

## THE PROVINCIAL ADMINISTRATIVE REFORM AND ISLAMIC LEGAL AUTONOMY IN SOUTH SIAM, 1892-1925

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### HISTORICAL BACKGROUND

In the present-day context South Siam consists of Thailand's four provinces of Satun/Setul, Yala, Narathiwat, and Pattani where the Malay ethnic minority forms a majority of the population in the region in spite of the fact that the Malay Muslims only represent around 4 percents of the country's over 50 million population. Satun was historically a part of the old kingdom of Kedah, while Yala, Narathiwat and Pattani were parts of the broken-up sultanate of Pattani. Historically speaking too, it was Pattani's role as champion of the Malays against Siamese overlordship, particularly since the founding of the Chakri dynasty, that led to the eventual annexation of Pattani into the Siamese kingdom proper at the beginning of the nineteenth century. Rama I, founder of Bangkok and of the reigning Chakri dynasty, decided around 1808-9 to divide the old Malay sultanate of Pattani into seven small principalities/*muang* in order to weaken permanently the resources at Pattani's command against Siam. These seven principalities known collectively as *Khaek Jet huamuang*-Tani, Yaring/Jaring, Saiburi, Legeh/Rangae, Raman, Yala, and Nongchik - were each given the status of a Siamese frontier province with a governor/*phrayal raja* as its chief administrator. These governors, in turn, were answerable to the governor of Songkhla who acted as one of the Siamese two viceroys for the South. The Chakri kings reserved the right to select and appoint the governors of the Seven Malay Principalities.

By the closing years of the nineteenth century it became clear that Songkhla had not only failed to curb abuses of power on the part of the *raja*-governors but also had itself mismanaged the *Khaek Jet Huamuang* for its own gains. Both Chulalongkorn and Prince Damrong, the then Minister of the Interior, saw the urgency for a re-organisation of the *Jet Huamuang*. In 1896 Damrong submitted, and the King approved, the *thesaphiban* system as the blueprint for the reform of the Siamese frontier provinces. Its aim was to transform these provinces, the *Jet Huamuang* included, into inner provinces of the Kingdom. For South Siam, the *thesaphiban* system was officially introduced into the Seven Malay Principalities on 22 December, 1901. However, various steps had earlier been taken by Bangkok in an effort to integrate the southern tributary states and the *Jet Huamuang* into the Kingdom proper. The administrations of Kelantan and Terengganu, for example, were put under the supervision of a permanent commissioner of Phuket as early as

1895. Kedah, Perlis and Setul were set up as a *monthon*/administrative circle in 1897 with Sultan Abdul Hamid, Kedah, as its Superintendent Commissioner. Before that, in 1896, the Ministry of Interior appointed the first commissioner of the Seven Malay Provinces. And finally in 1899 Kelantan and Terengganu were put under the supervision of the Superintendent Commissioner of Nakhon Sithammarat. It is worth noting that the *thesaphiban* system set up in *monthon* Zaiburi/Kedah and partly operated in Kelantan and Terengganu was not really effectively executed. Damrong and his Ministry were prevented from implementing fully the *thesaphiban* system not only in the Malay tributaries but also in other tributary states and outer provinces by the apprehension of British and French interference and negative response. As far as the Seven Malay Provinces were concerned, Bangkok, having signed the Anglo-Siamese Secret Convention 1897 which, *inter alia* recognised Siamese authority over the said area, and the Perak-Raman Boundary Settlement of 1894, felt confident of her position in the Seven Malay Provinces vis-a-vis anticipated Straits authorities' interferences. Bangkok also felt an urgent need for a re-organisation of the *Khaek Jet Huamuang* in the face of an increasingly aggressive stand adopted by the proponents of the forward party within the Straits government. As stated above, Prince Damrong had submitted a memorandum to King Chulalongkorn, outlining a necessity of an administrative reform in the *Khaek Jet Huamuang* as early as 1896. Among the leading reasons which made an administrative reform imperative were:

first, the relations with foreign powers at this juncture make it necessary that all malpractices and administrative ills be eradicated without delay ...

Secondly, the *huamuang* in the Malay peninsula especially the *Huamuang Khaek* present (us with) a dangerous situation. This is the area where the weakness of the Kingdom is most obviously displayed. It is therefore more easily encroached upon than (any other) inner parts of the Kingdom.

Thirdly, nowadays, the English have conducted their trade right up to the Malay Provinces of the country; we cannot stop or prevent such activities as it would go against the present (politico-economic) trend. The only way to deal with this ... is to educate our people to take advantage of commercial activities. The more effectively we can (educate them), the more effectively it will be to prevent foreigners from (interfering in local affairs).<sup>1</sup>

The proposed administrative reform, however, would avoid "any abrupt uprooting of the old system, as well as (any measure that will) hurt the feelings and the sensitivity of the present Governors". Conversely, it aimed to cultivate a new awareness among the Malay ruling class that "even though they are Malays and of different faith, but (they) are Thai in sentiment and outlook just as any other Thai officials".<sup>2</sup> Chulalongkorn agreed in principle to the proposed administrative reform in the Malay Provinces but emphasised the significance of Islam in the matter.

