

A Historical Study Of The Development Of Islamic Law In The Nusantara

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Abstract

This paper examines the role and function of Islam in shaping the judicial orientation of Malaysia, tracing the influence and evolution of Islamic law within the national legal framework from the Malay Sultanate era through colonial and post-independence periods. It begins by recounting the formation of Malay political entities and the transfer of sovereignty from Islamic rulers to Portuguese, Dutch, Japanese, and British colonial powers. During these transitions, Islamic belief systems and legal traditions faced challenges from Orientalist thought, Westernization, and modernization—forces that undermined Islamic moral values and Malay identity. These pressures were exacerbated by the fall of the Ottoman Empire, the last caliphate, which had served as a unifying banner for Muslims across the region. Employing qualitative analysis based on library research and literature review, the study finds that colonial interventions—driven by secular, nationalist, and communist ideologies for political gain—impeded the enforcement of shariah. Moreover, secular indoctrination during and after colonial rule dominated the intellectual and cultural landscapes of Muslim societies.

Keywords: Islamic Law, Judicial System, Secularism, Malay Identity, Malay Sultanate, Ottoman Caliphate

ABSTRAK

Makalah ini membahas peran Islam dalam membentuk orientasi sistem peradilan di Malaysia, dengan menelusuri perkembangan hukum Islam sejak masa Kesultanan Melayu hingga periode kolonial dan pasca-kemerdekaan. Kajian dimulai dengan menggambarkan terbentuknya entitas politik Melayu dan peralihan kekuasaan dari penguasa Islam kepada penjajah Portugis, Belanda, Jepang, dan Inggris. Dalam proses ini, nilai-nilai Islam dan tradisi hukumnya menghadapi tekanan dari pemikiran orientalis, westernisasi, dan modernisasi, yang turut melemahkan identitas Melayu dan nilai moral Islam. Kondisi ini diperburuk oleh runtuhnya Kekhalifahan Utsmaniyah sebagai simbol pemersatu umat Islam. Melalui pendekatan kualitatif berbasis studi pustaka, penelitian ini menunjukkan bahwa intervensi kolonial yang dipengaruhi oleh ideologi sekuler, nasionalis, dan komunis telah menghambat penerapan hukum syariah. Selain itu, proses indoktrinasi sekuler selama dan setelah kolonialisme turut membentuk lanskap intelektual dan budaya masyarakat Muslim di Malaysia.

Kata Kunci: Hukum Islam, Sistem Peradilan, Sekularisme, Identitas Melayu, Kesultanan Melayu, Kekhalifahan Utsmaniyah

A. Introduction

The codification of legal norms grounded in Islamic rulings introduced into administrative institutions and governance structures by formal and normative methods since the arrival of Islam in the Malay Indonesian archipelago opened a new influence within intellectual traditions that transformed both the appearance and spirit of society according to rational Islamic thought¹. This transformation was inseparable from the impact of Islamic da'wah and its spread during the twelfth and thirteenth centuries CE with the arrival of Sufi mystics, merchants, and scholars of the Shafi'i school, where "the historical trajectory of Islamic legal transformation is laden with historical, philosophical, political, sociological and juridical dimensions."²

Since the introduction of Islam into the archipelago, Islamic law has continued to develop and become a living regulatory framework embraced by every political entity, including the Islamic kingdoms of Siak, Samudera Pasai, Demak, Banten and Malacca. These codes and punishments laid a symbolic foundation for practical intellectual life that aligned with the expansion of power, conquest, and the needs of civilisation building. This is also linked to efforts to refine and deepen understanding of the spirit and objectives of shariah, which are necessary in responding to drastic legal developments and their constructive and positive values in statecraft and legislative practice.

Original legal manuscripts and classical texts reflect a socio cultural tapestry woven over centuries within the framework of customary practice and Malay legal thought underpinned by elevated Islamic values preserved throughout the nation's history. These inherited cultural experiences demonstrate the strength of Islam as a conquering force across the vast geography of the Malay Indonesian archipelago, shaping lifestyles and spreading its beliefs and lingua franca.

