

Muslim struggle for *Shari'ah* courts in Thailand: An analytical study

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Abstract: Muslims, especially in southern Thailand, have been struggling to lead their lives according to *Shari'ah*. They have been demanding independence or at least autonomy especially for the southern part of Thailand from the central government. Their aim is to transform the socio-economic and political set-up in the South along *Islāmic* lines. They began with the demand for Shariah Courts to be established in the region. This struggle for *Shari'ah* court is in accordance with the fundamental right enshrined in the Universal Declaration of Human Rights that stipulates that every person has the right to practice his/her religion. This is also required by religion. Muslims are under obligation to live according to the *Islāmic* way of life and to settle disputes among fellow Muslims through *Shari'ah* courts. However, Muslims are denied the right to *Shari'ah* court. There are no procedural laws and adequate substantive laws to govern their practical lives. The mass media highlights the insurgency that is taking place in southern Thailand but not the inequality and injustices Muslims face in the region. Muslims have been marginalized in almost every aspect despite being the citizens of the kingdom. This paper analyses the current situation regarding the status of *Shari'ah* courts in Thailand, analyses albeit briefly the injustices meted out to the Muslims and argues for granting the right to *Shari'ah* court in Thailand.

Keywords: *Shari'ah* courts, Muslims in Thailand, Dato' Yuthitam, Human rights.

Introduction

Universal Declaration of Human Rights stipulates that every person has the right to practice their religion.¹ This right, however, is denied to Muslims in Thailand and they are required to settle their disputes in the subordinate civil courts to

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¹ Some of the materials cited in this article appeared in a paper presented in a conference which was subsequently published. See Ramizah Wan Muhammad (2011). *The Dato' Yuthitam and the Administration of Islamic Law in Southern Thailand*. Melbourne: Centre for Islamic Law and Society.

which is attached a Muslim judge with the power to advise. Muslims have been demanding for independence or autonomy from the central government. At the minimum, they asked for the establishment of *Sharī'ah* courts which will partially permit them to live in accordance with the tenets of *Islām*. The fulfillment of this demand would pave the way for further Islamization of the South. This calls for a close analysis of their struggle for the *Sharī'ah* courts.

Sharī'ah courts, it is argued, will ensure that the rulings of *Sharī'ah* are not only implemented but also technically enforced and applied to the Muslims. *Sharī'ah* is not simply to understand and study the sources of Shariah, but one has to look beyond that: into the objectives of *Sharī'ah* i.e to uphold justice and to protect public interest which is inevitably the essence of *Sharī'ah* itself. *Sharī'ah* is often misunderstood as the sole divine law and exclusively for God. In fact, *Sharī'ah* is a divine as well as man-made law and it is for the benefit of humankind. A judge in a *Sharī'ah* Court could, to a certain extent, “enact” a law and enforce it to disputant parties in his court. The role of judge in a court institution is to use his creativity by looking into existing laws and power vested on him before giving a decision. This role could only be utilized if he is given a proper jurisdiction and power to enforce the laws. Otherwise, laws can only be observed and looked at but not tested. Any law if not tested will remain useless, be it *Islāmic* or Common law. The demand for *Sharī'ah* courts in Thailand is, therefore, not simply for an institution but an institution that would symbolize *Islām* and ensure that *Islāmic* law is followed.

This article aims at answering the following questions: What is the nature and status of *Sharī'ah* courts in southern Thailand? How are disputes among Muslims settled in Thailand? What kind of struggle is being made to have *Sharī'ah* courts established in the country and with what effect? The paper is descriptive and is based upon informal discussion with those well versed in Thai politics and history and documentary evidence.