We must always point out the fact that Siam regards Islam as one of the faiths of the country ... You should find out about the law used by the English in their Malay States concerning the Malays. This can be (used as) a reference in our attempts to change the administration in the Malay Provinces.<sup>3</sup>

With Chulalongkorn's approval, the plan was put into action. As stated by Damrong, the ultimate aim was to transform the *Khaek Jet Huamuang* into an intergral part of Siam which in turn meant an end to the semi autonomy enjoyed by the *Raja*-Governors of individual Malay provinces. For this purpose, Bangkok appointed a resident commissioner to the *Jet Huamuang* area whose authority overrode that of the traditional *Raja*-Governor. The latter's traditional power over life and death of his subjects was withdrawn while that of confiscating property prohibited. His right to levy and collect tax remained, at this stage, intact but one third of the revenue was now taken for the official and administrative needs of the Commissioner's office. It was clear that in initiating the administrative reform of the Seven Malay Provinces in 1896 and until 1902, both the King and Prince Damrong preferred a liberal approach in the hope of persuading the local Malay chieftains to gradually accept the change. The reform therefore accorded the *Raja*-Governors some real executive power, while the Commissioner's main task was to see that these governors did not abuse their authority. For a while it appeared that this soft approach was producing results. Apparently, Pattani, the traditional leader of the *Jet Huamuang*, acquiesced to the new measures. Sultan Sulaiman was Bangkok's hand-picked successor to the Pattani sultanate in 1890. He was known for his "pro-Siamese" stand, and, as expected, accepted the administrative novelty without much ado. Sultan Sulaiman however passed away in 1898 and Bangkok appointed his son, Tengku Abdul Kadir Kamaruddin/Phra Phiphit-bhakdi, as acting Governor. The emergence of Tengku Abdul Kadir led to the change in attitude of the *Jet Huamuang* leaders.<sup>4</sup> Even before being confirmed in the position of *Raja*-Governor of Pattani, Abdul Kadir began to register his strong objection to the administrative reform introduced in 1896. Together with the Raja of Sai and Legeh, Abdul Kadir refused to co-operate with the Commissioner and began concerted efforts with other rulers of the Malay Principalities to oppose the new order. As early as August 1898, Tengku Abdul Kadir wrote to Sir Frank Swettenham requesting the English to take over Pattani and release him from the Siamese rule.<sup>5</sup> Again in 1901, the three rulers of Sai, Raman, and Pattani separately wrote to Swettenham appealing for British assistance against Bangkok.<sup>6</sup> By this time, it became obvious to Prince Damrong and the Siamese authorities that the liberal approach to the reform in the Seven Malay Principalities was not winning Siam any meaningful co-operation from the Malay *Raja*-Governors. It was also obvious to them that if nothing was done to prevent the Malay Governors from ever being in contact with the Straits Settlements authorities, the reform was sure to founder. Bangkok decided it was time that more stringent measures be adopted. Consequently, the Royal Decree on the Administration of the *Jet Huamuang Khaek* was announced on 22 December

1901.<sup>7</sup> The Royal Decree of R.S. 120/1901 in sum returned the direct administrative power to the Central Government and its agents. The Decree stated that the Provincial Local Administration Act of R.S. 116/1898 was now to be enforced in the *Jet Huamuang*. The Act enabled Bangkok to appoint the Resident Commissioner of the area, together with other officials such as the governor, revenue officer, judge, and others. The provincial headquarters were to be set up, consisting of governors of the individual provinces concerned, and other senior officers. It became clear that the *Raja-Governor* was now reduced to a mere titular head since his financial, judicial, and administrative functions were taken over by the Resident Commissioner and the provincial headquarters. It was the Resident Commissioner who recommended and advised the central Government on appointments of senior officials of each province, including the appointment of the Governor. All the *Raja-Governors* were given an annual pension in accordance with their individual status. The Decree also stated that Islamic law concerning marriage and inheritance would be respected. The *Toh Kali or Toh Kadi*, the religious leaders of each province, would sit in judgment of cases concerning Islamic law on marriage and inheritance.<sup>8</sup> With the issuing of the Royal Decree R.S. 120, the *Jet Huamuang* were incorporated into the Kingdom proper. Between 1905-6 various special aspects of the frontier province, such as the *bunga mas* and other tributes were systematically abolished. In 1907, the Seven Malay Province were re-organised and given a *monthon* status; three provinces of Pattani (Tani, Nongchik and Yaring), Yala (Yala and Raman), and Bang-Nara (Sai and Legeh) were created to form *Monthon* Pattani. With the 1907 re-adjustment, the former *Jet Huamuang* became an integral part of Siam and have since been regarded as an inalienable part of the country.<sup>9</sup>

### ISLAMIC LEGAL AUTONOMY

It is not a place here to expound the political and administrative consequences of the Royal Decree R.S. 120, though the subject undoubtedly deserves an in-depth discussion. The purpose here is to examine the changes affected by the Decree to the authority of Islamic law and customs within the *Jet Huamuang* area. Before 1902, the Seven Malay Principalities were judicially more or less autonomous under the rule of individual Malay *Raja-Governors*. Siamese law was normally employed if one of the parties involved was a Buddhist Thai; in other cases, particularly on marriage and inheritance, the Islamic law was always enforced.<sup>10</sup> The enforcement of the 1901 Royal Decree appeared to affect very little, if at all, the autonomy of the Islamic judiciary practised *ante* 1902. The Article 3 of the Royal Decree stated that

The Criminal Code and the Civil Code shall be applied, except in civil cases concerning husbands and wives, and inheritance in which Muslims are both the plaintiff and the defendant, or only a defendant, in such cases the Islamic law shall be in force.

