c) qualification;
- (d) name of firm/office;

- (e) correspondence address;
- (f) date of admission as *Syar'ie* Lawyer;
- (g) the validity period of *Syar'ie* Annual Legal Practising Certificate;
- (h) date of revocation of registration (if any);
- (i) particulars regarding of any disciplinary action (if any) taken against the *Syar'ie* Lawyer;
- (j) such other particulars as required by the Committee from time to time.

Appeal

15. If the application under Rule 13 is objected the applicant may appeal to the Syariah Appeal Court referring to section 139 of the Syariah Court Civil Procedure Enactment 2004 within 14 days from the day the order is made.

***Syar'ie* Annual Legal Practising Certificate**

16. (1) Notwithstanding subrule 13(2), a *Syar'ie* Lawyer shall only be allowed to practice upon receiving a *Syar'ie* Annual Legal Practising Certificate.

(2) The Committee shall issue the *Syar'ie* Annual Legal Practising Certificate approved by the State Chief *Syar'ie* Judge in accordance with Form A of the First Schedule upon payment of a fee of one hundred ringgit.

(3) The *Syar'ie* Annual Legal Practising Certificate issued under subrule (2) shall be valid for a period of twelve months from the date it is issued and may be renewed upon payment of a prescribed fee.

(4) Any *Syar'ie* Annual Legal Practising Certificate issued upon the enrolment as a *Syar'ie* Lawyer shall expire at the end of the year it is issued.

Notice

17. The Secretary of the Committee is responsible to notify the issuance of order under subrule 13(2) to all Courts in Sabah.

Application to remove name from the Register of *Syar'ie* Lawyer

18. (1) A *Syar'ie* Lawyer may, subject to these Rules, apply to the Court to have his name removed from the Register of *Syar'ie* Lawyer.

(2) Every such application shall be made in writing and submit to the Court together with the Affidavit of Support and a copy of it to be submitted to the Committee.

Application to be re-admitted as *Syar'ie* Lawyer

19. (1) Any person whose name has been removed from the Register of *Syar'ie* Lawyer under subrule 18(1) may apply to the Syariah High Court for his name to be readmitted in the Register of *Syar'ie* Lawyer.

(2) Application under subrule (1) shall be filed by notice of application and supported by an Affidavit.

(3) Copy of the application shall be served to the Committee within fourteen days before the hearing of such application.

(4) The Committee shall, upon receiving a copy of the application, prepare a report which includes a copy of the record of any proceedings which cause the name of the applicant being removed from the Register of *Syar'ie* Lawyer.

(5) The State Chief *Syar'ie* Judge may, if it considers just and reasonable, upon payment of five hundred ringgit, order the Chief Registrar to readmit the applicant's name in the Register of *Syar'ie* Lawyer.

(6) Any person aggrieved by the decision made by the Syariah High Court may appeal to the Syariah Appeal Court.

Renewal of *Syar'ie* Annual Legal Practising Certificate

20. (1) Every application for the renewal of the *Syar'ie* Annual Legal Practising Certificate shall be made to the Committee not later than one month before the expiration of the certificate.

(2) The application shall be made using the form as prescribed in Form B of the Second Schedule.

(3) The *Syar'ie* Annual Legal Practising Certificate may be renewed if the Committee is satisfied that the applicant has submitted the audit report and has paid a fee of one hundred ringgit for the certificate renewal.

(4) *Syar'ie* Lawyer who fails to renew his *Syar'ie* Annual Legal Practising Certificate until the end of twelve months shall not be allowed to renew his certificate and his name shall be deemed to have been removed by the Committee from the list Register of *Syar'ie* Lawyer; and if he wishes to be re-appointed as a *Syar'ie* Lawyer, he shall apply pursuant to rule 19.

PART IV DISCIPLINARY PROCEDURES

Disciplinary action

21. (1) The Committee may, on due cause be shown, commence disciplinary action against any *Syar'ie* Lawyer in accordance with the provision of this Part.

