

Islamic Inheritance Law among Muslim Minority Countries in Southeast Asia

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Abstract: Solution for the disbursement of estate among Muslim minorities countries in Southeast Asia region is based on the systems and laws that being practiced by family, religion and custom in their countries in which any disputed estate will be referred to civil law. This article examines the similarities and differences between civil law and Islamic law in inheritance issues between Singapore and Thailand. The results show that in certain cases, custom and religion considerations are taken into account in the countries that provide alternative law instead of civil law. This law has be preserved and revised for the betterment and benefits of Muslim citizens especially in the condition of civil law being a mainstream law. It is important for Muslim communities to learn and understand the wisdom behind this law that aims to protect the interest of beneficiaries rather than leaving the families unsecured or misusing the rights for personal interest and cause harm to other family members. Inheritance law is certainly an essential mechanism in maintaining an individual's rights and protecting the needy family members under their care.

Key words: Inheritance • Southeast Asia • Comparative law • *fiqh al-faraidh* • *Faraidh*

INTRODUCTION

Inheritance law namely *faraidh* is one of the important branch in Shariah law. Some countries in Southeast Asia have classified the inheritance law as individual law. This article will try to brief historical outlook of the inheritance law in line with the emergence of Islam in Southeast Asia. Then, it view the distribution mechanism of Muslim estates in Islamic law as a part of the countries' legislation.

Historical Overview: Islam was officially established in Malay archipelago namely Southeast Asia in present days in 14th centuries as stated in the history of the related countries such as Brunei, Indonesia, Malaysia, Singapore and Thailand [1-5]. Islamic law has been developed in line with the Islamisation process in the region. In certain area, it had been implemented in the legislation.

In Brunei, the implementation of Islamic law can be divided into three stages: pre-colonial, during colonial and post-colonial [6]. Before colonial period, Islamic law was fully implemented as well as the Brunei customs which still consistent with Shariah principles [7].

During the British presence in Brunei in 1847, the Islamic law was limited to the marriage and divorce matters and being known as Islamic Law Enactment (Muhammad Laws, No. 1 of 1912), Chapter 31 of Revised Laws 1951 which has been enforced on 1 July 1912 during the ruling of Sultan Muhammad Jamalul Alam II, 26th Sultan of Brunei [8]. After the independence in 1984, the Islamic law has been improved by Sultan Hassanal Bolkiah in 1988. The Sultan has passed orders such as Emergency (Shariah Courts) Order, Emergency Order, Islamic Family Law 1999 and Chapter 206, Islamic Adoption of Children which provide clearer position of Muslims rights than the previous Chapter 77.

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In Indonesian, the development of Islamic law was quite impressive. As noted by Ibn Batutah when he arrived at Samudera Pasai in 1345 that he was impressed by the development of Islam in that state and amazed at the ability of Sultan al-Malik al-Zahir. During on that time, various Islamic issues and problems were discussed. When Dutch came to Indonesia in 19th century, Commission Head of Dutch Government Van Oud Haarlem instructed the courts to use religious laws and customs in the cases that involving indigenous people and local religion as long as it is recognized by the public. Haarlem's view may also have later influenced the establishment of a Court of Religion in Java and Madura in 1882. The setting up of courts of Religion was merely an official recognition and consolidation of something which had already existed within the community [9].

In Malaysia, Islam has been accepted by the locals since 14th century and became the religion of the Malaccan Sultanate in the 15th century. Islamic law was implemented in some states which covered Islamic Family law, Islamic Criminal law and Islamic Law of Transaction. After the fall of Malacca to the Portuguese in 1511, new Malay States emerged with Islam being the religion of the States and Islamic law being the law of the land [10]. During British colonization in Malay states, the British imposed English law through civil court system and legislation. The Rulers were required to follow the advice of the British Residents and Advisers respectively, except in matters relating to Islam and Malay custom. When the country moving towards independence, the constitutional commission suggested that the power to enact on Islamic law and establish the Shariah Court should be given to the States. After the independence, sources of Malaysian law includes the Federal Constitution, State Constitutions, Legislation, Islamic law, Customary law and English Common Law. The Malaysia legal system at present day is a mixture of Islamic Law, Customary law and English Common Law [10].

In Singapore, the drafting of Administration of Muslim Law Act (AMLA) was the result from the implementation of Muslims Ordinance which known as Mahomedan Marriage Ordinance of 1880 until it being replaced with Muslim Ordinance 1957 [11]. When Singapore withdrew from the Federation in Ogos 1965, Singapore became one of the secular countries which strongly emphasises that any national policies could not be mixed up with the religion and it has turned into legal and policies practice in Singapore [12].