Muslims in Thailand

The Kingdom of Thailand, once known as Siam, occupies the center of the South East Asian mainland. It is the only country in Southeast Asia that has not been subjected to any form of colonialism. The census of April 1, 2000 gave the population of Thailand to be more than 60 million which, in 2014, is estimated to be about 61.5 million of whom about 5 million are Muslims. Like Singapore and the Republic of the Philippines, Thailand also has a Muslim minority. Muslims in Thailand can be divided into four categories. The first group is the Muslim Thai, those who are ethnically and culturally Thai and live in the central part of

Thailand. The second group is the Chams who are originally from western Cambodia and live in the east coast district and Bangkok. The third group consists of Persians, Bengalis/Punjabis and Arabs many of whom are prominent businessmen. The last group is Thai Malays who speak and write in Malay or Yawi (Jawi). These people, estimated to be 3.5 to 4 million, live in the Southern part of Thailand consisting of Patani, Narathiwat, Satun and Yala. It is in the southern part where Muslims suffer injustices and inequalities and have seen the so-called insurgency. These people can be categorized as unassimilated group and predominantly Malays retaining Malay names, culture, language, music and attire. Those residing in other parts of Thailand converse in Thai both at home and in public. They are no longer familiar with the languages of their ancestors (Imtiyaz Yusuf, 1999: 20).

Muslims living in the south are locally known as Malay Muslim² or Thai Muslim³ and sometimes they are called as *Khaek*⁴ which means dark skinned foreign visitors or immigrants. This term is pejorative and symbolizes the general unease of the Muslim position vis a vis the majority people. *Khaek* also refers to people of different religion (Joy, 2007: 261-262). The Muslims in southern Thailand deeply resent such labeling for they are neither foreign visitors nor immigrants. They are actually the locals of southern provinces and part of Patani Kingdom. It is a historical accident that the Patani region had been incorporated into Thailand in the early part of the twentieth century. The Thai Muslims did not like the term at all since they argue that their arrival preceded the Thai Buddhists by several centuries (Gowing 1985: 185; Thomas, 1982: 159).

Historically, the first Thai kingdom was established in Sukhotai in 1253 to 1350 C. E. (Wyatt, 2000; Slagter, 2000: 16). It continued as a monarchy until 1932 when a bloodless coup brought to an end the absolute rule of King Prajadhipok. They drafted and promulgated the first constitution in Thailand and forced the King to relinquish his absolute status and become a constitutional monarch. The government that emerged was essentially dominated by the military and noted for the non-participation of the people (Uwanno and Burns, 1998: 29).

² The term Malay Muslim is used to describe the Malay Muslim speaking populations who have generally resisted assimilation into Thai society and culture (Farouk, 1981: 97).

³ The term Thai Muslim is used to describe the Thai speaking Muslims of Thailand who have internalized much of Thai culture.

⁴ Literally it means guests. However, it has been argued that this term is used specifically to Muslim. If he is a Cham or Chinese and lives in Thailand he is not known as *Khaek* (Gilquin, 2005: 23).

Islām in Thailand was institutionalized from the time of the arrival of Sheikh Ahmad at the beginning of 7th century. He is a figure of considerable political importance and occupied the position of personal advisor to the King on matters concerning *Islām* (Gilquin, 43). He was given the title of *Jaw Phraya*, the title given to a noble man of the highest rank (Tohmeena, 1997: 13).

The King is the spiritual head of all religions including *Islām* by virtue of the Section 9 of the 1997 Constitution. His personal advisor is the office of *Chularajmontri* or *Sheikh al Islām* who is appointed by the King on the recommendation of the Interior Minister. The office of *Chularajmontri* represents all the Muslims in Thailand and presides over a national council of *Islām*ic affairs. *Chularajmontri* was an old office dating back to the 17th century during Ayutthaya Kingdom. These *Chulas* are from Shiite descendants compared to Sunni Muslims in Southern Thailand.

Application of *Islām*ic law in Thailand

The history of the application of *Islām*ic law in Thailand can be traced to as early as 1900. On December 10, 1901, a Royal Decree was passed but it was not applicable to the Non-Muslims in Thailand (Pitsuwan, 1982: 119). Article 32 of the Royal Decree provides that the criminal and civil code shall be applied except in civil cases concerning husband and wives, and inheritance in which Muslims are both the plaintiff and the defendant or only a defendant. In such cases, the *Islām*ic law shall be applied (Pitsuwan, 1982: 120). During the reign of King Chulalongkorn (Rama V, 1868-1910), the Rule of Administration in the Seven Principalities was enacted in 1902 and the special court for the Muslims was set up as part of the Provincial Court. This rule remains valid until today and article 32 reads as follows:

The Criminal Code and the Civil Code shall be applied to Thai citizens except in civil cases concerning husbands and wives, and inheritance cases in which both parties are Muslims or a Muslim is a defendant, in such cases, the *Islām*ic law shall be applied.

