



**THE ADMINISTRATION OF ISLAMIC FAMILY LAW
AND INHERITANCE IN SOUTHERN THAILAND
(PATTANI, NARATHIWAT, YALA AND SATUN)**

**BY
MAHAMASAKE CHEHA**

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ABSTRACT

This dissertation focuses on the application of the Islamic law pertaining to the family and inheritance in the 4 provinces of Southern Thailand namely Pattani, Narathiwat, Yala and Satun. Through this research, the shortcomings of the application of the Islamic law have been unearthed in order to be reformed. The historical background of these 4 provinces, the arrival of Islam in this area and the Government's attempt to codify and systemise the Islamic Family Law and Inheritance for the Muslims are also discussed.

The dissertation also explores the judicial system as practised in Thailand as a whole and how it affects the judicial system in the Southern Thailand where the Islamic law is applicable. The administration of Islamic law court and the functions of the Dato'Qadi in Southern Thailand have been discussed and examined in detail which constitute a major contribution to this dissertation. The dissertation concludes with suggestions and recommendations based upon the existing problems for future reform.

ملخص البحث

تتركز المناقشة في هذا البحث على تطبيق القانون الإسلامي المتعلق بالأسرة والميراث في

الولايات الجنوبية الأربعة من تايلاند والتي هي: فطاني، نراتيوات، جالا وساتون. فقد تعرض

البحث بالكشف والاستقصاء لجوانب التفسير في تطبيق القانون الإسلامي في سبيل اصلاحها.

كما تعرض البحث للجوانب التاريخية للولايات الجنوبية الأربعة خاصة وصول الإسلامي إليها

والمحاولات الحكومية لتقنين القانون الإسلامي للأسرة وقانون الميراث وترتيبهما منهجياً.

إستطلع البحث كذلك النظام القضائي كما هو مطبق في تايلاند ومدى تأثيره على

النظام القضائي في جنوب تايلاند حيث يطبق القانون الإسلامي وقد تعرض البحث كذلك

بالتفصيل لإدارة المحاكم الشرعية وأعمال القاضي (داتو) ويمثل هذا الجزء أهم وأكبر جزء من

البحث. وبناء على العقبات الموجودة فقد اختتم البحث باقتراحات وتوصيات من أجل أي

اصلاح مستقبلي.

APPROVAL PAGE

I certify that I have supervised and read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Comparative Laws (M.C.L.).



Dr Najibah Mohd Zain
(Supervisor)

Date 15 June 1998

I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Comparative Laws (M.C.L.).



Tan Sri Prof Ahmad Ibrahim
(Examiner)

Date 19/6/98

This dissertation was submitted to the Kulliyah of Laws and is accepted as partial fulfillment of the requirements for the degree of Master of Comparative Laws (M.C.L.)



Tan Sri Prof. Dato' Harun Mahmud Hashim
Acting Dean, Kulliyah of Laws


Date 17 Jul 98

Tan Sri Prof. Dato' Harun Mahmud Hashim
Acting Dean
Kulliyah Of Laws
International Islamic University Malaysia

DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. Other sources are acknowledged by footnotes giving explicit references and a bibliography is appended.

Name MAPHIMASARE CHEHA

Signature 

Date 14 JUNE 2019

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*This dissertation is dedicated to my
parents, my beloved wife and my
daughters*

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Khadijah Chelah v. Maepikai [1951] Supreme Court 1349.

Salmah v. Soolong [1878] 1 KYSHE 421

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Civil and Commercial Code, 1992

Criminal Code, 1992

Emergency Decree Amending the Act Promulgation the Provisions of Book V and VI of the Civil and Commercial Code, 1934

Islamic Family Law (Federal Territory) Act 1984

Judicial Officer Act, 1928

Judicial Officer Act, 1934

Judicial Officer Act, 1936

Judicial Officer Act, 1939

Judicial Officer Act, 1942

Judicial Officer Act, 1945

Judicial Officer Act, 1948

Judicial Officer Act, 1954

Judicial Officer Act, 1978

Kelantan Islamic Family Law Enactment, 1983

Law of Organisation for Court of Justice, 1895

Law of Organisation for Court of Justice, 1934

Law of Organisation and Criminal Procedure of Magistrate Court, 1956

Masjid Act, 1946

Promulgating the Provisions of Book V of the Civil and Commercial Code Act, 1934

Rule of Administration in the 7 Principalities, 1902

Selangor Islamic Family Law Enactment, 1984

Thai Constitutional Law, 1990

The Application of Islamic Law in Pattani, Narathiwat, Yala and Satun Act, 1946

The Patronage of Islam Act, 1945

LIST OF ABBREVIATIONS

A.D.	After Decade
Art.	Article
B.E.	Buddhist Era
Ibid	<i>(Ibidem)</i> : in the same place
M.L.J.	Malayan Law Journal
N.D.	No Date
N.P.	No Place; No Publisher
P.	Page
P.S.A.R.	Persatuan Sekolah Agama Rakyat
Sec.	Section
Trans.	Translated by
VS.	(Versus): against (in legal terms)