It was evident that in identifying the autonomy of the Islamic law on marriage and inheritance, which were known among the Muslims as Islamic personal law, Bangkok was influenced by both the common practice within the Seven Malay Principalities itself, and by the colonial administration in the Malay Peninsula to which Siam implicitly turned for some administrative inspiration and reference. By so doing, Bangkok accepted the basic principle that in the realm of Islamic personal law Islamic rules had to be strictly followed. The autonomy of the Islamic personal law meant that in practice the judgments and interpretations of Islamic scholars, *the ulama* i.e. those well-versed in the teachings and interpreting of the Islamic law, particularly the *syariah*, the divine law, reigned supreme. It also meant the upholding of the legal authority of the *ulama*, the traditional religious leaders. It is interesting to note that in confirming the legal authority of the *ulama*, Bangkok had intendedly bypassed the role played by the *Raja-Governor* in this aspect of Malay life. Traditionally, the *Raja-Governor* had always been looked upon as a guardian and authority on religious matters. The Siamese authorities also rejected the British administrative model practised in the Malay Peninsula which confirmed the authority of the traditional rulers, the sultans, in matters concerning the Islamic faith and Malay custom. The side-stepping of the *Raja-Governor's* role in religious matters was obviously dictated by Bangkok's prime objective which aimed to affect a total intergration of the Seven *Huamuang* area into the Kingdom proper. The aim had no place for an autonomous government, no matter how limited, led by the traditional ruling class. By shifting the role of the local ruling clique to the *ulama*, Chulalongkorn and his officials were implementing measures which were hoped to bring about the King's wish, namely that his Malay subjects in the Seven Malay Principalities would in time become Siamese though not from the religious or racial aspect but from the mind and character outlook. The granting of the religious legal autonomy in 1901 soon raised various technical and administrative problems to Bangkok. For example there was a case of a woman committing adultery in Muang Sai.<sup>11</sup> According to the Islamic law, if there were four trustworthy eye-witnesses certifying against the woman, she would be found guilty; the penalty in such a case would be the burying of the culprit up to the chest, and the public were allowed to throw a stone or strike at the guilty party until she was dead. To the Siamese authorities, such punishment was "too violent and beyond implementation". At somewhat the same time, Bangkok learned that in a similar case which occurred in Kedah, wherein a man killed a lover of his wife who happened to be an Asian subject of Great Britain, the Straits Settlements authorities decided not to press charge against the accused because of the sensitivity of the case.<sup>12</sup> Beside the adultery case, there was also a case of a Singaporean Chinese trader bringing the Koran into Muang Sai for sale. Phraya Sai opposed to the sale of the Koran by non-Muslims, while the Resident Commissioner was more concerned with the British response if such discrimination against one of her subjects were to be implemented in Saiburi.<sup>13</sup> From 1902 until the issuing of the Interior Ministry Administrative Order of 3 December 1903, the

judicial administration of the *ulama* in the *syariah/kadi/kali* court (also known as the *Sala Toh Kali* or *Toh Kadi*) was left in the hand of the local religious leaders. However, by 1903 with cases such as above mentioned, it became clear to Prince Damrong that the *Toh Kali* courts were not performing as well as expected.

According to the Prince, there appeared to be no universal rules or conformity of judgments among the *Toh Kali*, even in similar cases. Such judgments had raised much concern and difficulties among the people and the officials involved.<sup>14</sup> To the leaders in Bangkok, the *Toh Kali* courts needed certain adjustments and administrative guidelines. Prince Damrong, however, ruled out, as explained in his memo to King Chulalongkorn, any measures that would streamline the *syariah* courts to that of the civil court, as such steps would only “lead to allegations that (the Government) is attempting to undermine and do away with the religious law of the Muslim Malays”.<sup>15</sup> Earlier it had been submitted to Damrong that in order to solve the problem, Bangkok had two alternatives. The first was to improve the religious knowledge of the *Toh Kali* so that they might be able to perform their duties with justice as prescribed by the Islamic teachings. The second alternative was to leave the matter in the present condition with a hope that people would eventually come to realize the unreliability of the *syariah* courts to provide them the justice expected, and would, of their own accord, turn to the civil court instead. Damrong rejected completely both suggestions as neither could really improve the efficiency of the *Toh Kali* courts. The Siamese Minister of Interior particularly pointed out the situation in Turkey and in the British Malay States which allowed the *ulama* unlimited discretion in the *syariah* courts. As for the *Jet Huamuang* area, Prince Damrong proposed some new measures that would introduce certain conformity and assure justice to those involved. In his submission to the King, Damrong explained his amendment to the administration of the *Toh Kali* court,

In each province, there should be a panel of no less than 6 *Toh Kali* appointed by the authorities ... A candidate for the *Toh Kali* should be (the *ulama*) who commands respect and popularity of the people as a knowledgeable leader in religious affairs. Whenever there are cases concerning inheritance or marriage which must be decided in accordance with the Islamic law ... the two parties involved are given the right to select the *Toh Kali* (from the panel) to act as judges to hear their case according to the law. The judgment passed is final. There can be no appeal against it. The exception is in cases where the civil court declines to enforce the sentence, such as in the case wherein the *Toh Kali* court has passed a capital punishment. In cases such as this, the appeal is allowed.<sup>16</sup>