There was also a Chinese court to cater to the needs of the Chinese from Mainland China (Pitsuwan, 1982: 12-13).

In 1917, there was a royal demand for Satun to apply *Islām*ic law and the appointment of Datok Yuthitham. As a result, *Shari'ah* Court was established and the Promulgation Act concerning *Islām*ic law was applied. Historical evidence shows that there was a *Shari'ah* Court in Satun during the reign of King Rama V of Krung Ratna Kosin. However, in 1909 when Satun was separated from Sai Buri

precinct the Shari'ah Court was abolished. But 8 years later, the operation of Shari'ah was resumed (Tohmeena, 1997: 17).

The then Prime Minister, General Phibun Songkhram abolished the position of Datuk Yuthitham and the application of *Islāmic* law in four southern provinces in 1943. In the same year, another law, known as Civil and Commercial Code Book 5 and 6, was passed. General Phibun overthrew Thailand's absolute monarchy in June 1932. He was responsible for stimulating Thai nationalism (Leifer, 1995: 190-191). The Civil and Commercial Code Book 5 and 6 abolished the application of *Islāmic* law relating to marriage and inheritance to Thai Muslims. The General sought to "siamise" the entire non-Buddhist minority including the Muslims (Gowing, 1985: 183-84). In other words, he believed that uniformity in Thailand could only be achieved through a single system of law and converting the Muslims into Thai legal system. He believed that enacting a special law for Muslims is like treating them as a special group with special rights. To a certain extent, he succeeded in converting Muslims to Buddhism (Gowing, 1985: 183-84).

In one of his addresses to his cabinet and senior officials, General Phibun said:

In an effort to build a nation with a firm and everlasting foundation, the government is forced to reform and reconstruct various aspects of society, especially its culture which here signifies growth and beauty, orderliness, progress uniformity and the morality of the nation (Baker & Phongchit, 2005: 140).

With that policy, he had introduced The National Culture Act of instilling Thai-ness and Thai nationalism. This policy was short-lived and done away with when General Phibun fell from power in 1944 (Baker and Phongchit, 2005: 140).

The Civil Code was abolished in 1946 and Muslims were allowed to apply *Islāmic* law concerning marriage and divorce. This development is the result of intense discussion between the government officials and Muslim leaders from Pattani. Consequently, the Royal Act of 1946 was established. According to Section 3 of the Royal Act:

Islāmic 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 defendants or a Muslim files the request in non-contentious cases.

The position and status of Muslim Thais have been taken care of during the period of King Chulalongkorn. The wish of the wise King Chulalongkorn concerning his Muslim subjects was not to suppress and destroy their Muslim

Malay and *Islāmic* identity but to make them feel that even though they are Muslims and are of different faith, they are Thais in sentiment and outlook just as any other Thai. This has since become the socio political goal of subsequent Thai leaders (Pian, 2002: 7). It could be surmised that had the 1932 revolution not taken place, the interest and welfare of the Muslim communities might not have been overlooked by subsequent Thai governments.

Under the 1997 Constitution, the King of Thailand provides the royal patronage to all religions in Thailand including *Islām*. Over 95 percent of the people of Thailand practice Buddhism with *Islām* accounting for most of the remaining 5 percent (totaling about 3.5 million). Muslims live mostly in the Southern part of Thailand that consists of Pattani, Narathiwat, Satun and Yala. These provinces were once parts of the old Malay Kingdom of Pattani (Che Man, 1996: 425). Despite the government's attempt to cultivate the sense of Thai nationalism among the Thai population, the Muslim's sense of ethnicity and faiths has kept them apart (Pitsuwan, 1982: 28). The Government plays limited role in Muslim religious affairs. The Government maintains some kind of relationship with the Muslim community through various ministries and councils.