However, Malay communities were recognized as indigenous people of Singapore and the government are highly encourage to promote any matters related to Malay communities as stated in Article 152 of the constitution. Moreover, in Article 153 of the constitution stated that the government under the law are requested to make provision for regulation Muslim religious affairs and constituting a council to advise the President in matters relating to Muslim affairs [13].

The Malay Muslim community then requested to form a new body which could administer Muslim issues with the establishment of specific legal to replace the previous one [14]. On 13 December 1965, Minister of Culture and Social Affairs Mr Othman Wok had introduced a draft Bill of Administration of Muslim Law in his first Reading n Singapore Parliment. On 30 December 1965, the Bill was read for the second time in the Parliament and on the same day, a parliamentary selection committee was formed to review the Bill and taking into consideration in every aspect by getting opinions, feedbacks and views from Singapore Muslim Leaders, representative from Muslim organisations and selected personnel. In this second reading, Minister explained to the parliament that the Bill consist of some example taken from Administration of Muslim Law Selangor 1952 which effect in few states in Malaysia such as Selangor, Negeri Sembilan, Pahang and Perlis [14-15].

Each of every views and suggestion from the public were reviewed, discussed and the report was summarised by the committee and presented in the Parliament on 31 May 1966. The third reading of the bill was read on 17 August 1966. Minister explained to the Parliament that this bill are not substantively Islamic but it is more to Administration of Muslim law as to establish an Islamic Religious Council, to consider for executive power to be given to the council, strengthen Shariah Court power, setting up the age limit for Muslim marriage and defence for Singapore Muslim women rights. The bill was passed in Parliament and known as Administration Muslim Law Act or AMLA. This bill came into effect and became an act on 25 August 1966 and two years later Islamic Religious Council of Singapore was established and started to operate [15].

In Thailand, Islamic law was formed in matters relating to family and inheritance. The Thai government has issued a law by including the Islamic law on the matter stated above in the Royal Decree R.S. 120/1901 to provide smooth administration and governance in the

states where the population are majority Malay-Muslims [16]. Unfortunately, in 1943, the government of Phibun has removed Islamic family and Inheritance law and the Highest Islamic position from the law and forced the Muslims community to accept local civil law. This has created an instability in southern Thailand and gives an emergency called to the government. In 8 May 1945, the government of *Khuang Apaiwong* with advice from *Chem Promyong* reformed the Islamic law and known as *Praracha Banyat Sasanupatham Fai Islam* [16]. In 1946, the government of *Thamrong Nawasawad* has re-enacted the Islamic Law in Southern Thailand known as Application of Islamic Law in Pattani, Narathiwat, Yala and Satun Act B.E. 2489 (1946). All hearings on Islamic family Law will be heard in District Court in front of the Higher Officer Dato' Yuthitham [16].

In 1997, the religious leaders together with the politicians found out there was a need to modify the Islamic law to fit in with the current context, the Thai Parliament has passed the Bill which known as The Royal Act Concerning the Administration of Islamic Organization 1997 [16].

Islamic Inheritance Law as Practised in Singapore and Thailand: Generally, Islamic as well as civil law share the same goals in distributing the estates to the heirs as to protect their interest and welfare in continuing their life.

In Islamic law, general guidelines in identifying those who entitle as beneficiaries and the portions that they will receive are stated in two major sources which is the Quran and Sunnah whereby the main beneficiaries who will automatically receive their shares are the spouse, descendants and parents, while others will be considered as substitute to the main beneficiaries if they died before the deceased. In terms of portion that the beneficiaries get will be based on the share stated in the two sources and if there is a mix of gender in same level such as Sons and Daughters; Grandson and Granddaughter and Brothers and Sisters, the male will get a portion equivalent to two portions of the ladies share [17].

This law is believed to be grounded on the wisdom behind the law and not in harming others as it is a guideline to assist the beneficiaries in solving the distribution of the estate. Generally, the enacting of Islamic law in Southeast Asia and its acceptance does not fully implemented even though Muslims form majority in certain countries such as Brunei, Indonesia and Malaysia. The Islamic law in Southeast Asia countries focuses only on certain laws in Islam, enacted in Brunei (Sect. 3(1), The

Constitution of Brunei Darussalam I), Indonesia (Sect. 29(1), The Constitution of Indonesia) and Malaysia (Sect. 3(1), The Constitution of Malaysia). In the countries where Muslims are the minority like Singapore and Thailand, Inheritance Islamic law has been recognised and applied under the personal law. However, there still some problems in implementing the law because the mainstream law is still the civil law [15-18].