Prince Damrong also informed his sovereign that Phraya Sukhum, the Superintendent Commissioner of *Monthon* Nakhon, had done a survey on this proposal in the Seven Malay Provinces. The new system appeared to receive approval from the local people. The only main question raised was concerning the choice of the people which predictably would fall on certain *Toh Kali* whom they most revered and liked. This would cause much hardship to the particular *Toh Kali* as he/they would be compelled too often to make long and exhausting trips to hear cases. Damrong therefore submitted to the King a means to lessen the burden of and

to compensate the popular *Toh Kali*, namely by allowing him to hold a court at his own residence, by granting him some financial compensation, or by awarding the *Toh Kali* the title of *khun*, or *luang*. Chulalongkorn gave his consent and the Regulations on the Administration of the *Toh Kali* Courts was issued by the Ministry of Interior on 10 December 1903. The Regulations is worth quoting in length.

Whereas His Majesty the King deems that there is no order in the *Sala Toh Kali* appropriate for the present time, and, Whereas His Majesty the King wishes that the people who uphold the Islamic religion should enjoy justice and the facility of their judicial affairs with respect to marital and inheritance cases, which are deemed to be connected with their religion;

His Majesty the King hereby orders that the following procedure be followed in the deliberation of the Islamic court:

1. Each Governor (of the Malay provinces) shall select *Toh Hajji* (ones who have performed the pilgrimage) who have the knowledge of the Koran and enjoy the respect of the people in the province and appoint of them *Toh Kali*. The number is left to the discretion of the governor, but no less than 6 persons. They would sit and deliberate on civil cases pertaining to Islam i.e. cases concerning inheritance and marriage. But the selection must be approved by the Governor-General (the Superintendent Commissioner) of the region.
2. When both parties to the lawsuit (two) are Muslims or only the defendant is a Muslim, file their complaint in the ordinary courts, the parties shall be ordered to select the *Kalis*, from the panel already established, to deliberate and give their judgment in accordance with the Islamic religious and customary practices.
3. If there are more than one judge and the opinions differ, the judges shall elect one *Toh Kali* as their chairman of the panel, and the opinion of the majority is the final judgment.
4. The judges shall examine the cases and if witnesses are needed in the deliberation, the courts must facilitate in the calling of the witnesses. The witnesses who response to the call shall be sworn in by the judges in accordance with Islam. As for the compensation for the witnesses, if Islam or customs do not require, it shall be set in accordance to the law of evidence of 1895.
5. When the judges complete their deliberation and give their judgment, the Thai judges of the ordinary (civil) courts in the region confirm the judgment (of the *Toh Kali*). As for the compensation for the parties, or the fines or the fees, the *To' Kali* shall determine according to the Islamic law or customary practices.
6. When the Thai judges have given the final judgment following the opinion of the *To' Kali*, the plaintiff shall not appeal the decision except in the cases where the final judgment (of the civil court) is at variance with the *To' Kali's*. In the latter case, the plaintiff or the defendant shall (be able to) appeal to the Governor in residence (Resident Commissioner).<sup>17</sup>

The prime objective of Bangkok was to introduce some administrative measures into the procedure of the *syariah* court with a hope to establish some conformity in the dispensing of justice in that court. From the discussion between King Chulalongkorn and Prince Damrong, it was likewise evident that political motive, if there were any, was not the main reason for the introduction of the Regulations on the Administration of the *Toh Kali* Courts. Perhaps one may go even

further and argue that the setting up of the *Toh Kali* courts and the Regulations were done with the ulterior motive of avoiding political pressure being exerted on Bangkok, both from the *Jet Huamuang* area itself and from outside powers. The pressure seemed to be forthcoming in 1902-3. For example, Damrong reported of Phraya Sai's attempts to force the Siamese authorities in his province to give a ruling on complicated religious matters so as to involve them in matters damaging to Islam. The setting up of the *Toh Kali* courts therefore extricated the Siamese authorities from personally participating in matters clearly within the legal jurisdiction of *syariah* courts. More important, the judgment and opinion of the *Toh Kali* exonerated Bangkok from any allegation that Siam undermined the Islamic faith and custom of her Malay subjects.<sup>18</sup> Nevertheless, it was inevitable that the Regulations of 1903 did affect the Seven Malay *Huamuang* both from political and religious aspects. From the religious viewpoint, it has been stated that the structural arrangement of the *Yala Toh Kali* as only an extension of the civil court, and acting as an adviser to the civil/Thai judges, together with the selecting process of the *Toh Kali* which needed an approval of the Siamese authorities, and the necessity of the civil judge's endorsement to make the *Toh Kali's* decision enforceable by law plus the majority decision rule, (i.e. the points 4, 5, 6, of the Regulations) - all rendered the *syariah* courts in the *Jet Huamuang* subservient to the civil authorities. they likewise "stifled" the classical Islamic legal principle of legitimate disagreement, *ikhtilaf*.<sup>19</sup> From the political viewpoint, some of the objectionable political implications were that firstly with the establishment of the *syariah* courts, the Malay Muslims appeared as though they accepted the Siamese rule, which was not the case, as explained by Surin, "the administration of justice was usurped by the Thai officials"; secondly, the *Toh Kali* courts were in fact a part of the Siamese political regime since their decision needed a sanction "by the Thai political authorities".<sup>20</sup> As stated above, the establishment of the *Sala Toh Kali* and its Regulations undoubtedly affected the political and religious setting in the *Jet Huamuang*. There certainly is some validity to the argument that Bangkok's efforts to bring conformity to the dispensing of justice in the *syariah* courts in effect "stifled the classical Islamic legal principle of legitimate disagreement (*ikhtilaf*)". However, it was obvious that the Siamese efforts were motivated by the desire to improve, if such was the word, the quality of justice, and not by other sinister design to usurp or dilute the authority of the *Toh Kali* as such. Prince Damrong and his officials certainly possessed no scholarly knowledge of the Islamic law, nor appreciated the virtue of slow process of subtle persuasion leading to an eventual 'consensus of the Muslims at large' which would 'serve to eliminate stray opinion'. No doubt, this was their cardinal short-comings of which they seemed to be unaware. The Prince and the Ministry of Interior were more preoccupied with the urgency of time and with the efficiency, or to be more precise the lack of it, of the *syariah* courts which were needed to ensure law and order in the Malay provinces. Even if they had been aware of the principle of "legitimate disagreement", it is doubtful whether the Prince would have honoured