In the same year, 1997, the government of Thailand issued a new act called the Royal Act Concerning the Administration of *Islāmic* Organizations B.E. 2540 (C. C. 1997). This act pertained to some *Islāmic* organizations such as *Chularajmontri* office, the Central and Provincial *Islāmic* Committee and the Mosques Committee. *Islāmic* Law is placed within the jurisdiction of provincial courts and is available only in Yala, Satun, Pattani and Narathiwat. There are 5 provincial courts that cater for the needs of Muslims in four southern provinces in Thailand.⁵ The jurisdiction of *Islāmic* law in Thailand is limited only to marriage, divorce and inheritance.⁶ According to the Act, on the Application of *Islāmic* Law in the Territorial Jurisdictions of Pattani, Narathiwat, Yala and Satun Provinces (B.E. 2489), the *Islāmic* law on family and succession shall apply to all Muslims who are residing in those provinces.

Dato' Yuthitam

The person who caters for *Shari'ah* in Thailand is known as Datuk Yuthitam (Uwanno and Sathurathai, 1987: 88). The designation was created under the Act

⁵ In Yala there are two Shariah Courts. One is in the city of Yala and another one is in Betong.

⁶ Section 3 of the Act of Exercising of Islamic Law in Pattani, Narthiwat, Yala and Satun, B.E. 2489

of Exercising *Islāmic* Law in Territorial Jurisdiction of Pattani, Yala, Satun and Narathiwat in B.E. 2489. The post was created in 1945 by General Phibun prior to the Royal Act 1946 (Aphornsuwan, 2003: 22). This Act also mentions that in cases of personal laws, a civil court judge has to sit with Dato Yuthitam in the course of trial. Otherwise, the judgment of Dato' Yuthitam will have no legal effect.⁷ 'Yuthitham' is a Thai word denoting justice whereas the word *Dato'* is a Malay word for a venerable person. However, the Malays and Muslims in the South usually address the Muslim judges as "*tok kadi*", as commonly referred to in much of the Malay World in Southeast Asia.

The establishment of Dato' Yuthitam institution is sanctioned by the Royal Act of 1946, which provides for special concessions allowing the application of *Islāmic* law in matters concerning family and inheritance. He is placed in the Thai Provincial Court in four southern provinces and his duty is mainly to assist the civil court judge. He was also known as a judge without a court. This means that Dato' Yuthitam is a judge without a proper organization, staff and place to hear a case. There are two Dato' Yuthitams in each province.

Being an assistant to the civil court judge, he could not make his decision independently. In other words, the application of *Islāmic* law for Muslims in Thailand is subject to the approval of the civil court judge. According to Mr. Apirat Mad Sae, a *Shari'ah* judge in Pattani, the civil court judges generally respect the kadi and follow their decision accordingly. There is no right of appeal should any party be dissatisfied with the decision. This is against natural justice in administrative law as well as in *Islāmic* law.

The power to appoint Dato' Yuthitam and to dismiss him is invested in the Ministry of Justice. This is provided in the Judicial Official Act 2000. Special procedure must be followed in appointing a Dato' Yuthitam. The vacancy of the post has to be announced by the regional director general of judges. Then the interested Muslims are invited to submit their application within a specified period. The candidate for the post must be a Muslim of Thai nationality; minimum 30 years of age; and must have an education that is equivalent to lower secondary school. The Regional Director then consults the provincial Chief Judge and the Provincial Governor of their respective province to determine the qualifications and suitability of two Dato' Yuthitams in each provincial court. He is like any other civil servant eligible for pension after retirement at the age of sixty. In

⁷ Section 4 of the Act of Exercising Islamic Law in Territorial Jurisdiction of Pattani, Yala, Satun and Narathiwat in B.E. 2489

theory, Dato' Yuthitam plays an important role in settling disputes on family and inheritance matters. In practice, however, they play a negligible role since they receive very few cases per year to handle.

As discussed above, Dato' Yuthitam's jurisdiction is limited to four southern provinces. Application and enforcement of *Islāmic* law does not cover Muslims living outside these four provinces. A Muslim who lives in Bangkok and commits an offence that contravenes *Islāmic* law is not liable to be prosecuted under the provision of *Islāmic* law.