The advent of colonial influence in the Malay Indonesian archipelago eroded its strength as a centre of Islamic commerce and culture. European trading companies such as the Dutch Vereenigde Oost Indische Compagnie (VOC) and the English East India Company (EIC) initially sought spice markets³, but these commercial schemes evolved into unlimited territorial conquest, which then gave rise to missionary activities and the spread of Christianity.

¹ Al-Attas, S.M.N.A., *Islam dalam Sejarah dan Kebudayaan Melayu* (Bangi: Penerbit Universiti Kebangsaan Malaysia, 2022).

² Noor Efendy, Jalaluddin, Fathurrahman Azhari, Fahmi Hamdi. (2024). Hukum Islam di Indonesia (Sejarah, Rekonsepsi dan Ius Contitueum). *Maqashiduna Jurnal Hukum Keluarga Islam*, 2(1), 23.

³ Aprilia, Mona. (2024). Dunia Melayu di Bawah Kekuasaan Kolonial. *Hadharah Jurnal Keislaman dan Peradaban*, 18 (1), 15.

As a result, the colonial doctrines imposed by the occupiers extinguished the influence of Islam and erased the remains of legal traditions and religious decrees that had once endured within the sultanates' systems. Efforts to restore the practice and understanding of shariah to its original and authentic sources as the only true divine law remain possible through innovative and dynamic *ijtihad* that complements legal reasoning and interprets its general objectives to prevent harm and promote welfare (*dar al-mafasid wa jalb al-manafi*)⁴. Law at its core is a product of social relations and balances within society. It is described as a social mechanism that reflects the prevailing values of the community.⁵

Legal change is fundamentally enabled by *ijtihad* in cases not explicitly addressed by the Qur'an and Hadith.⁶ Complex legal issues are always resolved by human intellectual development and progress. In the modern context, this legal evolution is illustrated in the practices of pilgrimage and marriage. Classical Islamic scholarship did not set limits on marriage age or require capacity as a criterion for marriage readiness. By contrast, contemporary studies allow for age limits and capacity requirements through the instruments of public interest and the objectives of shariah. Likewise, pilgrimage regulations such as security measures during travel, rules for mahram companions and the concept of capability were not benchmarks in classical times, but today factors such as pilgrimage quotas, health and financial capacity influence one's eligibility to perform the hajj.⁷

This foundation also aligns with Salafi epistemology, which calls on Muslims to return to the original textual sources of the Qur'an and Sunnah and to reinterpret these texts based on modern needs and demands without being bound by the interpretive models of the earliest Muslim generations. This was affirmed by the Azhar scholar Sheikh al-Maraghi (died 1945), who confirmed that shariah must change in accordance with shifts in place, time and environmental requirements.⁸

Nineteenth and early twentieth century Salafis also emphasised the importance of the concept of public welfare, arguing that anything that serves communal interests should be considered part of Islamic law. This rational and humane approach to law was pioneered by figures such as Ibn Taymiyyah (died 1328), Ibn Qayyim al-Jawziyyah (died 1350), Muhammad al-Shawkani (died 1834), al-Jalal al-San'ani (died 1810), Jamal al-Din al-

⁴ La Ode Angga dkk., *Hukum Islam* (Bandung: Penerbit Widina Bhakti, 2022), iii.

⁵ Arifin, Leonarda Sambas K., *Teori-Teori Hukum: Klasik dan Kontemporer* (Bogor: Ghalia Indonesia, 2016).

⁶ Ahmad Hanany Naseh. (2012). *Ijtihad dalam Hukum Islam*. *Jurnal An-Nur*, IV (2), 247.

⁷ Gusti Muslihuddin, Jalaluddin, Fathurrahman Azhari, Fahmi Hamdi, Muhammad Zaki Mubarak. (2024). *Dinamika Hukum Islam Berdasarkan Masalahah (Istitha'ah Bagi Jamaah Haji)*. *Maqashiduna Jurnal Hukum Keluarga Islam*, 2(1), 1.

