



ISLAM VERSUS *ADAT* IN *UNDANG-UNDANG*
KEDAH

BY

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A dissertation submitted in fulfilment of the
requirement for the degree of Master of Human
Sciences (History and Civilization)

Kulliyyah of Islamic Revealed Knowledge and
Human Sciences
International Islamic University Malaysia

AUGUST 2013

ABSTRACT

Kedah is one of the oldest states in Malaysian history. In fact, if we look from the archaeological perspective, some of the earliest sites that are well known in Kedah can be seen through the existence of Lembah Bujang. The ancient state of Kedah has been assumed as one of the significant places in the Malay Annals other than Melaka, and Johor. In other words, the history of Kedah can also be traced if we study deeply the literary sources in order for it to earn the rightful claim to be the most ancient state in the country. Due to the rarity of materials, the early history of Kedah and its relations with its neighbours are vague and incoherent. Perhaps a reliable study of the Kedah state can be looked from the historical perspective with special reference to the Kedah Legal Law. Indeed, the objective of this research is to confirm the aforementioned rightful claim which is outstanding in the Kedah Legal Text by looking at the Islamic and Customary Law.

ملخص البحث

ولاية قدح من أقدم الولايات في التاريخ الماليزي. إذا نظرنا في هذا الواقع من المنظور الأثري، وجدنا بعض المواقع الألفية المعروفة في ولاية قدح، وذلك ما يمكن ملاحظته من خلال ظهور منطقة لمبه بوجنج في هذه الولاية. ويُعتقد أن ولاية قدح القديمة عُدّت من الأمكنة المهمة في سجلات التاريخ الملايوي بالإضافة ملاكا وجوهر وغيرهما. ونستطيع أن نجد صحة التاريخ لولاية قدح عندما ندرس مصادرها الأدبية بعمق، وهذا مهم في الحصول على أقوى الدعائم في كونها أقدم الولايات في البلاد. ونظرا لندرة المواد التاريخية المتوافرة، كان التاريخ الأولي لولاية قدح وعلاقتها بجيرانها غامضا ومبهما. ويمكن العثور على الدراسة الموثوقة لهذه الولاية بالاطلاع على المنظور التاريخي مع إشارات خاصة إلى القوانين التي طبقت فيها. ومن هذا المنطلق، يهدف هذا البحث إلى الحصول على أقوى الأدلة في هذا الصدد من خلال النصوص القانونية القديحة، وذلك بالنظر إلى الشريعة الإسلامية والقانون العرفي المكتوبين فيها. وعلى حسب علم الباحثة، لم يتم أحد بعد بدراسة هذا الموضوع نظرا لأن الباحثين يركزون على القوانين الملاكية (المتعلقة بولاية ملاكا) أكثر.

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 Human Sciences (History and Civilization).

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DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degree at IIUM or other institutions.

Nurul Ain Ahmad Sani

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Dedicated to my parents and my sister Intan Nadhira for their support and belief...

ACKNOWLEDGEMENTS

Working on a Master thesis has been a wonderful experience for me as a student. I can say that the real learning experience is the struggle with how to write an academic paper. In fact, this thesis would not have been possible without the help of the following people:

First of all, I am sincerely thankful to my supervisor Dr Wan Suhana Wan Sulong for the support and guidance she gave me throughout my writing. I am sure that this dissertation would not have been complete without her guidance as she had taught me diligence and perseverance with her advice and experience.

In addition, I owe sincere and earnest gratitude to my second reviewer, for the insightful comments on this thesis.

It is a great pleasure to thank everyone who had helped me in completing my thesis successfully. To Dr Arshad Islam, the Head of Department of History and Civilization, thank you for believing in me and boosting me morally and for being a great information resource.

Finally, I would like to thank my loving parents, Juairiah Ismail and Ahmad Sani Maisin for their love and support; to my sister Intan Nadhira, this thesis will not have been completed without your encouragement.