Inequalities, injustices and demands for redress

The historical analysis carried out above shows that Muslims in Thailand are the victims of inequalities and injustices. One, they have been labeled *Khaek*, a specific term used by the Thai majority to refer to Muslims in the sense that they are the "other". Muslims are considered outsiders simply because they adhere to the religion of *Islām*. Understandably, Muslims resent such a labeling. Two, attempts have been made and are being made to convert Muslims into Buddhism. The largely Buddhist Thai government exert hegemonic pressures upon the Muslims, forcing linguistic changes, and infiltrating Muslim villages by placing Buddhist families there and constructing Buddhist monasteries in Muslim villages. Muslims have been seriously resisting these attempts in various ways. Muslims could resist the forced conversion but could do nothing to stop the conversion of a place into Buddhist areas. Three, Muslims are denied their right to have *Shari'ah* courts established. Instead, they are given Dato' Yuthitam whose jurisdiction is limited and who plays second fiddle to the civil court judge. Muslims outside the south of the country are subject to the civil law of Thailand. This has the effect of dividing the Muslims rather than uniting them as one religious community. Four, since the country's civil and commercial code takes effect throughout the country, a case settled by the civil court judge has the priority over the opinion of Dato' Yuthitam.

In addition, Muslims and non-Muslims differ in the possession of what is desirable and undesirable. Muslims possess much less of what is desirable as compared to the non-Muslim citizens. Most Muslims are poor and live below the poverty line. They are small holders of rubber trees, small fisherman, and small agricultural farmers. Many of them are farm labourers or wage workers in the non-Muslim fishing enterprises. They also work as labourers in the non-Muslim owned mines. There is a clear bias against Muslims occupying top administrative positions or in terms of benefitting from economic development. Muslims are

suspect and are arrested on mere suspicion and detained for months or years without trial. Most Muslims are devoid of qualifications to hold any professional job except as primary school teachers or religious teachers. Most of them are farmers, fishermen, rubber tappers and small traders. The Malay Muslims are reluctant to go to the national schools since they are afraid that their *Islāmic* faith would be jeopardized.

Given a myriad of sufferings, Muslims were engaged in movements led by the *‘ulamā* to consciously influence changes from what is bad into what is good. One such movement was initiated by Haji Sulong Bin Haji Abdul Kadir who served as the President of the *Islāmic* Religious Council in Thailand. The movement he established made the following seven specific requests to the government:

1. The four southern provinces to be governed as a unit, with a Muslim governor.
2. For the first seven years of the school curriculum, Malay to be allowed as the language of instruction.
3. All taxes collected in the four southern provinces to be expended there.
4. 85 percent of the government officials to be local Malays.
5. Malay and Thai to be used as the languages of government.
6. The provincial *Islāmic* committees to be given authority over the practice of *Islām*.
7. The *Islāmic* judicial system to be separated from the provincial court system.

Haji Sulong subsequently established a “Seven Requests” movement to pressure the government into considering the requests. The movement used the language of human rights and articulated their demands with a moral authority. It is a language which is recognized by the Universal Declaration of Human Rights (UNDHR) adopted by the UN General Assembly on December 10, 1948. The demand for *Shari’ah* courts is in conformity with the UNDHR which entitles all human beings to live in dignity, and in conditions of social justice. However, his demand fell on deaf ear and instead Muslims were asked to be satisfied with the institution of Dato’ Yuthitham. Haji Sulong also demanded regional autonomy for the former lands of the Patani Sultanate, which was absorbed by the British into Malaysia, then given to Thailand. The demand for autonomy was justified on the ground that it would preserve special identity of the inhabitants as Malay

Muslims. He asked the government not to adopt a policy of converting Muslims or of marginalizing them by labeling them as outsiders. He wrote:

We Malays are conscious that we have been brought under Siamese rule by defeat. The term Thai *Islām* with which we are known by the Siamese government reminds us of this defeat and is therefore not appreciated by us. We therefore beg of the government to honor us with the title Malay Muslims so that we may be recognized as distinct from the Thai by the outside world (Hayimasae, 2002: 83).

