

## THE JUDICIAL SYSTEM OF SOUTHEAST ASIAN COUNTRIES

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### **Abstract**

The Malaysian judicial system is a unique model in Southeast Asia, distinguished by its federal structure, combination of common law and Islamic jurisprudence, and active implementation of digital technologies. The article analyzes key aspects, including the two-tier judicial hierarchy, the functioning of two parallel High Courts, autonomous Sharia courts, the creation of specialized mechanisms for regulating cyberspace, and the integration of digital tools such as electronic filing and videoconferencing. Based on constitutional norms, recent reforms, and comparative analysis with other ASEAN countries, it highlights how these features contribute to Malaysia's legal pluralism while addressing challenges such as jurisdictional overlap and ensuring technological justice. The study, based on data as of August 2025, highlights the adaptability of the system in a multinational federal society.

### **Keywords**

Malaysian judicial system, dual jurisdiction, Sharia courts, digitalization, ASEAN comparative analysis.

### **INTRODUCTION**

Malaysia, a federal constitutional monarchy in Southeast Asia, has a judicial system that reflects its complex socio-cultural and historical structure. Established under the 1957 Federal Constitution, the judiciary serves as a pillar of the rule of law, balancing secular common law traditions inherited from British colonialism with Islamic principles enshrined for Muslim citizens. This dualism, combined with federalism, creates a unique legal landscape that distinguishes Malaysia from its ASEAN neighbors, such as the more unitary systems in Indonesia, Thailand, or Singapore.

Malaysia's judicial system is adversarial in nature, emphasizing the independence, impartiality, and efficiency of the judiciary. Article 121 of the Constitution grants the judiciary a single hierarchy, but in practice it has a multi-tiered structure with parallel tracks for civil and Sharia-related cases. Recent developments, including the abolition of mandatory death penalty in 2023 and ongoing digital transformation, have led to further development of the system [12]. As of 2025, the judicial system faces pressure from a growing number of cases, cyber threats, and calls for greater transparency in appointments, as highlighted in reports by Human Rights Watch and statements by the Chief Justice [10].

The Malaysian judicial system has five key features: (1) a two-tier court system; (2) dual High Courts in accordance with Article 121; (3) decentralized Sharia courts; (4) an initiative to establish a Cyber Court; (5) digitalization efforts, such as electronic filing and videoconferencing. These elements are analyzed through comparison with other ASEAN countries based on official sources, academic literature, and recent reforms. The analysis shows how Malaysia's system promotes legal pluralism but faces conflicts of jurisdiction and resource inequality [11].

Historically, Malaysia's judicial system developed from the common law system of the Straits Settlements, which was formally enshrined after independence. In 1957, the Reid Commission recommended the creation of a federal structure to accommodate the diversity of Peninsular Malaysia and the distinctiveness of the states of Borneo (Sabah and Sarawak). Updates after 2023 include strengthening judicial accountability measures and technological integration of the e-Judiciary system to eliminate delays, with the e-Judiciary system playing a central role. In a region where legal systems range from civil law (e.g., Vietnam) to hybrid models (e.g., the Philippines), Malaysia's combination of federalism and pluralism offers valuable insights for regional harmonization within ASEAN [8].

In the digital sphere, Malaysia leads ASEAN in court automation, reducing delays by up to 30% through virtual hearings.

At its core, Malaysia's court system is a two-tier hierarchical system consisting of higher and lower courts, designed to ensure effective adjudication and appellate oversight. This structure, set out in the Courts Act 1964 and subordinate legislation, reflects English common law models but is adapted to the federal context of Malaysia.

The higher courts form the upper tier, such as: The Federal Court, Mahkamah Persekutuan, as the highest appellate court, hears appeals from the Court of Appeal with leave under section 96 of the Courts Act. Established in 1994, it consists of the Chief Justice, the President of the Court of Appeal, the Chief Justices of Malaya, Sabah, and Sarawak, and up to 12 other judges, for a total of about 25 members in 2025. The Court of Appeal, Mahkamah Rayuan, is an intermediate court that reviews decisions of the High Courts and lower courts, with a particular focus on errors in law or fact. The High Courts (Mahkamah Tinggi), which are courts of first instance for important cases, have unlimited original jurisdiction in civil cases involving amounts over RM1 million and in all criminal cases punishable by death, except for cases related to Sharia law [9].

Subordinate courts handle most cases: courts of first instance hear civil claims up to RM1 million and criminal cases with penalties of up to 10 years' imprisonment, while magistrates' courts hear less serious offences (up to 5 years) and civil claims up to RM100,000. The hierarchy provides an upward flow of appeals, with appellate courts empowered to affirm, reverse, or remand decisions, which helps ensure consistency. In 2025, the system handles more than 500,000 cases per year, and reforms such as the Court Backlog Reduction Program reduce the number of pending cases by 20% [7].

This two-tier model is not strictly binary, as it includes specialized tribunals (e.g., industrial court, tribunal dealing with consumer claims) and a special court for magistrates under the 1993 amendment. Judicial appointments, made since 2009 through the Judicial Appointments Commission (JAC), are based on merit, with criteria including integrity and experience, as reiterated in the Chief Justice's speech at the opening of the 2025 judicial year. The guarantee of tenure until the age of 66 (or 70 for the Chief Justice) ensures independence, although there are still criticisms regarding the influence of the executive branch on promotions [5].