TABLE OF CONTENTS

Abstract.....	ii
Abstract in Arabic.....	iii
Approval Page.....	iv
Declaration Page.....	v
Copyright Page.....	vi
Dedication.....	vii
Acknowledgements.....	viii

CHAPTER 1: INTRODUCTION

1.1 Background and History.....	1
1.2 Statement of the Problem.....	5
1.2.1 Research Questions.....	9
1.2.2 Objectives of the Study.....	9
1.3 Significance of the Research.....	10
1.4 Literature Review.....	11
1.5 Research Methodology.....	20
1.6 Chapter Outlines.....	22

CHAPTER 2: HISTORICAL BACKGROUND OF KEDAH

2.1 Geographical Location of Kedah.....	24
2.2 From Hinduism to Islam.....	26
2.3 Islam in Kedah.....	30
2.4 <i>Undang-Undang Kedah</i>	32

CHAPTER 3: ADAT LAW IN UNDANG-UNDANG KEDAH

3.1 Development of the Law.....	36
3.2 Meaning and Concepts.....	38
3.3 <i>Adat Temenggung</i> against <i>Adat Perpatih</i>	40
3.4 <i>Adat</i> laws in <i>Undang-Undang Kedah</i>	42
3.4.1 Port Law (<i>Undang-Undang Pelabuhan</i>).....	43
3.4.2 The law of Seri Paduka Tuan (<i>Undang-Undang Seri Paduka Tuan</i>).....	47
3.4.3 The Cannon Law of Dato' Kota Setar (<i>Hukum Kanun Datuk KotaSetar</i>).....	48
3.4.4 Making Golden Flowers (<i>Cara Membuat Bunga Emas</i>).....	49
3.4.5 The Law of 1199 Hijrah (<i>Undang-Undang HIjrah 1199</i>).....	52

CHAPTER 4: ISLAMIC TRADITIONS IN UNDANG-UNDANG KEDAH

4.1 The Influence of Islamic Law.....	55
4.1.1 Port Law (<i>Undang-Undang Pelabuhan</i>).....	56
4.1.2 The law of Seri Paduka Tuan (<i>Undang-Undang Seri Paduka Tuan</i>).....	57
4.1.3 The Cannon Law of Dato' Kota Setar (<i>Hukum Kanun Datuk Kota Setar</i>).....	58
4.1.4 Making Golden Flowers (<i>Cara Membuat Bunga Emas</i>).....	59
4.1.5 The Laws of 1199 Hijrah (<i>Undang-Undang Hijrah 1199</i>).....	59

CHAPTER FIVE: HUKUM KANUN MELAKA VERSUS UNDANG-UNDANG KEDAH

5.1 Introduction.....	65
5.2 Adat law in <i>Hukum Kanun Melaka</i>	68
5.3 Islamic traditions in <i>Hukum Kanun Melaka</i>	72
5.4 <i>Hukum Kanun Melaka</i> and <i>Undang-Undang Kedah</i> : A Critical Evaluation.....	78

CHAPTER SIX: CONCLUSION

6.1 Conclusion.....	85
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REFERENCES	87
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CHAPTER ONE

INTRODUCTION TO THE STUDY AND ITS METHODOLOGY

1.1 BACKGROUND AND HISTORY

The state of Kedah has the oldest history in Malaysia. In fact, some of the earliest, well known archaeological sites are in Kedah and this could be seen in Lembah Bujang.¹ In fact, the ancient state of Kedah was one of the significant places mentioned in the Malay Annals other than Malacca and Johor. The history of Kedah too can be found if we explore deeply into the literary sources and some of these sources claim Kedah as the most ancient state in the country.² However, due to rarity of materials, the early history of Kedah and its relations with its neighbours are vague and incoherent. In the absence of sufficient relevant materials, *Undang-Undang Kedah*, therefore, can be utilized in studying the history of Kedah.

Undang-Undang Kedah can be considered as part of the traditional Malay literature written and implemented in the kingdom of Kedah in 1650. Together with other legal texts such as *Hukum Kanun Melaka*, *Undang-Undang Pahang*, *Undang-Undang Johor*, *Undang-Undang 99 Perak* and so forth, it falls under the category of traditional legal text. This traditional legal text which was part of the royal traditions, embodied several matters regarding the daily conducts, customs, and religious practices of the Malay society of that time. These traditions and culture represented the Malay world and it has proven that the Malay people, before the 19th century, were highly civilized and had high levels of thinking. Every matter was recorded and

¹ Adi Haji Taha, "Di Manakah Langkasuka", *Wacana Warisan Negeri Kedah*, 12 Mac, 2009, 4.