(2) Amongst the reasons for commencing disciplinary action against any *Syar'ie* Lawyer are as follows-

- (a) has conducted himself in such manner which is inconsistent with Hukum Syarak;
- (b) has made any public statement whether orally or in writing or any other act which may reasonably be construed as to bring into contempt the religion of Islam or state syariah judiciary institution or *Syar'ie* Judges;
- (c) has been convicted by any Syariah or Civil Courts in Malaysia or any other country with regard to any criminal offence under any written law;
- (d) has wilfully or without any reasonable reason refused to carry out his duties for his clients;
- (e) has breach his duty to the Court to comply with his undertaking given to the Court;
- (f) contempt of Court or any other matters related to Islamic affairs;

- (g) is dishonest or has conducted himself fraudulently in the discharge of his duties;
- (h) has accepted employment in any legal business through a tout;
- (i) has done or caused or allowed to be done, anything for the purpose of touting directly or indirectly or which is calculated to suggest that it is done for that purpose.
- (j) allows any person who is not a *Syar'ie* Lawyer to undertake or carry on legal business in his name or firm;
- (k) carries on by himself or through any person in his employment any trade, business or career which is in the opinion of the Committee is incompatible with his position as a *Syar'ie* Lawyer;
- (l) has been found guilty by the Disciplinary Board established under section 12A of the Advocate Ordinance (*Sabah Cap. 2*);
- (m) has been declared a bankrupt and has not been discharged;
- (n) has contravened or failed to comply with any of the provision of these Rules or any other written law, if in the opinion of the Committee such contravention or failure warrants disciplinary action; or.
- (o) has contravened any Practice Direction issued by State Chief *Syar'ie* Judge or guidelines relating to etiquette and conduct of a *Syar'ie* Lawyer that is issued from time to time by the Court or the Committee.

Complaint against *Syar'ie* Lawyer

22. Any complaint as to the conduct of a *Syar'ie* Lawyer or a pupil in his professional capacity shall be made in writing to the Chairman of the Committee.

Enquiry

23. (1) Upon receiving a complaint, the Chairman of the Committee shall cause the Committee to hold an enquiry.

(2) Every enquiry held by the Committee shall be carried out in such manner and to such extents as it thinks just and reasonable pursuant to his absolute discretion provided before it decides that an enquiry should be held, it shall-

- (a) request the *Syar'ie* Lawyer concerned, within a period of not less than fourteen days, present to the Committee any written explanation regarding the complaint; and
- (b) subject to subrule (a), notice shall be served by way of personal service to the *Syar'ie* Lawyer concerned and if the personal service cannot be made, it is sufficient to leave the notice at the *Syar'ie* Lawyer last known address.

(3) If the *Syar'ie* Lawyer concerned fails to present any reasonable written explanation or fails to present any explanation upon the expiry period of fourteen days, the Committee may proceed the enquiry on the complaint.

(4) When the enquiry has been completed, the Committee shall furnish a report and its opinion and shall also make an affirmation as to whether the *Syar'ie* Lawyer concerned is guilty or not of the matter complained of.

(5) If the Committee makes an affirmation that the *Syar'ie* Lawyer concerned is guilty of the matter complained of, the Committee shall also make an affirmation as to the appropriate sentence that should be imposed against the *Syar'ie* Lawyer concerned.

(6) Subject to these Rules, the Committee has power to regulate its own procedure with respect to the carrying out of its enquiry on any complaint.

Power of Committee to issue order

24. The Committee, upon receiving complaint under rule 22, shall have the power to issue instruction as they think just and reasonable, and such an instruction may specifically include the provisions of any of the following-

(1) instruct that the name of the *Syar'ie* Lawyer concerned be struck off the Register of *Syar'ie* Lawyer;

(2) suspend the *Syar'ie* Lawyer concerned from practice for such period considers just and reasonable;

- (3) issue the *Syar'ie* Lawyer concerned a warning letter; or
- (4) make such other decision that is considered to be just and reasonable.