it. Siam of the early 20th century could not afford such principle as she was hard-pressed for time in her efforts to defend the sovereignty of the country. As for the administrative structure of the courts, whereby the panelled *Toh Kali* and their judgments needed the approval of the Siamese authorities, it is relevant to stress that in practice the *Toh Kali* courts were autonomous. There was no case in which the decisions delivered was altered or not confirmed by the civil court judge. In fact throughout the period between 1903-1925, the decision of the *syariah* courts which did not violate the criminal law were always upheld. Only in cases where the punishments impinged on the realm of the criminal law that the parties had a right to appeal to the secular court. Such as the case of adultery where the Islamic *hukum* was death by stoning.<sup>21</sup> It was true the *syariah* courts were regarded as a part of the Siamese civil court, but this was so organized mainly for the purpose of administrative procedure, namely to create a conformity in its chain of command only. Siam was in the midst of building a nation-state and was evidently hypersensitive towards any resemblance of “a state within a state” situation, a situation that could easily be exploited by hostile powers. To demand that Bangkok at this particular juncture consent to a separation of the *syariah* courts from the Siamese judicial system would be more or less equivalent to a naive out-of-historical-context demand that Chulalongkorn and Damrong understood the post-war concept of self-determination which is still unacceptable to a great number of present-day world leaders. Administratively, therefore the *syariah* courts, for contemporary political reasons, had to be attached to the secular judicial establishment. The approval of the civil court judge of the *syariah* court’s rulings was merely a bureaucratic formality to enable the latter to be enforceable by the law of the land. It had no ulterior aim to usurp the autonomy of the *syariah* courts. There appeared no evidence in support of secular interference in the functioning of the otherwise autonomous *Toh Kali* courts throughout the period under study. All in all, the courts seemed to have served their community well. One indication that the *syariah* courts were well received by the Malay Muslim community is the fact that since the setting up of the *Toh Kali* courts, there had been a steady flow of Malay migration from Kelantan into *Monthon Pattani*. In Bang-Nara province alone, between R.S. 125-7 (1907-9), there were about 450 Kelantan Malay families settling in Siam.<sup>22</sup> It is unlikely that if the *syariah* courts were regarded by the contemporary Malays as a Siamese usurper of Islamic legal authority and an instrument obstructing Islamic values and practices, there would be Malay Muslims willingly settling down in Siam so as to be voluntarily oppressed and deprived of their religious and customary practices. Prince Damrong himself proudly boasted that,

(the Kelantan Malays) prefer the Siamese administration as there were fewer bandits and thieves, and tax-rate is quite moderate. Moreover, they are not oppressed or abused by the family of the *Phraya Muang/Raja*-Governor (as in the case of Kelantan where) the Raja’s relations are numerous and do not work to support themselves but incline to employ their power and position oppressing the people. This condition is not yet realized by the Adviser

in Kelantan.<sup>23</sup>

Logically, it can be argued that the *Toh Kali* courts were accepted by their contemporary community right down to 1925. There were nonetheless disturbances led by the *haji* after the courts were introduced in the Seven Malay Provinces. In 1910 there were unrests in Yaring and Nongchik; in 1923 there was another uprising led by the former ruler of Pattani, Tengku Abdul Kadir.<sup>24</sup> The unrest in Yaring was led by Haji Wan Chik and Haji Bulleh, while in Nongchik it was led by Haji Omar and Haji Yunus. In the Yaring incident, Haji Wan Chik and Haji Bulleh together with their supporters of about 50 strong started an attack on the Siamese district officer and the guards on July 31, 1910. They were almost immediately overpowered. Haji Bulleh was sentenced to 13 years imprisonment in Bangkok. Haji Wan Chik managed to escape to Saiburi and disappeared. In the case of Nongchik, there was no fighting; the leaders were rounded up after declaring themselves *phu wiset*. They were released after questioning. The King was very anxious to find out the true reasons behind the outbursts in Yaring which appeared to him to be religiously inspired.<sup>25</sup> Both Haji Bulleh and Haji Wan Chik together with the Nongchik leaders - Haji Yunus and Haji Omar - all declared themselves *phu wiset/al mahdi*. According to Prince Damrong's report, the particular district in Yaring which became the scene of the Haji Bullen-Haji Wan Chik unrest was Tengku Abdul Kadir's stronghold. Though during the time of the trouble, Tengku Abdul Kadir was in Kelantan, it was possible that the Nongchik incident, there seemed no other cause except that the two leaders were Haji Wan Chik's followers who declared their support for the former.<sup>26</sup> For the Siamese authorities, the two unrests were only minor incidents. They demanded some attention because of the religious connotations they conveyed through the status of their leaders, and through the somewhat messianic intonation embodied in the concept of *al-mahdi*. But because of their political undertone they were immediately put down. The fact that the main body of the *Jet Huamuang* community responded with indifference to the call of the uprising suggests that they did not support or agree with the *haji* leaders whose action showed more their rejection of the administration than their objection of the *syariah* courts per se. If the 1910 unrests gave at least some religious intonation, the 1923 uprising was pure and simple a political protest against what was regarded by the traditional ruling class as Siamese abuse of power against Pattani. The immediate cause of the 1922-3 uprising was the *Compulsory Primary Education Act*. In 1921 the Compulsory Primary Education Act was passed. In sum, the Act called for the compulsory attendance at the national schools of all children from the age of 7-14. All primary schools, whether publicly or privately funded, were compelled to adhere to the standard set by the Ministry of Education on matters dealing with syllabus, textbooks, schooling year, and the like. Children attending primary schools needed not pay for the school fee or charge. The expenses for primary education was to be borne by the school poll tax and voluntary contributions. The Government's main purpose was to streamline the primary education of the country and to ensure all