⁸ Abou el Fadl, Khaled, *Reasoning with God: Reclaiming Shari'ah in the Modern Age* (Lanham: Rowman & Littlefield, 2014).

Afghani (died 1897), Muhammad Abduh (died 1905) and Muhammad Rashid Rida (died 1935) whose works contributed to an authentic space for authority in Islam that embraced liberty and egalitarianism.⁹

In the context of Malaysian Muslims, what is needed is to highlight the harmony between Islamic and civil laws and for government authorities to enact legislation and procedures that ensure the integration of their shared values within the legislative process, with the ultimate aim of eliminating or reducing legal duality and promoting substantive unity.¹⁰

Another aspect of this challenge is to incorporate human rights principles into the application of both civil and shariah legal procedures. Malaysia is not new to these efforts and some initiatives have been undertaken to harmonise shariah and civil laws within the national legal system, gaining new momentum marked by Malaysia's progress in Islamic banking and finance.¹¹ In his work related to this theme, Reasoning with God Reclaiming Shariah in the Modern Age Khaled Abou el Fadl¹² outlines the exercise of legal reasoning as an effort to reclaim shariah in the modern age. He rejects extremist and fanatic interpretations associated with the Khawarij sect, known throughout Islamic history for its uncompromising zealotry. He also critiques modern groups rooted in Khawarij ideology.

Accordingly he opposes the literal reading of the Qur'an by fundamentalists who neglect the spirit and objectives of shariah and condemns Wahhabi interpretations that have led to terrorism and the destruction of holy sites in Mecca and Medina. In the essay Shariah's Winding Path into Modernity Mustafa Akyol highlights the challenges and winding journey of shariah towards modernity. He seeks to show a middle way between opponents and proponents of shariah by presenting its positive aspects and reminding serious Muslims of the importance of shariah. Medieval Islamic scholars distinguished between personal worship and public regulations and acknowledged that the latter is more flexible. This is why among fifty majority Muslim countries only about twelve have implemented criminal codes based on shariah.¹³

However there are ideological movements across the Muslim world that wish to restore a harsh narrow version of shariah seen as oppressive to women and men in the name of God. According to Akyol this misunderstanding stems from Western ideas about religion based

⁹ Ibid,

¹⁰ Kamali, Mohammad Hashim. (2013). Islam and Democracy. *ICR Journal*, 4(3), 437.

¹¹ Ibid,

¹² Abou el Fadl, Khaled, *Reasoning with God: Reclaiming Shari'ah in the Modern Age* (Lanham: Rowman & Littlefield, 2014).

¹³ Akyol, Mustafa. (2017, July 13). "Shariah's Winding Path into Modernity". *New York Times*. Retrieved from nytimes.com/2017/07/13/opinion/shariahs-winding-path-into-modernity.html

mainly on Christianity whose savior is said to have intended to establish a worldly kingdom. Yet there is another Abrahamic tradition more similar to Islam in this regard namely Judaism whose divine law Halakha also means way and served as a model for shariah.

Like shariah Halakha contains rules ranging from personal observance to severe punishments including stoning. These punishments have since been reinterpreted in Judaism according to modern values such as secular knowledge rationality and freedom of conscience. This enlightenment resonates strikingly with the arguments of contemporary Islamic reformers and offers an apt analogy for the reforms needed in modern Islam. Islam also contains the seeds of renewal within itself. Some medieval scholars such as Imam Abu Ishaq al-Shatibi of Granada looked beyond the letter of the law to map the divine objectives behind shariah. This approach produced protection for five fundamental values namely religion life property intellect and progeny.

Today's Islamic reformers show that these values are better upheld in Western democracies than in so called Islamic states. They add that zeal for shariah must translate into doctrines of inalienable rights for all humans a vision sadly absent in today's Middle East where the only alternative to literalist shariah is often secular despotism. In formulating a methodology and ideals for shariah and its application in the modern era Abdullahi Ahmed An-Naim's *Toward an Islamic Reformation Civil Liberties Human Rights and International Law* tries¹⁴ to address these questions with reference to the radical ideas formulated by Sudanese reformer Mahmoud Mohamed Taha in *The Second Message of Islam*.