²Booney, R., *Kedah 1771-1821: The Search for Security and Independence*, (Kuala Lumpur: Oxford University Press, 1971), 12-13.

existing studies on these traditional Malay texts show that there were historical accounts on these matters. Studies have been done by the Orientalists and local historians in many types of genres, especially in the field of literature and philology. Thus, local and Eurocentric elements can be found in these transliterated texts.

Written with deductive purposes, these traditional legal texts were highly characterized by the beauty of the Malay culture since the objectives of the authors were to propagate the ethical values and glorify the rulers. For instance, among the extensive traditional texts of Malacca were *Hikayat Siak* and *Tuhfat Al Nafis*; of which the latter is free from mythical elements. With the arrival of Islam to the Malay Archipelago in the 15th century,³ there were significant changes in the lives of the Malay people. One of the changes was the transition in the writing style of these traditional Malay texts which were characterized by the concept of *Tauhid* and the implication of Islamic law.⁴ In fact, Islam had significantly played its pivotal role in shaping the *Akidah* of these conservative Malays as can be seen in the *Undang-Undang Kedah* itself. For example, the implications of the *Syariah* can be found in *Undang-Undang Kedah* which is one of the main manuscripts relating the history of the traditional customary law of the Malay world.⁵

The advent of Islam to the Malay Archipelago had given a tremendous impact in shaping its society. From Hinduism to Islam, Malay traditional literature has faced transitions in its writings; moving from the concept of myth and legend to the concept of divinity.⁶ As for the case of Kedah, among the famous traditional Malay writings

³ Ali Ahmad, Siti Hajar Che Man & Jelani Harun, *Tasawwur Islam Dalam Kesusasteraan Melayu Tradisional*, (Pulau Pinang: Penerbit Universiti Sains Malaysia, 2005).

⁴ Ibid.

⁵ Jelani Harun, *Undang-Undang Kesultanan Melayu dalam Perbandingan*, (Pulau Pinang: Universiti Sains Malaysia, 2008), 97.

⁶ Winstedt, R. O. *A History of Classical Malay Literature*, ed. Yusof A. Talib (Malaysia: MBRAS, 1992), 50

were *Hikayat Merong Mahawangsa*, *Al Tarikh Salasilah Negeri Kedah*, *Syair Sultan Maulana* and so on. The famous Kedah annals, *Hikayat Merong Mahawangsa*, for example had sparked incessant arguments among historiographers since the content was full of mythical and legendary elements due to the process of ‘Indianisation’.⁷ The term ‘Indianisation’ referred to the process of cross-cultural link between India and Southeast Asia which resulted from the transformation of Hindu and Buddhist cultural traits from the subcontinent to Southeast Asia.⁸

In other words, the process of Islamisation in *Hikayat Merong Mahawangsa* was also explained in such a mythical way. According to Siti Hawa Salleh, a leading scholar who had studied the *Hikayat*, a character by the name of Syeikh Abdullah claimed to have travelled with a non-visible *Penguhulu Syaitan* which she later equated with the journey of Prophet Muhammad s.a.w during the *Isra’ Mi’raj*.⁹ Siti Hawa’s clarification regarding to this issue is open to discussion. Compared to other written sources in Kedah, its validity is debatable. From the textual point of view, certain practices and customs were best illustrated in *Undang-Undang Kedah* compared to *Hikayat Merong Mahawangsa*.

Written after the fall of Malacca in 1511, it was said that *Undang-Undang Kedah* was compiled at the end of 1060H/1650. This legal digest consisted of several chapters which touched on various topics such as the activities at the port, tax payment, and duties of the harbour master, land enactments, *Munakahat* (laws about marriage), death sentence and others. Although the author of *Undang-Undang Kedah* is unknown, this legal digest was compiled by the Sultan’s men based on the text of

⁷ Amran Kasimin, *Religion and Social Change Among the Indigenous People of the Malay Peninsula*, (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1991), 120

⁸ Shaffer, L. N., *Maritime Southeast Asia to 1500*, (London: M.E. Sharpe, 1996), 100.