CHAPTER ONE

INTRODUCTION

1.0 General Introduction

To the Muslims, Islamic law constitutes an important part of the system of religion. Muslims consider personal law the domain which Islam has influenced the most and which gives a distinction to their society. On this particular point, the late Joseph Schacht observed:

As long as the sacred law received formal recognition as a religious ideal, it did not insist on being fully applied in practice. But it could not abandon its claims to exclusive theoretical validity, and acknowledge the existence of an autonomous secular law; its representatives, the *'ulama*, were the only qualified interpreters of the religious conscience of the Muslims; and the idea that law must be ruled by religion has remained an essential assumption even of modern Muslims.¹

Seyyed Houssein Nasr also made a very perceptive observation on the special status of personal law in the Muslim society:

What has remained intact through the ages has been that aspect of the *Shari'ah* which concerns directly the human person, such as marriage, divorce and inheritance. These

¹ J. Schacht, "Law and Justice," *The Cambridge History of Islam*, Cambridge University Press, Cambridge, 1974, Vol. II, pp. 566-567.

are thus labelled as personal law. This domain has been the refuge and stronghold that has enabled Islamic society to remain Islamic in spite of the various forms of political institutions that have ruled over it in past centuries. Therefore what is under discussion is the last refuge of the legal aspect of the *Shari'ah* in Islamic society as a whole.²

Thailand is among the non-Muslim countries which recognises the application of Islamic Family Law and Inheritance, which is considered as an integral part in the system of religion. Muslims in Thailand, who are the minority in population, have been, since decades, struggling to have the Islamic law i.e., personal law applied to them. Their struggle had received the Government's attention by allowing the application of the Islamic law. However, it is limited only to the southernmost provinces, namely Pattani, Narathiwat, Yala and Satun. This is due to the historical background of this region.

Historically, these four provinces were known as Malay-Muslim Kingdom. When it was formally incorporated into the Buddhist Thai state in 1902, many measures were taken to ensure that the Muslims would gradually come to accept their status under Thai rule.³ One of them was to promote freedom and equality before religion. In the Royal Decree of 1902, concerning the governance of the region, it was stipulated that no law shall be established without specific royal consent.⁴ The aim of this clause

² Houssein Nase, *Islamic Life and Thought*, State University of New York Press, New York, 1981, p. 27.

³ Surin Pitsuwan, *Islam and Malay Nationalism: A Case Study of the Malay-Muslims of Southern Thailand*, Harvard University, Cambridge, 1982, p. 119.

⁴ Uthai Hiranyato, *Paendin Thai: Changwat Chai Daen Paktai (Thailand: Southern Bordered*

was to establish a single legal system applicable to the entire country.⁵ However, the Royal Decree of 1902 was not applicable to the Muslims in Southern Thailand in respect of constitutional rights of equality and freedom of religion. The government refrained from imposing its will over the sensitive area of family relations and inheritance.

The reason may be due to the fact that the Government also realised that the majority of the population in Southern Thailand are Muslims who have their own cultures, customs and laws which are different from the Thai Buddhists. To the government, Muslims cannot be treated in the same manner as the rest of the population. Accordingly, the Government promulgated Muslim Personal Law and Inheritance Law to be enforced in these four provinces. They were introduced during the time of King Chulalongkorn (King Rama V) of the Jakri Dynasty through the Rule of Administration in the seven principalities of 1902 (the rule of 1902). The Decree commanded that the Criminal Code and Civil Code shall be applied to Thai citizens except in civil cases concerning husbands and wives, and inheritance cases where both parties are Muslims or a Muslim is a defendant, in which case the Islamic law shall be applied.⁶ This rule mainly recognises the general application of Islamic law in Southern Thailand. However, it is not certain from the said provision whether Islamic law still prevails whenever there is lacuna in law. This general provision gives rise to several

Provinces), Local Administration Department of Interior, n.pp, p. 28.

⁵ Surin Pitsuwan, *op.cit.*, p. 119.

⁶ See Section 32 of the *Rule of Administration in the Seven Principalities of 1902*.

uncertainties in terms of its superiority over the Thai's law which will be discussed in the later chapter.

The rule of 1902 was abrogated in 1943 with the introduction of the Emergency Decree Amending the Act Promulgating the Provisions of Book V and VI of the Civil and Commercial Code of 1943 which provide that all citizens are subject to Thai law regardless of their religions.

The introduction of this new Code was mainly due to the fact that the Government believed that unity of the people can be achieved by having a uniformed law for all people regardless of their religion. As a result, the Islamic law had been abolished. This move received negative reaction from the Muslims. The Muslims believed that the policy of the Government was against the constitutional law where freedom of embracing and practising religion must be respected including practising one's own law.⁷

After realising that the abolition of Islamic law had provoked the feeling of the Muslims and caused a certain degree of dissatisfaction among them, another new Act was introduced in 1946. The Act, known as the Application of Islamic Law in Pattani, Narathiwat, Yala, and Satun Act of B.E. 2489(1946), reclaims the application of Islamic Family Law and Inheritance in four provinces up to date. Section 3 of this Act explains:

Islamic Family Law and Inheritance shall be applied in the Court of First Instance in Pattani, Narathiwat, Yala and Satun where Muslims are both the plaintiff and the defendant or a Muslim files the request in non-contentious cases.⁷

Since then, the Islamic law has survived as an exception to the Civil Code. At present, the application of the Islamic law is experiencing serious administrative problems. It calls for a major reform, so that its application would be well implemented for the Muslims in Southern Thailand.