This book pioneered important efforts to reform Islamic legal sources and understanding by drawing on the teachings and writings of Taha who reinterpreted traditional law based on radical principles he formulated to establish an intellectual foundation for a comprehensive reinterpretation of the nature and meaning of Islamic public law. In developing Taha's modern methodology and ideas An-Naim succeeded in elaborating them concretely and fully and in promoting the modern ideals and aspirations they inspired.

In his discussion of the reconciliation between Islamic law and modern international law he seeks to modernise Islamic law by reviving a historical shariah understood by most Muslims as part of their faith. To achieve this objective An-Naim endeavours to align Islamic belief and practice with fundamental rights by delegitimising historical Islamic law. His evaluation of shariah in its historical context reflects his intellectual understanding of the integration of human reason with divine revelation in order to establish a just Islamic society.

¹⁴ An-Na'im, Abdullahi Ahmed, *Toward An Islamic Reformation: Civil Liberties, Human Rights, and International Law* (New York: Syracuse University Press, 1990).

In his seminal work *Towards a History of Law in Malaysia and Singapore* Ahmad Ibrahim offers a deep analysis of legal developments in Malaysia and Singapore and presents a powerful argument about the eminence of Islamic law and its contextualisation in history. His writings deserve attention as a reference for understanding the background of current legal systems in these countries.¹⁵

In Malaysia's reform movement these important texts should be elevated in assessing and considering the authenticity of historical shariah developed by early jurists and pioneers of Islamic legal schools. This will engage religious scholars Middle Eastern academics lawyers and those interested in the interaction of law and religion in Islam to develop methodologies and perspectives and to formulate answers to modern challenges in alignment with values of freedom constitutionalism criminal justice international law and fundamental human rights. The critical evaluations offered by these works open up possibilities for essential renewal in the Muslim world that uphold the dignity and movement of the ummah preserve freedom dignity and self respect and defend universal values of equality and humanity.

This reality can be compared with the legal views formulated in classical fiqh and usul works as a comparative study of legal principles and fatwas. Discourse on the Islamic state often refers to *al Ahkam al Sultaniyah wa al Wilayah al Diniyah* by Abu al Hasan al-Mawardi written in the fourth Islamic century. However the present situation is far more complex than issues of dhimmi and harbi non believers and the restrictions on non Muslim movement described by al-Mawardi. Today the emphasis is on social justice equality and fair distribution of national resources and the function of democracy.

Classical and modern theories of jihad also differ in connotation with classical interpretations bound to historical reports textual meaning and occasions of revelation¹⁶ while contemporary understandings highlight modern implications and rhetorical¹⁷ dimensions and include interpretations manipulated out of context.¹⁸ Therefore the academic concern highlighted by this study is the line of renewal needed for law thought and theology and their relationship with human rights. This is examined from the perspective of fundamental differences between classical and contemporary punishments that change

¹⁵ Ibrahim, Ahmad, *Towards a History of Law in Malaysia and Singapore* (Kuala Lumpur: Dewan Bahasa & Pustaka, 2015).

¹⁶ Al-Qaradawi, Y. (2009). *Fiqh al-Jihad*. Terj. Fawwaz Fadzil (Batu Caves: PTS Publications).

¹⁷ Azrul Azlan Abdul Rahman, Noraini Zulkifli, Amer Fawwaz Mohd Yazid. (2020). Jihad Ketenteraan: Perbandingan Teori Tafsiran Klasik dan Modern. *Social Sciences and Humanities in the 4th Industrial Revolution, Special Issues*, 1.

¹⁸ An-Na'im, Abdullahi Ahmed. (2006). Why Should Muslims Abandon Jihad? Human Rights and the Future of International Law. *Third World Quarterly*, 27 (5), 785-797.

according to context and the paths of public interest and differing *ijtihad* by shariah scholars and jurists.

This study employs a qualitative approach based on documentary and library surveys. Sources and data were drawn from current and authoritative primary and secondary references. The collected information was analyzed descriptively, comparatively, and historically to derive the final findings and conclusions.