In the Administration of Muslim Law or better known as AMLA in Singapore states that the jurisdiction of Shariah Court in terms of inheritance is only limited to issuing the Inheritance Certificate for the beneficiaries who apply for it (Sect. 115, Administration of Muslim Law Act in Caption 3) and for any claims to the estate will only be heard in the High Court or Subordinate Court (O. 80, r. 3, Rules of Court). Although the Sharia Court has the jurisdiction to issue the Inheritance Certificate, it might not come into effect in certain cases. This can be learnt from the case between siblings of *Saleh Ali* (the deceased); *Saniah Ali v. Abdullah Ali* (3MLJ 135), whereby "The issue for determination whether upon the true construction of sections 23 and 24 of the Central Provident Fund Act (Cap 36) (CPF Act) and sections 112 and 115 of the Administration of Muslim Law Act (Cap 3) (AML Act), the plaintiff or the defendant is entitled to the amount of \$60,607.71, being the amount paid out of the Fund on the death of the deceased. In this case, the deceased had, during his lifetime, pursuant to sect. 24(1) of the CPF Act nominated only the plaintiff to receive in her own right the entire amount payable on his death out of the Fund. The question that arises now is whether her right to the amount under the provisions of the CPF Act is subject to the law governing succession to a deceased's estate and in this particular case, the law governing intestate succession of a member who at the time of his death was a Muslim domiciled in Singapore. As conclusion to the case, in judge opinion on the true construction of sections 23 and 24 of the CPF Act, the amount of \$60,607.71 is not part of the estate of the deceased and therefore does not fall within section 112(1) of the AML Act. The plaintiff, in my judgment, is entitled in her own right to the full amount of \$60,607.71 which has been paid to her by the CPF Board. As of the result, I make the declaration that the plaintiff is entitled to retain the said sum in terms as applied for by her." From the statement of the case, it demonstrates that not all estate will be distributed according to the law stated in AMLA as it is not part of the estate of the deceased [15-16].

In Thailand, there are some process of implementation and cancelation to it by the local government whereby the first Islamic law was being enacted in year 1901 and removed from the legislation in year 1943. Therefore, the application of Islamic Law in Pattani, Narathiwat, Yala and Satun Act B.E. 2489 (1946) was reenacted and Islamic inheritance law was included in the act and it is applicable until today [16, 18].

Islamic law in the matters related to family and inheritance contains 230 articles which were divided into two sections. First section is about family and other section from article 188 to article 230 is for the inheritance. However, in Thailand legal system, there is no any Shariah Court in hearing the case and it can only be done in District Court where the court process will be hearing by Dato' Yuthitam status for a Judge that working in the district court [16, 18].

In other words, like other countries in the region, traditional laws exist vis-a-vis to the western systems that were imported through colonialism in Southern Thailand. Muslim law is clearly applied in marriage and inheritance cases involving Muslims as stipulated in statues of 1926. At the same time, there is no appeal from the decision can be rendered [18].

The historical accounts have given an impact in formulating the Islamic law and it facilitates the Muslim community in Southeast Asia in applying it within the official channel provided. The differences between Islamic inheritance law in Singapore and Thailand is that the Shariah Courts were given jurisdiction in issuing Inheritance Certificate for the beneficiaries who apply for is as stated in section 115(1) AMLA in Caption and any claim on the estate can only be heard in Subordinate Court. All hearing process including Islamic law matters will be processed in the District Court, Dato' Yuthitam are given the authority to give religious guidance on the matters within the four southern Thailand district and other district area will be based on the civil law [19].

Both Islamic law in Singapore and Thailand have the similarities and differences in implementing the Islamic inheritance law in both countries. Besides, advantages and disadvantages can also be seen from the comparison. Similarities exist in the governments' approval of some parts of Islamic law to be applied in both countries. Whereas the differences occur where the Islamic law in Thailand is only applicable in the four southern districts where majority of the population are Malay-Muslim community compared to Islamic law in Singapore is

applicable to all Muslim in the matters relating to marriage, divorce and inheritance of the Muslim community (Sect. 35(1), (2) and Sect. 112, AMLA) [19-20].

Besides, the divergence lies in the role of Shariah Court. In Singapore, it is responsible in hearing divorce cases involving Muslim couple and issuing Inheritance to the beneficiaries who apply for it in distributing the estate (Sect. 112 and Sect. 115, AMLA). In Thailand, there is no specific Shariah Court being established to hear cases related to Muslim in marital and inheritance matters but the cases are referred to District Court and will be heard by Dato' Yuthitam in giving his views based on Islamic law (Article 4 Clause 3 of the Act Application of Islamic Law in Pattani, Narathiwat, Yala and Satun Act of 2489 B.E.) [21, 22].

CONCLUSION

The Islamic inheritance law must be preserved and revised for the betterment and benefits of Muslim citizens. It is important for Muslim communities to learn and understand the wisdom behind this law that aims to protect the interest of beneficiaries rather than leaving the families unsecured or misusing the rights for personal interest and cause harm to other family members. Inheritance law is certainly an essential mechanism in maintaining an individual's rights and protecting the needy family members under their care.

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