⁹ Siti Hawa Salleh, *Hikayat Merong Mahawangsa*, (Kuala Lumpur: Universiti Malaya, 1991), xl

Hukum Kanun Melaka.¹⁰ In fact, *Hukum Kanun Melaka* which was written around 1446-1456 is regarded as the oldest law manuscript in the Malay Archipelago and had become the major reference for other traditional Malay law.¹¹ Nevertheless, in terms of the implication of the *Syariah* rule, *Undang-Undang Kedah* was written more specifically compared to *Hukum Kanun Melaka* as can be seen in Chapter 2 of *Hukum Kanun Datuk Kota Setar* (The Cannon Law of Dato' Kota Setar) in *Undang-Undang Kedah*. Moreover, Abu Hassan Sham has asserted that the content of *Undang-Undang Kedah* was far more precise in explaining the port laws and the role of the Sultan's men compared to *Hukum Kanun Melaka*.¹²

Consequently, the importance of reviewing a text such as *Undang-Undang Kedah* will help us to determine what was commonly practised in traditional Kedah society. *Undang-Undang Kedah* is a legal digest composed of several issues and bound together as one manuscript: *Undang-Undang Pelabuhan* (Port Law), *Undang-Undang Seri Paduka Tuan* (The Law of Seri Paduka Tuan), *Hukum Kanun Datuk Kota Setar* (The Cannon Law of Dato' Kota Setar), *Cara Membuat Bunga Emas* (Making Golden Flowers), and *Undang-Undang Hijrah Seribu Seratus Sembilan Puluh Sembilan* (The Law of 1199H).

Basically, *Undang-Undang Kedah* was written in five chapters which emphasized on the activities of the port of Kedah. One of the significant ports in Kedah refers to the port of Lembah Bujang. Moreover, the text was designed to determine the customs of the ports, the duties of the harbour master and the practices

¹⁰ Mariyam Salim, *Undang-undang Kedah*, (Kuala Lumpur: Dewan Bahasa dan Pustaka, 2005), Ix.

¹¹ Siti Hawa Salleh, "*Undang-undang Kedah: Suatu Penilaian Am*" in *Warisan Pesuratan Johor II: Perundangan dan Ketatnegeraan Melayu*, edited by Zainal Abidin Borhan, & et. Al (Johor: Yayasan Warisan Johor, 1999), 174.

¹² Abu Hassan Sham, "*Undang-Undang Kedah*" in *Kesultanan Melayu Kedah*, edited by Rogayah A. Hamid and Maryam Salim (Kuala Lumpur: Dewan Bahasa dan Pustaka, 2006), 296.

in Kota Palas, another important port in Kedah. Apart from that, this law was also designed to determine the customs on land activities and cultivations.¹³ It also stressed on the role of the *Temenggung* and his watchmen in handling crimes and desecrations, who were also part of the implementation of the legal system. *Undang-Undang Kedah* also described the golden flowers which were sent as tribute to Siam. It also stated the role of the King and his fellowmen and the importance of the practice of wearing traditional regalia.

1.2 STATEMENT OF THE PROBLEM

Before the coming of Islam, the process of thinking of traditional Malays was influenced by the teachings of Hinduism¹⁴ whereby they believed that man and nature were the human form of Brahma. As a matter of fact, Kedah was under the suzerainty of Srivijaya in 695 C.E., a Hindu and Buddhist kingdom and established the Indian and Chinese influences.¹⁵ Hence, Hindu and Buddhist influences can be considered as one of the popular beliefs among its inhabitants.¹⁶ Before the coming of Islam, the local and foreign inhabitants of Kedah were characterized with the animistic doctrine of Hindu and Buddhist principles.¹⁷ Slowly, these traditions and cultures were absorbed into the local socio-cultural system and it became an integral part of the indigenous culture.¹⁸ These mixtures of traditions were best illustrated among the Malays in wedding rituals, tombstones on the graves, the wearing and belief in certain

¹³ Winstedt, R. O “Notes on the History of Kedah”, *JMBRAS*, vol. 14, no.2 (1936): 73.

¹⁴ Mustafa Daud, “Pengaruh Islam Dalam Kesusasteraan di Alam Melayu dan Kedah Sebagai Pusat Kesusasteraan Islam” in *Islam di Kedah Darul Aman*, edited by Md. Noor Salleh and Abdul Halim Haji Salleh (Kedah: Persatuan Sejarah Negeri Kedah & Perbadanan Perpustakaan Awam Kedah, 1996), 123.

¹⁵ SarDesai, D.R., *Southeast Asia: Past and Present*, (London: Macmillan, 1989), 14.