B. Discussion

1. Foundations and Modern Reform of Shariah

The most pressing question in the context of modern Muslim societies concerns the continued legitimacy of legal rulings drawn from the earliest *fiqh* sources. From a historical standpoint, the edifice of “historical shariah” is understood as the product of the *ijtihad* of classical jurists, developed during Islam’s formative centuries and deeply conditioned by their unique social and environmental contexts. This condition stands in stark contrast to the realities faced by today’s modern, cosmopolitan nation-states.¹⁹

This tension is highlighted by Abdullahi Ahmed An-Na‘im in his work *Toward an Islamic Reformation*, in which he calls for a comprehensive re-formulation of Islamic law (commonly known as shariah) a body of doctrine regarded by many Muslims as an integral component of their faith. While An-Na‘im approaches the Qur’an and the shariah with profound reverence and sensitivity to their intricate relationship, he nonetheless argues that these questions must be decisively addressed if Islamic public law is to be applied effectively in the contemporary world.²⁰

Recent trends indicate that Muslim populations comprising approximately seventy percent of the total in thirty-five countries are becoming increasingly politically assertive. This phenomenon raises urgent issues regarding the modern application of shariah. In light of the interdependent nature of today’s nation-states and the transnational influences at play, An-Na‘im’s analysis focuses on the implications of shariah’s contemporary implementation for modern constitutions, criminal justice systems, international law, and human-rights norms. He demonstrates the necessity of radical reform in this domain by juxtaposing the imperatives of shariah with the demands of existing legal frameworks.

Acknowledging both the competing rights of Muslims and non-Muslims to self-determination and the need to preserve shariah’s legitimacy in any proposed reforms, An-Na‘im establishes an Islamic rational foundation for both the methodology and objectives

¹⁹ Hallaq, W. B. (2005). *The origins and evolution of Islamic law* (Chaps. 2–3). Cambridge University Press

²⁰ An-Na‘im, A. A. (1990). *Toward an Islamic reformation: Civil liberties, human rights, and international law*. Syracuse University Press.

of renewal, drawing on the teachings of Sudanese reformer Mahmoud Mohamed Taha. He goes beyond Taha's general principles to provide a concrete analysis of how these ideas apply directly to Islamic public law.

In proposing a pathway for rejuvenating what many refer to as "historical Islamic law," contemporary reformers seek an alternative to both secularism and fundamentalism. They affirm the authority of the Qur'an and the Prophetic tradition (Sunnah) while applying those sources' methods to a core set of Islamic legal concepts, with a particular emphasis on inalienable rights within the scope of modern constitutionalism and international legislation.

The revolutionary upheavals in Iran in 1979 and the subsequent rise of fundamentalist movements across various regions of the Muslim world have demonstrated that few would now argue Islamic legal treatises and philosophies have little bearing on global politics or international relations. Consequently, Muslim scholars and jurists have endeavored to reinterpret traditional laws avoiding both secularism and extremist literalism in order to harmonize them simultaneously with the demands of modern life and with international legal standards, including principles of self-determination and human rights. While these efforts carry significant political weight, the task itself is both vast and highly complex.

2. Localization in Malaysia: Ahmad Ibrahim, Pluralism, and Extremism Risks

In the Malaysian context, ensuring that shariah can coexist harmoniously with international law and human-rights norms—and introducing a modern, renewed form of Islamic law—is indispensable for reform. Such developments enable a contemporary Muslim nation-state to uphold a constitution that adheres to international obligations and secures acceptance within the global community of nations.

The effort to elevate Islamic law within Malaysia's administration was championed most prominently by Professor Ahmad Ibrahim (1916–1999). He argued that shariah represents a superior legal system and demonstrated its efficacy in reducing crime across various Muslim countries. Although Professor Ahmad Ibrahim's formal engagement with Malaysia's legal framework began only after his retirement from public service in Singapore, his influence transcended national borders: his ideas guided Islamic legal practice in both Singapore and Malaysia. In the realm of education and the Islamization of law, his legacy is especially evident in the upgrading of the Syariah Courts, the establishment of the Ahmad Ibrahim Kulliyah of Law at the International Islamic University Malaysia, and the introduction of takaful (Islamic insurance) and Islamic banking systems that have since become integral to the nation's finance and economy.