Appeal from the final order or decision of the Committee

25. A *Syar'ie* Lawyer aggrieved by any decision of the Committee may appeal to the State Chief *Syar'ie* Judge within one month from the date of the receipt of that decision.

PART V GENERAL PROVISIONS

Produce *Syar'ie* Annual Legal Practising Certificate

26. Every *Syar'ie* Lawyer shall produce his *Syar'ie* Annual Legal Practising Certificate if so required by any Syariah Court.

Permission to Practice in Special Cases

27. (1) The State Chief *Syar'ie* Judge may, at his absolute discretion, on the application or on behalf of any *Syar'ie* Lawyer of another state in Malaysia, allow the *Syar'ie* Lawyer to practice any case subject to such conditions as the State Chief *Syar'ie* Judge deems fit and upon payment of five hundred ringgit if-

- (a) the *Syar'ie* Lawyer is suggested by the local *Syar'ie* Lawyer; and
- (b) taking into considerations on all relevant circumstances, as the State Chief *Syar'ie* Judge thinks it is in the interests of justice.

(2) An application under subrule (1) by a *Syar'ie* Lawyer shall be supported by his own affidavit or affidavit of *Syar'ie* Lawyer who is directing him stating that-

- (a) that he was suggested by a local *Syar'ie* Lawyer;
- (b) all circumstances relating to the matter for which the applicant intends to attend;

- (c) grounds or reasons why it is in the interests of justice for the applicant to be admitted under this rule;
- (d) specific qualification and experience of the applicant.

(3) The application shall be served on the State Attorney General and to the Committee.

(4) Before granting permission to any *Syar'ie* Lawyer to practise under this rule, the State Chief *Syar'ie* Judge shall have regard to the view of the State Attorney General and the Committee.

(5) The Chief Registrar shall, on payment of fee of one thousand ringgit, issue to each *Syar'ie* Lawyer who is authorised to practise under this rule, a practising certificate in accordance with Form C of the Third Schedule stating therein or in which case the *Syar'ie* Lawyer is allowed to attend.

(6) The Chief Registrar shall keep a separate register of names of *Syar'ie* Lawyers who are allowed to practice under this rule.

Restriction

28. (1) No person shall practice as a *Syar'ie* Lawyer or perform any act as a *Syar'ie* Lawyer unless he is under rule 14, is considered to have been appointed as a *Syar'ie* Lawyer by this rule, or he has been duly appointed as *Syar'ie* Lawyer under this rule.

(2) No person shall practice as a *Syar'ie* Lawyer or perform any act as a *Syar'ie* Lawyer, provided that a suspension order thereon under subrule 24(2) is still in force.

Penalty

29. Any person who contravenes any of the provisions of this rule shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit.

Repeal and Saving

30. (1) A person who has been authorized as a *Syar'ie* Lawyer before these Rules come into operation shall be deemed to have been admitted as a *Syar'ie*

Lawyer subject to the conditions of admissions as set out in the Fourth Schedule and the decision of the State Chief *Syar'ie* Judge.

(2) A *Syar'ie* Lawyer under subrule (1) shall, within a period of 12 months after this Rule comes into operation, produce to the State Chief *Syar'ie* Judge proof of his compliance towards the conditions set out in the Fourth Schedule prior to issuance of the *Syar'ie* Annual Practising Certificate under rule 16(2).

(3) Subject to subrule 2(2), a person who has resigned his office or has opted for retirement or has retired on compulsory basis and has previously served for a term of not less than 3 years as *Syar'ie* Judge throughout Malaysia may practice as a *Syar'ie* Lawyer.

(4) In carrying out the provisions of subrule (1), (2) and (3), the State Chief *Syar'ie* Judge may set his own procedures.

FIRST SCHEDULE

SYARIAH COURTS ENACTMENT 2004

SYAR'IE LAWYER RULES (STATE OF SABAH) 2021

FORM A
(Rule 16)

SYAR'IE ANNUAL LEGAL PRACTISING CERTIFICATE

I do hereby certify that.....
Identity card No.....is permitted to practice as a *Syar'ie* Lawyer in a Syariah Court throughout the State of Sabah with effect fromday of.....20..... until day of.....20.....