¹⁶ Hall, D. G. E., *A History of South-East Asia*, (London: Macmillan, 1981), 41.

¹⁷ Devahuti, D., *India and Ancient Malaya: From the Earliest Times to circa A.D. 1400*, (Singapore: Donald Moore for Eastern Universities Press Ltd, 1965), 15.

¹⁸ Aun, W. M., *The Malaysian Legal System*, (Kuala Lumpur: Longman Malaysia, 1990), 3.

amulets and so on. Consequently, it left a significant impact on Malay customs and law.¹⁹

Some of the Malay customs which are not to be recognised are considered as customs only, and not laws. It might be considered as the general common law before they are officially documented and openly recognised. In a broader sense, the Malay customs are the social rules which are observed by the higher authority. Thus, not all of these traditional customs are or will be laws.²⁰ Since the state composed of ruler and the ruled, a law is a system which was imposed by the ruler with sanctions on to the subjects. During the time when it was set up, the purpose of the law making was to consolidate and to glorify the power of the ruler.²¹ There were many kinds of laws written in these traditional legal texts particularly in *Undang-Undang Kedah* and these laws were linked by their basic common function which is to furnish the socio-economic life of the land and to control the behaviour of its inhabitants. For instance, in *Undang-Undang Kedah*:

Semua orang yang datang berniaga hendaklah diperiksa terlebih dahulu. Begitu juga apabila mereka hendak keluar. Mereka dikenakan cukai, iaitu tatkala masuk, cukainya enam kupang emas, dan tatkala keluar pula mereka dikenakan cukai mengikut jenis muatan. Misalnya jika mereka membawa kerbau, setiap seekor cukainya sekupang emas. Jika membawa gajah pula mereka dikenakan cukai sepaha emas bagi setiap ekor.

Researcher's translation:

Those who were involved in trading activities must go through check points before entering and leaving the port. Upon entering the port, the traders have to pay six *kupang* of gold and upon leaving the port, they are required to pay the tax according to the weight or size of the goods

¹⁹ Othman Ishak, "Hubungan Adat dan Islam Dengan Tumpuan di Kedah Darul Aman" in *Islam di Kedah Darul Aman*, edited by Md. Noor Salleh and Abdul Halim Haji Salleh (Kedah: Persatuan Sejarah Negeri Kedah & Perbadanan Perpustakaan Awam Kedah, 1996), 10.

²⁰ Sadler, G. T., *The Relation of Custom to Law*, (London: Sweet & Maxwell, 1919), 2.

²¹ Siti Hawa Haji Salleh, "Unsur-unsur Islam Dalam Undang-Undang Kedah" in *Islam di Kedah Darul Aman*, edited by Md. Noor Salleh and Abdul Halim Haji Salleh (Kedah: Persatuan Sejarah Negeri Kedah & Perbadanan Perpustakaan Awam Kedah, 1996), 16.

being exported. For instance, the tax for a buffalow is equivalent to one *kupang* of gold whereas an elephant is taxed 'sepaha' of gold.

Since Islam is universal, therefore this research will also look at the interpretation of *Syariah* and Malay *adat* (customs) particularly in *Undang-Undang Kedah*. The Malay *adat* (customs) according to the Malay dogma is specified to the practice of the local inhabitants. Looking from a different perspective, the Malay *adat* can be defined as a long practice of the Malays which are acceptable in the force of law and acts as an institution of law which consists of social, political and constitutional body for the ruler.²²

Islamic influence had already penetrated the Malay society since the coming of Islam to the Malay world. As Islam took a firm hold in Kedah and became the state religion, Muslim laws were gradually applied along with the Malay customary law (*adat*). In other words, the traditional Malay legal text was a mixture of Malay customary (*adat*) and Islamic laws and it gave a big impact to the development of the Malay intellectual activity.²³ Therefore, this study focuses on the content of *Undang-Undang Kedah* in investigating the degree of Islamic influence in the text itself.

Indeed, Islamic traditions had been practised for a long time in Kedah as these traditions could be seen specifically in the *Undang-Undang* itself. This was best reflected for example in the laws of marriage in *Undang-Undang Kedah*. Mahani Musa wrote:

Hukum syarak kelihatan jelas dalam fasal munakahat, seperti syarat orang yang lebih berhal dalam perwalian bagi perempuan ialah bapa, kemudian datuk setelah bapa, bapa bagi datuk lelaki sehingga ke atas,

²² Othman Ishak, *Hubungan Antara Undang-Undang Islam Dengan Undang-Undang Adat*, (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1997). 81.