Today, Ahmad Ibrahim's contributions continue to resonate in Malaysia's legal landscape, particularly in the harmonization of civil and shariah laws within the national judiciary. His dedication as a Shi'ah advocate first as a practicing lawyer in Singapore serves as a model, as does his pioneering work in introducing globally recognized, shariah-compliant financial instruments in Malaysia.

To realize his ambitious vision of Islamization, Ahmad Ibrahim developed a legal framework rooted in shariah principles intended to replace the colonial civil law inherited from British rule. His ideas consistently informed efforts to enhance the stature of Islamic law and to reform the administration of shariah in line with Malaysia's legal traditions. Recognizing Malaysia as an independent, Muslim-majority state, he recommended that English common law and equity be applied only insofar as they conformed with the needs of a population committed to shariah. His advocacy for the dignity of Islamic law and its institutions earned wide recognition and spurred the development and empowerment of Malaysia's legal system.

Ahmad Ibrahim's writings address a broad array of issues concerning shariah law and the strengthening of the shariah legal system in Malaysia. He tackles fundamental perspectives on legal reform and fatwa issuance, the enforcement of shariah law, the evolving role of the Syariah Courts, the need to harmonize shariah and civil statutes, the expansion of the principle of *maslahah* (public welfare), legal theology, the foundations of fatwa, and critical analyses of legal doctrines across different *madhhabs*.²¹

At the same time, Ahmad Ibrahim warned that misinterpretations of shariah particularly those that overemphasize political Islam can yield harmful consequences. The manner in which Muslims understand and interpret shariah has profound societal implications, since erroneous readings can lead to extremism and threaten human dignity. Accordingly, he urged the Islamic tradition to embrace religious and cultural pluralism, rather than adhere to a single, monolithic interpretation. This pluralism is reflected in the coexistence of multiple theological schools and diverse moral codes within the various streams of Islamic jurisprudence.

Ultimately, shariah as revealed divine law remains the primary source for discerning right from wrong. Errant beliefs can inflict harm and precipitate violence, so it is imperative that Muslims adopt an orthodox interpretation characterized by moderation (*wasatiyyah*) and universal applicability.

²¹ Bakar, Osman (2023, Mac 10). "Misinterpretations of syariah may lead to violence". *New Straits Times*. Retrieved from nst.com.my/opinion/columnists/2023/03/887649/misinterpretations-syariah-may-lead-violence

C. Conclusion

In conclusion, it is essential to elevate the status of the Syariah Courts and strengthen their judicial institutions in accordance with their dignity and mandate to address the needs and concerns of Muslims and the wider public. Such measures are crucial for enhancing the legitimacy of shariah jurisprudence in Malaysia and for harmonizing the authority and competencies of Syariah and civil courts, particularly in respect of certain provisions in the civil system that plainly conflict with Islamic legal principles. Recent government initiatives to review amendments to the Syariah Courts (Criminal Jurisdiction) Act 1965 (commonly known as Act 355) illustrate this imperative. In this regard, the legislative competence of the State Legislative Assemblies to enact Islamic law must be carefully examined and referred to the Attorney General's Chambers and the Conference of Rulers—who bear constitutional responsibility for matters of Islam, custom, and citizenship—as recommended by the Prime Minister, to preclude any substantive disputes or ambiguities upon implementation. These amendments should be undertaken comprehensively and earnestly, incorporating input from all relevant stakeholders to produce a robust statutory framework that can withstand international scrutiny. Furthermore, the drafting of the 2024 Federal Territories Mufti Bill—which proposes formal provisions for the office of the mufti, the determination of shariah legal opinions, and related doctrinal matters—should likewise be submitted to the Conference of Rulers to forestall any contestation regarding Sunni orthodoxy. Concurrently, obsolete statutes inherited from the British colonial era must be reviewed and updated to ensure their continued relevance and consistency with contemporary needs.

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