subjects of a free public education at primary level. Bangkok appeared to be quite mindful of the Malay provinces in this matter. In order to forestall certain criticisms and negative response, the Government specially stated that Malay was allowed to be taught in all primary schools in the *Jet Huamuang* area, though the teaching of the national language, Thai, was also compulsory. However, the school poll tax seemed to be the straw that broke the proverbial camel's back. The Siamese Malays protested against the school poll tax and other kinds of tax, especially the land-rent, which they considered unjust. Moreover, the Malays also regarded *the Primary Education Act* with great misgivings. To a number of them, the Act seemed a mere plot to get their children into Siamese/secular schools at the expense of the religious-cultural education provided by their own *pondok* school. To these people, the Act certainly spelled an end to their Malay Muslim identity based on the Malay language, culture and Islam. In 1922 an uprising emerged in Mayo District, Pattani. It crystallised into the setting up of a Pattani liberation movement. In 1923, Tengku Abdul Kadir took over the leadership of the movement with an ultimate aim of liberating Pattani from the Siamese rule, and of restoring the sultanate of Pattani under the rule the ex-Sultan himself.<sup>27</sup> The uprising had no direct connection with the *Toh Kali* courts, and could not convincingly be used as an evidence of the *Jet Huamuang's* rejection of the Muslim legal system set up in 1903. Religiously speaking therefore, the establishing of the *Sala Toh Kali* and its administrative adjustments were not unacceptable to the majority of the contemporary Malays in the *Jet Huamuang* area. The free flowing of Malay settlers into *Monthon* Pattani indicated that not only that the Malay community *not* objected to the new system of Islamic legal autonomy but they also implicitly favoured the system so established. The objection to the *Toh Kali* courts seemed to emerge only when the issue of Islamic courts became part and parcel of a political movement against Siamese rule led by the Malay nationalists for the independence of Greater Pattani from 1945 onwards. It was the modern political leaders of the Siamese Malay Provinces who objected to the administration of the *Toh Kali* courts, not so much on the ground of "religious interference" but more on the political ground of the courts representing the hateful authority of Bangkok. The political effects of the *Sala Toh Kali* on the contemporary Malay Provinces were, however, most distressing, looking from the viewpoint of the traditional Malay leaders. The *Sala Toh Kali* effectively took over the judicial power traditionally vested in the rulers of the *Jet Huamuang*. It deprived them of being the prime source of the judicial authority. The administrative reform launched by Prince Damrong, and the introduction of the autonomous *Sala Toh Kali* reduced the power and position of these traditional leaders in the *Jet Huamuang* area to that of a titular head with no real power or meaningful role in all administrative and religious matters. The traditional leaders tried to regain their lost socio-political status. The most serious of these were the 1902 and 1923 attempts. The failure in 1923 spelled an end to their ambition of regaining their power and position. Tengku Abdul Kadir himself had to flee the country for the last time and lived out the rest of his life in