Date of issuance:

Masihi:.....

Hijrah:.....

.....
State Chief Syar'ie Judge

SECOND SCHEDULE
SYARIAH COURTS ENACTMENT 2004
SYAR'IE LAWYER RULES (STATE OF SABAH) 2021

FORM B
(Rule 20)
APPLICATION FOR
RENEWAL OF SYAR'IE ANNUAL LEGAL PRACTISING CERTIFICATE

To,

The Chairman
Syar'ie Lawyer Committee
State of Sabah

I have the honour to apply for renewal of the *Syar'ie* Annual Legal Practising Certificate for a period of twelve months commencing from.....day of.....20..... untilday of.....20.... and my personal particulars are as follows:

(To be filled by the Applicant in CAPITAL LETTERS).

1. Name:
2. Identity Card No.:
3. Register Serial No.:
4. *Syar'ie* Lawyer Certificate No.:
5. Expiry Date of *Syar'ie* Annual Legal Practising Certificate:
6. *Syar'ie* Annual Legal Practising Certificate No.:
7. Fax No.:
8. Email Address:
9. Firm/Office Address:
(if the applicant is an advocate and solicitor)
10. Postal Address:

FOR REFERENCE ONLY (SEPTEMBER 2021)

11. Telephone Number:

(a) (Office)

(b) (Handphone)

12. Residential Address:

13. Other details (if any):

I hereby affirm that I have never been convicted in Malaysia or in any other country on any criminal offence and I am not a bankrupt.

I hereby affirm that particulars stated above are true.

Date.....

.....

Signature of Applicant

REMINDER:

The Applicant shall submit certified true copies of certificates, statutory declaration, testimonials, declaration and other relevant certified documents to support his application.

FOR COMMITTEE'S USE ONLY

Date of receipt:

Fee amount:

Receipt No:

Entered into the Register *Syar'ie* Lawyer on:

Date:

.....
State Chief Syar'ie Judge

THIRD SCHEDULE
SYARIAH COURTS ENACTMENT 2004
SYAR'IE LAWYER RULES (STATE OF SABAH) 2021

FORM C
(Rule 27)

CERTIFICATE TO PRACTICE IN SPECIAL CASES

I do hereby certify that.....(name) Identity card No..... is allowed to appear before(specify which court), for.....(case number)(client's name) with effect from until

Date of issuance:

Masihi

Hijrah

.....
State Chief Syar'ie Judge

FOURTH SCHEDULE
SYARIAH COURTS ENACTMENT 2004
SYAR'IE LAWYER (STATE OF SABAH) RULES 2021

EXEMPTIONS
(Rule 30(1)(2) and (4))

For the purpose of implementing subrule 30(1)(2) and (4), it is set that the conditions of admissions are as the following:

- i. A person has experience practising as a *Syar'ie* Lawyer referring to the Permission Letter to Practice as a *Syar'ie* Lawyer issued to him; and
- ii. A person is found to be actively practising as a *Syar'ie* Lawyer referring to Documents such as *Syar'ie* Lawyer Wakalah or case management correspondence in Syariah Court; and
- iii. A person who has a Post Graduate Diploma in Islamic Studies from University Malaysia Sabah (UMS) or Master in Islamic Studies from Open University Malaysia (OUM) or Diploma in Administration Islamic Judiciary from the International Islamic University or equivalent to it or Post Graduate Diploma in Syariah and Legal Practise or equivalent to it from any university or any higher educational institution recognized by the Government of Malaysia; and
- iv. A person is free from complaints of misconduct or disciplinary action from any association or association of lawyers or *Syar'ie* Lawyers in Malaysia; and
- v. A person has Sabah connections as provided for in subrule 2(2).

Made on..... 2021

With the Power and Instruction of,

Y.A.A. ALIDIN @ AHMAD DIN BIN OKK OTHMAN
State Chief Syar'ie Judge