²³ Muhammad Yusoff Hashim, "Undang-undang Melaka/Hukum Kanun Melaka dan Undang-undang Laut Melaka: Wacana Mengenai Perundangan Melayu-Islam" in *Warisan Persuratan Johor II: Perundangan dan Ketatanegaraan Melayu*, edited by Zainal Abidin Borhan & et.al. (Johor Bharu: Yayasan Warisan Johor, 1999), 111.

*kemudian saudara lelaki (seibu atau sebapa) dan beberapa kategori lagi. Yang turut diperincikan dalam fasal munakahat ialah orang yang haram dinikahi yang juga diperturunkan mengikut hukum agama.*²⁴

Researcher's translation:

The provision of *Syari'ah* (Islamic Law) is clear on the issue of *munakahat* (marriage); in a marriage, the *wali* of a woman is her father, followed by her paternal grandfather, the father of that grandfather and so on; then the male sibling (from the same mother or father) and so on. The provision on *munakahat* also details out those considered *haram* (illegal) to be married according to Islam.

This analysis of *Undang-Undang Kedah* also includes other traditional legal texts in order to counter the claims that *Undang-Undang Kedah* is another version of *Hukum Kanun Melaka*. Compiled originally in Malacca, *Hukum Kanun Melaka* has attracted a large number of studies on the manuscript. Since *Hukum Kanun Melaka* was one of the earliest and acts as the prototype of other traditional legal texts, therefore the existence of other traditional legal texts such as *Undang-undang 99 Perak*, *Undang-Undang Johor* and so on had followed the pattern of the *Hukum Kanun Melaka*.²⁵ Similar to the *Hukum Kanun Melaka*, Winstedt argues that the content of *Undang-Undang Kedah* has no differences with other earlier traditional legal texts and the *Undang-Undang Kedah* is just another version of *Hukum Kanun Melaka*.²⁶

Liaw Yock Fang claimed that:

Compiled originally in Malacca, this digest was adapted and adopted in Kedah, Pahang, Riau, Pontianak and was quoted in recent times as authoritative (in civil suits) in Brunei...The *Undang-undang Johor* is

²⁴ Mahani Musa, "Undang-undang Kedah Versi Ku Din Ku Meh (1311Hijrah/1803 Hijrah)" in *Kesultanan Melayu Kedah*, edited by Rogayah A. Hamid & Maryam Salim (Kuala Lumpur: Dewan Bahasa dan Pustaka, 2006), 255.

²⁵ Mohammad Yusoff Hashim, *The Malay Sultanate of Malacca: A Study of Various Aspects of Malacca in the 15th and 16th Centuries in Malaysian History*, (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1992), 154

²⁶ Winstedt, R.O "Kedah Laws", *JMBRAS*, vol 6, no.2 (1928):1.

no other than the *Undang-undang Melaka* and the *Undang-undang Kedah* is another version of the *Undang-undang Melaka*.²⁷

1.2.1 RESEARCH QUESTIONS

In studying *Undang-Undang Kedah*, this research attempts to find answers to the following questions:

- a) When was *Undang-undang Kedah* written and compiled?
- b) What were the factors which led to the writing of *Undang-Undang Kedah*?
- c) Is it true that *Undang-Undang Kedah* is another version of *Hukum Kanun Melaka*?
- d) Between Malay customary and Islamic law, which prevailed more in *Undang-Undang Kedah*?

By addressing these questions, this research seeks to determine the degree of Islamic influence and *adat* in the traditional legal text of Kedah.

1.2.2 OBJECTIVES OF THE STUDY

The purpose of this study is to see the degree of Islamic influence as well as Malay *adat* in *Undang-Undang Kedah*. In doing this, the research will indirectly provides a new understanding on Kedah society from 1650 A.D to 1784 A.D. Therefore, the objectives of the study can be summarized as follows:

- a) To determine when *Undang-Undang Kedah* was written and compiled.