Kelantan. The *Toh Kali* courts brought to the fore the *ulama* who were entrusted with the administering of the Islamic personal law. The *syariah* courts in the Malay Provinces were, as confirmed by historical evidence, autonomous in spirit, if not in form. In practice, it would be an exaggeration to argue that the *syariah* courts were part of the Siamese political regime. There were no evidence, for example, that between 1903-1925 the *Toh Kali* passed judgments to please their so-called political masters in Bangkok or in the provinces. The reverse seems to be the case. It was the *syariah* court's decision not to atone the stoning-to-death sentence on one adultery case that prompted the Siamese authorities to insert the criminal law impingement clause.<sup>28</sup> There is no doubt that the political effects of the *Sala Toh Kali* were the disappearance of the traditional leaders' religious authority. In its place, the *ulama* reigned supreme as far as the Islamic law on marriage and inheritance was concerned. The autonomy of the Islamic personal law in South Siam was as real as in any other Muslim society. During the reign of King Wachirawut (1910-25), Siamese desire to further unify Siam under the King's political philosophy of monarchical nationalism inevitably led to an "additional" control of the *Sala Toh Kali*. The appointment of *Toh Kali* with the new title of *Dato' Yutitham* (*Dato' Kehakiman*), an evidence of the lingual marriage of Thai and Malay languages, needed no approval of the Superintendent Commissioner of the *Monthon* but that of the monarch himself. The qualifications of the *Dato' Yutitham* were further regulated. Besides the religious knowledge and experiences in the religious and customary practices in the area, a *Dato' Yutitham* had to "be loyal to the King and dedicated to the affairs of the Sovereign".<sup>29</sup> In practice, these new measures added little novelty to, nor furthered the control by Bangkok over, the selection and appointment of a *Toh Kali*. It was a known fact that the appointment of a *Toh Kali* before 1910 required in practice the consent of the King (Chulalongkorn) and his Minister (Damrong). The 1917 Regulations changed none of this procedure. What the 1917 Regulations succeeded was to put in black and white what had long been a common practice. However, it was clear that the *Dato' Yutitham* courts now had to dispense justice in the name of the King. In name, at least, Bangkok became the final authority on the appeal from the *syariah* court. So it seemed that the Islamic court was no longer autonomous. In practice, again, little did change after 1917. The sentence passed by the *syariah* court was regularly upheld and enforced. The shocking and abrupt change only came with the implementation of Phibunsongkhram's cultural programme during the war years. That is of course another story. Finally, it was the validity of the *Sala Toh Kali/Dato' Yutitham* that Tengku Abdul Jalal and other Malay leaders of the postwar years implicitly confirmed when they wrote in 1945,

Formerly there were *Kadhis* [*Toh Kali*] to hear and decide cases in connection with Mohamedan religion in their courts, but now [1941-45] such cases are tried by the magistrates who pass all judgments as they think fit.<sup>30</sup>

It is hard to believe that Tengku Abdul Jalal and friends would consider the *Toh Kali* courts as the Muslim Malays' if the courts were doing Bangkok's bidding and exercised no real autonomous authority over their jurisdiction. It was because of the nationalist upsurge in Siam and Malay nationalist Islamic resurgence of the

post World War II, that the *Toh Kali* courts came to be regarded by one (the Bangkok authorities) as an obstacle to a re-moulding of a Thai nation, and by the other (the Malay Muslim leaders in South Siam) as a Siamese political instrument to stifle and undermine the Malay and Islamic identity of the Siamese Malays. Neither was accurate. In the historical context, the *Sala Toh Kali/Dato' Yutitham* played a most constructive role in preserving the autonomy of Islamic personal law.

### SUMMING UP

The provincial administrative reform begun in 1893 set into motion the administration and procedure of the *Toh Kali* court which was set up to uphold the legal autonomy of Islamic personal law in South Siam. The overall purpose of the administrative reform was to unify the country under the centralized rule of Bangkok and to enable Siam to safeguard her sovereignty against encroachments from the colonial powers. The reform therefore bent to give the central Government the required undisputed authority over all parts of the Kingdom. As result, the reform dismantled the political and economic power of Siam's semi-autonomous rulers of all the frontier/outer provinces. The *Jet Huamuang* provinces were given this treatment between 1896-1902. However, in the *Jet Huamuang* area, it was not the intention of Bangkok to distort or undermine the position of Islam. If discussions between Chulalongkorn and Damrong are anything to go by, the establishing of the *Sala Toh Kali* was to assure the Malay subjects that their religion, custom and Islamic personal law were to be respected by the Government. In implementing the authority and administering of the *Toh Kali* court, there were however certain measures required by the overall desire to strengthen Siam vis-a-vis the external dangers threatening her sovereignty. In practice, the autonomy of the *Toh Kali* court was always upheld throughout 1902-1925. Because Bangkok chose to uphold the religious authority of the *ulama* and the *Toh Kali*, it was successful in dismantling the power and position of the traditional ruling class without causing much stir among the its Malay subjects in the Seven Malay Provinces. The *syariah* court itself gained much respect from its contemporaries. The negative criticisms against the court and the original policy of setting it up only appeared during (from the Siamese stand) and after the Second World War (from Malay standpoint). It is contending here that such criticisms are out of the historical context and cannot be upheld so far as historical evidence is concerned.

<sup>1</sup>KR 5M 1-52, Damrong's Memorandum to King Chulalongkorn, 4 March R.S. 114/1896.

<sup>2</sup>KR 5M 1-52, *Ibid.*

<sup>3</sup>KR 5M 1-52, Chulalongkorn to Damrong (Private), 6 March R.S. 114/1896.

<sup>4</sup>Tengku Abdul Kadir's opposition to the reform and his hostile attitude towards Bangkok led Phraya Sukhum, the Superintendent Commissioner of Nakhon, to advise Prince Damrong not to appoint the former Raja of Tani. KR 5M 1-52, Phraya Rajworakun to Prince Sommot, 17 December, R.S. 117/1899. Prince Damrong, however, confirmed Abdul Kadir in his post in early 1901.

<sup>5</sup>FO 69/218 Swettenham to Salisbury, 17 November 1898.

<sup>6</sup>CO 273/274 Tengku Abdul Kadir to Swettenham, 13 August 1901; Raja Jering, the Raja of Raman to Swettenham, 10 October 1901; Abdul Muttalib, Raja of Sai to Swettenham, 13 October 1901.