Therefore, this research is undertaken to examine the administration of Islamic Law in Southern Thailand. The present study will also discuss the historical struggle of the Muslims and the significance of this historical factor to the development of Islamic law in Southern Thailand. This work will also identify the legal problems and attempt to offer some solutions for the smooth running of the application of the Islamic law in Southern Thailand.

1.1 Background of the Study

The problem of developing Islamic society today seems to depend essentially on the extent to which all Islamic laws could be applied to all the Muslims in all states, territories and communities regardless of whether they are the majority or the minority

⁷ Thai Constitutional law, section 27.

⁸ See Section 3 of the Application of Islamic Law in Pattani, Narathiwat, Yala and Satun B.E. 2489 (1946).

in the countries. It has been observed that in non-Muslim countries where the Muslims form a minority, freedom of worship may be generally and legally recognised for those religious minorities of the same ethnic and race and a higher degree of Islamic law application in the community could be obtained. If, however, the Muslim minorities are of mixed ethnicity and races and even though freedom of worship might be officially recognised, the chance for a reasonably high degree of Islamic law application seems to be slim and very limited, if not, at all and is the target of strong assimilation or annihilation policy measures of the non-Islamic government. In this case *Shari'ah* is reduced to a minimum and a model of Islamic community of true believers could hardly be realised unless separation should take place.⁷

As in the case of Thailand, several attempts have been made to improve the present application of the Islamic law in Southern Thailand. Unfortunately, those efforts are not supported by the Government. The reason may be due to the fact that being a non-Muslim country, the Government believes that the existing law is sufficient to serve the needs of the Muslims. Many seminars were held on this issue but the outcome remains in the working papers. The problems certainly need to be solved by the Government as soon as possible otherwise it would affect the unity between the Muslim minority and the Government in the future.

⁷ Amnoey Suwanakijborihan, "Shariah and Society-Thailand," *Shariah Law Journal*, Malaysian Law Publishers Sdn.Bhd., Kuala Lumpur, 1985, p.119.

Among the major problems faced by the Muslims in Southern Thailand is the absence of the *Shari'ah* Court¹⁰ which is the most important institution in dealing with the application of the Islamic law. Without it, the Islamic law cannot be applied properly and the most important difficulty is the uncertain status of the law under the Thai Court. In the absence of the *Shari'ah* Court, the Islamic law cases are tried before the Provincial Court where the Dato'Justice¹¹ (hereinafter referred as Dato'Qadi)¹² and the civil judge hear the case side by side.

According to the present practice, the Dato'Qadi mainly acts as a legal advisor to the Civil Court Judge. The Code of 1946 provides that in Islamic Civil cases, a decision made by a single Dato'Qadi without consultation of Civil Court Judge has no legal effect.¹³ It can be said that even though Islamic law applies to the Muslims, the Dato'Qadis have no exclusive power to pass judgement which is contrary to the normal practice in the Islamic judicial system where decisions rest on the Dato'Qadi. This practice again shows a serious mismanagement of judicial power which needs an immediate reform to give an exclusive jurisdiction to the Dato'Qadi in deciding cases on Islamic law.

¹⁰ The court which entertains Islamic law cases on family and inheritance.

¹¹ Honorary title awarded by the government.

¹² Muslim judge.

¹³ See Section 4 of the Application of Islamic Law in Pattani, Narathiwat, Yala and Satun of 1946.

Another major problem is that even though the application of Islamic law in Southern Thailand is recognised by the Thai government, its application is recognised only by the judiciary not the executive or government officials. The government officials in practice, would never recognise any law except the Thai law such as Civil and Commercial Code and Criminal Code. Examples can be seen in cases of marriage where the courts recognise the validity of a Muslim marriage solemnised according to Islamic law. In contrast, the government officials would only treat a couple as married if they could show a civil certificate of registration. Such conflicts will cause great injustice to the Muslims. Therefore, it is necessary to have a regulation or policy where government officials must respect and recognise the application of Islamic law to the Thai Muslims.

1.2 Significance of the Study

Up to present, no positive action has been taken by the Government to improve the system. There were many requests and proposals forwarded to the relevant authority. The Government realises that such problems are crucial to the Muslims but the necessary reformation has not yet been started. This study will discuss the administration of Islamic law in Southern Thailand with the view to identify problems faced by Muslims in Southern Thailand since the time of its commencement up to present. Then, this work will discuss these problems in the light of the past and present experiences with regard to the administration of the Islamic law in Southern Thailand.