²⁷ Liaw Yock Fang, *Undang-Undang Melaka*, (Singapore: Koninklijk Instituut, 1976), 1

- b) To identify the reasons behind the compilation of *Undang-Undang Kedah*.
- c) To compare and contrast between *Undang-Undang Kedah* and *Hukum Kanun Melaka*.
- d) To study the influence of Islam and *adat* in *Undang-Undang Kedah*.

1.3 SIGNIFICANCE OF THE RESEARCH

The history of Kedah has always been the mainstream study in the history of Malaysia. This can be seen from the continuous attention which many researchers devoted to explore the labyrinth of these traditional Malay laws and historical clashes of Kedah particularly the research by Siti Hawa Salleh, the leading scholar in the Kedah Malay Manuscripts. By focusing on Kedah's traditional legal text, namely *Undang-undang Kedah*, it can be noted that most of the existing studies on the text mainly revolve around the philological point of view which focuses on the study of the Malay language. In the mean time, there were studies which deliberately focused on other aspects of traditional Kedah such as trade activities, unutilised land, and many more.

While this study provides information on the traditional legal system, it also raises questions on several significant issues; one being the influence of Islam in the *Undang-Undang Kedah*. By looking at the degree of Islamic influences, this research thus attempts to provide a clear idea and offers a fresh look on the cultural and religious aspects of traditional Kedah. The arrival of Islam had changed the religious life of the Malays which was influenced by the teachings of Hinduism and Buddhism

and it set a structured system in their life and lifestyle. It also brought upon a major and profound impact on the socio-cultural life of Kedah.

This study also throws a light on the extent of Malay *adat* which prevailed in the *Undang-Undang Kedah* given the preservation of some Hindhu and Buddhist elements in the Malay society despite the coming and spread of Islam in the Malay Peninsula. Moreover, this research renounces the opinions which consider *Undang-Undang Kedah* as another version of *Hukum Kanun Melaka*. Furthermore, this research will act as a platform for academic discussion on issues centred on Islamic civilisation and Malay identity. It is hoped that this study will open the floodgates for new disclosures on the traditional and cultural practices in Kedah.

1.4 LITERATURE REVIEW

The research on traditional Malay Law could be considered well studied. But for traditional Kedah law, existing studies were mainly carried out from the philological point of view. Besides that, most of the written sources on the history of Kedah only touch on the Kedah kingdom, its political succession and the making of *Bunga Emas*. Thus, only few have generally discussed the Kedah legal text from non-philological point of view and the process of Islamisation which took place in Kedah. Since this research deals with the study of the Malay and Islamic laws, therefore, some new insights will be garnered from the textual study of *Undang-Undang Kedah*.

M. B. Hooker wrote *Adat Laws in Modern Malaya: Land Tenure, Traditional Government and Religion* which touches on the Malay legal digest.²⁸ The purpose of this book is to describe the interaction and integration of the basic tenure system. In

²⁸ Hooker, M. B., *Adat Laws in Modern Malaya : Land Tenure, Traditional Government and Religion*. (Kuala Lumpur: Oxford University Press, 1972).

addition, it also discusses the interaction between the religious and English laws concerning family. In other words, the aim of this book is to study the influence of Islamic law and the integration of this law and its existence in the state government. Similar to other scholars, Hooker uses the word “digest” for the traditional written law since it contained many cases such as penalties of crimes, marriage and so on. In fact, he believes that these digests were the products of court proceedings held in the various Malay principalities. However, the author generally explains the content of *Undang-Undang Kedah* rather than the issues behind the implication of the laws. Similarly, although he touches on certain cases in this book, the author has left his judgement unexplained. In order to fill in the gap in the existing literature, this research deals with the textual analysis of *Undang-Undang Kedah* and it will give us an idea of the effectiveness of *Undang-Undang Kedah* and the role of the Islamic Law in shaping the Kedah society.

Another available literature which is used is entitled *Kedah State Legislature: Its Development and Influence in Law Making in Kedah*²⁹ by Idrus b. Harun. The purpose of this project paper is to see the development of Kedah traditional law in the law-making process in Malaya. Furthermore, this paper also focuses on the law of Kedah specifically in 1909-1948 prior to the coming of the British. In his paper, Idrus agrees with the point that the prevailing law in Kedah was a blend of Islamic Law and *Adat Temenggung*. Moreover, the author has included his commentary on the traditional Kedah law from the historical and legal perspectives. Although he does not deliberately discuss the Malay custom, yet the author claims that Islamic law is the law of the traditional Malay States and it is not foreign but local law. Similar to other commentators on *Undang-Undang Kedah*, Idrus agrees with the point that the law of

²⁹ Idrus Harun, “*Kedah State Legislature: Its Development and Influence in Law-Making in Kedah*,” (Honours. Project paper, University of Malaya, 1979).