<sup>7</sup>A day after the announcement of Royal Decree of R.S.120/1901, Tengku Abdul Kadir, the Raja of Tani, sent a letter to Prince Damrong, accepting certain aspects of the administrative reform including the judicial authority of the civil court in all matters except those concerning the Islamic teachings, the limited number of police in Pattani to 60 strong, no arms purchase without permission from Bangkok, no demand for a share of the opium and liquor revenue, and the maintenance of the sending of *bunga mas* to Bangkok. However, he rejected to have a resident commissioner in the *Jet Huamuang*. Abdul Kadir's proposed compromise came apparently too late. See CO 273/282 Raja of Pattani to Prince Damrong, 23 December 1901. See also a different account in Ibrahim Syukri (pseudonym), *History of the Malay Kingdom of Pattani*, tr. Conner Bailey and John W. Miskic, Ohio University Center for International Studies, Athens, 1985, pp. 60-1.

<sup>8</sup>KR 5M 1.51, Monthon Pattani, Draft of the Royal Decree on the Administration of the *Jet Huamuang*. Also Kobkua Suwannathat-Pian, *Thai-Malay Relations: A Study of Traditional Intra-Regional Relations from the Seventeenth to the Early Twentieth Centuries*, Oxford University Press, Kuala Lumpur, 1988, chap. 5.

<sup>9</sup>Kobkua, *Ibid.*

<sup>10</sup>KR 5M 1-52, Phraya Sukhum to Damrong, 28 November R.S. 117/1898.

<sup>11</sup>KR 5M 1-51, Damrong to Chulalongkorn, 21 Feb. 1902

<sup>12</sup>KR 5M 120-129, Chulalongkorn to Damrong, 19 April 1903.

<sup>13</sup>KR 5M 1-51, Damrong to Chulalongkorn, 21 Feb. 1902 which tells of a conflict between Phraya Saiburi and the Resident Commissioner on the selling of the Koran case. Prince Damrong decided that, "whichever the *Toh Kali* decided must be accepted. If he thinks the Koran should not be sold [by the Chinese], the authorities will enforce the decision. If the British complain, we can always counterargue that [to allow the sale] would be violating the religious practice of the inhabitants".

<sup>14</sup>This was apparently not a unique experience for Bangkok alone. The Straits authorities faced similar situation and difficulties arisen from the unrestrained autonomy of the *ulama*.

<sup>15</sup>KR 5M 1-51 (M49/1-19), Monthon Pattani R.S. 117-125, Damrong to Chulalongkorn, 3 December R.S. 121/1903.

<sup>16</sup>KR 5M 1-51, Damrong to Chulalongkorn, 3 December 1903.

<sup>17</sup>KR 5M 1-51, *Santra* Mahatthai on the Religious Courts of the *Toh Kali*; the translation quoted is from Surin Pitsuwan, "Islam and Malay Nationalism: A Case Study of the Malay Muslims of Southern Thailand", unpublished Ph.D. thesis, Harvard University, 1982, pp. 124-5.

<sup>18</sup>KR 5M R.S. 120-129, Damrong to Chulalongkorn, 21 February R.S. 121/1902.

<sup>19</sup>Surin Pitsuwan, *op. cit.*, pp. 126-127.

<sup>20</sup>*Ibid.*, pp. 127-128.

<sup>21</sup>KR 5M R.S. 120-129, Damrong to Sommot, 28 August 1904. It is worth noting that this in fact is the basic legal separation of most modern Muslim states which separate the jurisdiction of the *syariah* court from that of a secular one.

<sup>22</sup>KR 5M 1-52, Damrong to Sommot, 16 September 1910.

<sup>23</sup>*Ibid.*

<sup>24</sup>KR 5M 1-52, Damrong to Sommot, 2 August 1910, and 25 September 1910; Ibrahim Syukri, *op.cit.*, p. 64.

<sup>25</sup>KR 5M 1-52, Chulalongkorn to Damrong, 4 August 1910.

<sup>26</sup>KR 5M 1-52, Damrong to Chulalongkorn, 5 August 1910; Damrong to Sommot, 25 September 1910.

<sup>27</sup>Ibrahim Syukri, *op.cit.*, p. 64; MS 145982, Barbara Whittingham-Jones' Collection of Letters and Papers, Tengku Mahyiddin's account of his father's role in the uprising, 3 December 1943. Bangkok took seriously the uprising and quickly moved to end it. It came to Bangkok's attention also that there were some attempts by the British colonial officials in Malay to get the Siamese-Malay border re-adjusted. In 1923 itself, a pamphlet, *Some Abuses in Pattani* was being circulated among the official circle, pleading for the British to take over Pattani. See Walter F. Vella, *Chaiyo! King Vajiravudh and the Development of Thai Nationalism*., The University Press of Hawaii, Honolulu, 1978, pp. 80-81.

<sup>28</sup>KR 5M R.S. 120-129, Chulalongkorn to Damrong, 19 April 1903.

<sup>29</sup>Ministry of Justice no. 30/4353 24 September 1917, quoted in Surin, *op.cit.*, p. 132.

<sup>30</sup>Petition from Tengku Abdul Jalal and other Malay leaders to the Secretary of State for the Colonies, 1 November 1945, in Kobkua Suwannathat-Pian, "The Problem of Minority in International Politics: A Study of Malay Irredentism, Siam, and Great Britain 1945-1950", unpublished manuscript.