However, none of the seven demands was met by the government. The Thai government dismissed Haji Sulong's activities and jailed him for over 3 years. Sometime after his release, Haji Sulong disappeared with his son, and some followers. He was found murdered and tossed into Songkhla Lake in 1954. News reports suggested that Haji Sulong had been killed by the police. Muslims, consequently, were agitated and some might have even supported radical groups who were bent upon destroying the peace of the country.

Muslims intensified their demands asking for full independence to establish an *Islāmic* republic which understandably incorporate *Shari'ah* courts. In 1963, the Pattani Malay National Revolutionary Front (Barisan Revolusi Nasional or BRN) was established with the demand for an independent *Islāmic* Republic of Pattani comprising the southern provinces of Pattani, Satun, Yala, Narathiwat and Songkhla. In battles with the Thai Army, over 400 NLFP members were killed during 1971-1975. Soon, the BRN toned down its demand and opted for autonomy. In addition, the forces of the Communist Party of Thailand, operating in the southern region were working together with the various Muslim separatist movements. The Pattani United Liberation Army and Pattani United Liberation Organization (PULA and PULO) both pursued autonomy for the Pattani Province. PULO has advertised the sponsorship of killing state workers, law enforcement personnel, local government officials, school teachers and other symbols of Thai oppression, according to a report published by the Rand Corporation. A footnote to the Rand report says that between August 1997 and January 1998, at least 33 separate attacks were carried out, killing nine, injuring several dozens along with considerable economic losses. The Malaysian government at the time was having its own problems in its northern area bordering Thailand. Both countries agreed to let each other's armies move freely in these areas to cleanse the area of the strife that was afflicting its home country. The mutual policing has since ceased around 1990. The demand for autonomy continues and the struggle for the *Shari'ah* court remains in the forefront.

Conclusion

Muslims in southern Thailand have been struggling for independence and subsequently for autonomy from the central government. They began making the minimum demand for the establishment of *Shari'ah* courts in southern Thailand hoping this to open the possibility for Muslims to live an *Islāmic* way of life. Their demand for *Shari'ah* court is in conformity with the Universal Declaration of Human Rights. The Muslim demand for the *Shari'ah* court has been neglected for centuries. Unlike their counterparts in other ASEAN countries like Singapore and the Republic of the Philippines, Thai Muslims are treated with disdain. The establishment of shari'ah court is essential to ensure that basic rights of the Muslims to enjoy their personal status are protected. It is suggested that shari'ah court should be placed under specialized courts together with Labour Court, Tax Court, Intellectual Property & International Trade Court and Bankruptcy Court. This fundamental right is universally accepted by most of the countries.⁸ Other than that, there is a need to have proper procedural laws that would guide the Datok Yuthitham in arriving at juristic decisions. The Rule of Administration in the Seven Principalities which was enacted in 1902 should be amended and certain changes should be included such as the application of laws to all Muslims across the Kingdom of Thailand and details out the function Datok Yuthitham in a court. These demands are not radical but indeed, a fundamental right that need to be secured by the Muslims. The government policy should be modified by including the positive interest to boost the confidence of the Thai Muslims to the government. The government should also facilitate extensive communications between the majority and the minority. This can be facilitated through education. Eventually, this move will improve their status and the stigma of *Khaek* will be eliminated. What is more important is to instill a strong sense of belonging to the nation and the values of respect in every citizen in the Kingdom of Thailand.

The findings however, show that the interest of the Muslims in Thailand scarcely receives attention from the central government. The authorities should try to resolve the conflict by looking into the root of the problems. The element of discrimination in Thailand society against the Muslims should be properly addressed. Unattended, this discrimination eventually would create the negative sentiments among the Thailand community. The policy of the Thai government concerning the southern provinces should be geared towards improving the quality of life of Muslims, the infrastructure and economy of those provinces.

⁸ See for example Shariah Court in Singapore where Muslims are in the minority yet the personal rights of Muslims are well protected and administered.

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