1784 was copied from *Undang-Undang Melaka*. Thus, unlike other commentators, Idrus has extensively stated his opinion that some provisions in *Undang-Undang Kedah* were overlapping. Moreover, this article offers a good explanation on *Undang-Undang Kedah* and the condition of Islamic law in Kedah after the coming of British. In relation to this research, this article has demonstrated the influence of Islam in the law making process before and after the coming of the British to Kedah.

Another existing text which is related to this research is a chapter from Muhammad Yusoff Hashim's book entitled *Pensejarahan Melayu*.³⁰ Chapter 9 stresses on the legal history of the Malaccan Sultanate as depicted by "Sejarah Melayu" and some Malaccan legal texts. In his introductory chapter, he claims that Malacca was one of the maritime ports which economically depended on trading activities. According to the author, the laws of Malacca consisted of *Undang-Undang Melaka* and *Undang-Undang Laut Melaka* (The Maritime Law of Malacca). This law contained the Malay *adat* (customs) and *istiadat* (traditions) connected to the royal court regulations and prohibitions, protocols and how to control the complex problems in Malacca since it was one of the most important harbours in South-East Asia at that time. In other words, the author also clearly explains the differences between both legal texts. In addition, the author claims that in both texts, the law lack in consistency when it comes to the implication of the Islamic laws. This is because, according the author the implication of *Syari'ah* differs from one society to another and in fact, some legal rulings are open to consensus views. In this chapter, the author also discusses the influence of Islamic laws in the case of Malacca since Islam had become the state religion. In relation to this research, it is clear that Islamic legal influence was

³⁰ Muhammad Yusoff Hashim, *Pensejarahan Melayu Nusantara: Kajian mengenai sumber, penghayatan, masalah dan tafsiran naskah-naskah terpilih Sejarah Melayu*, (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1986).

dominant in the Maritime Law of Malacca as it appeared in various chapters. Therefore, this chapter in Yusoff Hashim's book is very useful since it helps in comparing *Undang-Undang Kedah* and *Hukum Kanun Melaka*.

The working paper by Wan Shamsudin Mohd Yusof entitled *Hukum Kanun Kedah: Satu Penilaian Mengenai 'Hukum Kanun Dato' Kota Setar*³¹ is very useful for this research. Like other writings, this paper focuses on the content of Kedah traditional law from the historical perspective. In supporting his work, Wan Shamsudin has inserted some texts from *Al Tarikh Al Salasilah Negeri Kedah* and he has clearly explained on the provisions of *Undang-Undang Kedah*. For example, in Chapter 1, the provisions in *Undang-Undang Kedah* are more precisely connected with the traditional port of Kedah, *Lembah Bujang*, which had received attention of traders from all over the world. Furthermore, he also states the names of the King whom he believes to be involved in the law-making process. For instance, Wan Shamsudin believes that Sultan Muhammad Jiwa Zainal Adilin Muadzam Shah II was the ruler who was engaged in the law-making of Chapter 3 of the *Undang-Undang Kedah* though there was no mention of the ruler's name in the actual legal text. Unlike other analysts of *Undang-Undang Kedah*, Wan Shamsudin strongly claims that Chapter 2 of *Undang-Undang Kedah* is similar to *Hukum Kanun Melaka* and *Undang-Undang Riau*. In short, Wan Shamsudin's analysis helps us to understand comprehensively the relation between *Undang-Undang Kedah* and *Al-Tarikh Salasilah Negeri Kedah* as the main sources of the history of Kedah. He does not however touch extensively on the Islamic influences in *Undang-Undang Kedah*. Therefore this aspect is addressed in this research.

³¹ Wan Shamsudin Mohd Yusof, *Hukum Kanun Kedah: Satu Penilaian Mengenai 'Hukum Kanun Dato' Kota Setar*, Working paper. Arkib Negara Cawangan Kedah/Perlis.