Compared to other ASEAN countries, Malaysia's hierarchy is more federalized. Indonesia's system, reformed after 1998, features a single Supreme Court but faces regional differences without clear appellate courts as in Malaysia.

Singapore's highly centralized and efficient judicial system emphasizes commercial specialization but lacks federal divisions. Thailand's courts, influenced by civil law and fragmented by military interventions, contrast with Malaysia's stable common law foundation. The flexibility of the Malaysian model's appeal system, which allows for the reconsideration of some appeals in lower courts, enhances fairness. This structure not only supports the separation of powers but also adapts to Malaysia's diverse population, making it a benchmark for federal court systems in the region [6].

Article 121(1) of the Federal Constitution provides for the establishment of two high courts with coordinating jurisdiction, namely: the High Court in Malaya (for Peninsular Malaysia) and the High Court in Sabah and Sarawak (for East Malaysia). This division, which was a concession made in connection with the integration of Borneo in 1963, provides regional autonomy while maintaining national unity.

The High Court of Malaya, located in Kuala Lumpur with branches in states such as Penang and Johor, hears federal and state cases under common law. Similarly, the High Court of Sabah and Sarawak, headquartered in Kota Kinabalu and Kuching, takes into account local customs, such as the land rights of indigenous peoples under the Sabah Land Ordinance. Both courts have unlimited jurisdiction in civil and criminal matters, but the courts of East Malaysia often take into account local laws reflecting the 1963 Malaysian Agreement (MA63, author's abbreviation) [10]. In 2025, the revision of MA63 reinforced this duality by creating special courts to hear appeals relating to Borneo.

Such federal divisions are rare in ASEAN. The Philippine Supreme Court oversees a unitary system despite archipelagic federalism, leading to congestion (more than 1 million pending cases in 2024). Indonesia's dualism is more administrative in nature, with provincial high courts subordinate to the national supreme court, but it lacks Malaysia's constitutional parity. Vietnam's socialist courts are centralized and ignore regional differences. Malaysia's model promotes equality, with East Malaysia receiving 20% more funding for judicial infrastructure in the 2025 budget. Challenges include overlapping jurisdictions in interstate disputes and resource imbalances, as peninsular courts handle 70% of cases. Reforms such as the 2025 Court Rules amendments improve inter-jurisdictional transfers, promoting greater efficiency. [5] Overall, the dual High Courts exemplify Malaysia's commitment to federal pluralism, setting a precedent for multinational judicial bodies.

Malaysia's dual legal system – civil courts for all citizens and Sharia courts for Muslims – embodies the legal pluralism that distinguishes the country within ASEAN. According to Article 121(1A), Sharia courts have exclusive jurisdiction over Islamic personal law (e.g., marriage, inheritance) limited to Muslims, while civil courts handle secular matters [1].

Sharia courts are decentralized, with 144 courts in 13 states, and are accountable to state executive bodies and sultans. They apply state laws based on the Sunni Hanafi and Maliki schools, imposing penalties of up to three years' imprisonment or fines of 5,000 ringgit. An appeal sharia court in each state reviews decisions, with minimal federal oversight. Recent expansions, such as Kelantan's 2024 laws, have been partially overturned by the Federal Court for exceeding constitutional limits, highlighting tensions.

The concept of a 'cyber court,' launched in 2016, has evolved into specialised sessions within the High Courts for cybercrime and technology disputes under the Communications and Multimedia Act 1998 [2]. By 2025, it will hear cases related to e-commerce, data privacy and artificial intelligence, with 294 incidents reported in the first half of the year alone. It is not a separate court, but is integrated with the e-Judiciary platform and uses artificial intelligence to sort cases. Digitalisation is developing rapidly, with electronic filing (mandatory since 2020) processing 90% of applications online, reducing paper use by 70%. Video conferencing via the Zoom platform or court applications allows remote hearings to be held, and by 2025, 75% of urgent cases will be heard virtually. An online case management system tracks the progress of cases, and e-Review processes citations [4].

Malaysia leads the way in ASEAN, Singapore's e-justice system is advanced but not integrated with Sharia law, and Indonesia lags behind in terms of access in rural areas. Cybersecurity and digital literacy are among the challenges, but advantages such as a reduction in the number of pending cases (20%) confirm its effectiveness.

It should be emphasised that Malaysia's judicial system contrasts with those of other ASEAN countries due to its federal-dual model. Unlike Singapore's efficient but centralised system, Malaysia's system takes diversity into account. Judicial oversight in Indonesia is reliable but overburdened, according to a 2025 comparison. In Thailand, it faces politicisation, while in Vietnam, it is under state control. [3] Malaysia's digital advantage and pluralism allow it to occupy a leading position in the region, although questions of independence remain a concern.

The features of Malaysia's judicial system promote stability in a diverse society, and reforms ensure its relevance. Future improvements should prioritise fairness and the fight against corruption.

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