



This book constitutes a study of Southeast Asia, discussing the Malay world's long historical connection with the Muslim people including the Rumi-Turks, Ḥaḍramīṣ and the Ottomans. These connections reflect religious, political and legal cooperations. It also discusses the Ottomans' policy of pan-Islamism and the role of Sultan Abdulhamid II in improving ties with the Malay world and their scholars, rulers and heritage, in the fight against Western colonial powers. In seven essays, the contributors to this book discuss the early religious-intellectual network in the region as well as the evolution of the judicial and political systems.

Dr Saim Kayadibi is lecturer at the International Islamic University, Malaysia. Born in Turkey, he studied at Al-Azhar University and at the University of Jordan, and obtained his PhD from Durham University, UK. He has published numerous books and articles and has taught Islamic law in Turkey and the UK. His other areas of interest include Islamic legal theory and jurisprudence, Muslim international law, human rights and democracy, Sufism, and philosophy of Rumi. He is also author of *Istihṣān: The Doctrine of Juristic Preference in Islamic Law* (Islamic Book Trust, 2010).

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Ottoman Connections to the Malay World

Saim Kayadibi



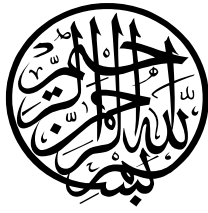
Ottoman Connections to the Malay World

Islam, Law and Society

EDITED BY

Saim Kayadibi





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Dedicated to
My late father Mehmet
and
my mother Zülfüye

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Wa al-salamu 'alaykum wa rahmatullāhi wa barakātuh

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Preface

Southeast Asia, especially the Malay Archipelago, has enjoyed a long historical connection with Muslim Rumi (Turkish), Ḥaḍramī Arab, and Ottoman traders as can be seen in the two regions' framework of religious, political, and legal cooperation. The Ottomans' pan-Islam policy and the mission of Sultan Abdulhamid II enabled the archipelago to play an active role and thus increase its relationships with Muslim scholars, rulers, and legal heritages elsewhere when it was confronted with European colonialism. The network of Johor-Ottoman and Ḥaḍramī Muslim relationships, as well as the role of Sultan Abu Bakar of Johor, strengthened bilateral connections. The translation of the *Majallah al-Aḥkām* (Ottoman Legal Codes) into Malay also served to develop legal practice of Islamic law in Malay Shari'ah courts.

The seven articles contained in this collection discuss and analyze selected topics related to the Ottoman and Malay legal structures and development. Chapter 1, "The Religious-Intellectual Network: The Arrival of Islam in the Archipelago" by Nurulwahidah Binti Fauzi, Ali Mohammad, and Saim Kayadibi, elaborates upon the network existing between the '*ulamā*' and the ruler of Johor during the twentieth century, including its historical background. The researchers indicate that ever since Islam appeared in seventh-century Arabia, Arab society has continued to influence

Asian societies. After Islam's arrival in Southeast Asia, a number of records were found that present a still incomplete picture of the mix of formal and/or non-formal relationships between the Arabs and the Chinese, Indians, Persians, and Turks. The authors focus on Islam's arrival and the Malays' relationship with Muslims, especially the Ottomans and Arab Ḥaḍramīs.

In "Baba Davud: A Turkish Scholar in Aceh," Mehmet Özay presents the scholar Shaikh Davud b. Ismail b. Mustafa ar-Rumi, generally known as Baba Davud or Mustafa ar-Rumi, who was a caliph of the well-known Acehese religious scholar Abdurrauf as-Singkilī (Teungku Syiah Kuala). One of his works, the *Risālah Masā'il al Muhtadi li Ikhwanil Muhtadi*, has been taught at Islamic institutions in Aceh and around the Malay world. It is hoped that his article will make a significant contribution to Ottoman-Malaysian studies. The third chapter, "A Preliminary Note on 'Dayah Tanoh Abee,'" also by Mehmet Özay, describes this centre's famous *zāwiyah* that is located in Seulimum, a subdistrict of the Acehese capital of Banda Aceh. Its importance is considered to be based on its founding family's origin, the connection between the Sultanate of Aceh Darussalam and the Ottoman empire, and its contribution to Islamizing Southeast Asia.

The Ottomans made a significant contribution to the development of legal matters in Islamic law. With this point in mind, Prof Dr Ahmed Akgündüz enriches the value of this book with his "Legal Developments in Ottoman State (1299-1926)." This important research article, which appears as chapter 4, outlines the course of legal developments before the *Tanzīmāt* Reforms (699-1255/1299-1839) and during the Post-*Tanzīmāt* Period (1255-1345/1839-1926).

Chapter 5, Saim Kayadibi's "Evolution of the Muslim Judicial System," investigates this topic by analyzing the effect of those social, cultural, political, and historical elements that shaped the role of both jurists and courts in secular and non-secular

environments. In the modern period, most Muslim-majority countries steadily adopted western legal systems and institutions due to the economic and political influence of their colonial masters. Chapter 6, featuring Servet Armağan's "Fiqh Education at Ottoman Madrasahs: A Case of Süleymaniye Madrasahs," evaluates the science of *fiqh* (Islamic jurisprudence) among the systematic sciences and its place in legal history. The emergence of madrasahs and the importance of Süleymaniye madrasahs among the Ottoman educational institutions, along with their main resources and methods of teaching, are analyzed according to both *furū' al-fiqh* and *uṣūl al-fiqh* individually.

The seventh (and final) chapter, Saim Kayadibi's "Judicial Pluralism in the Malaysian Legal System", investigates this intriguing subject. Malay society, which is well-known for allowing others to live according to their own cultural values and traditions, believes that diversity is a source of cultural and social wealth. This can be seen in Malaysia's extraordinary freedom and richness in both legal and cultural matters, traits that it shares with Ottoman society. Malay society has apparently interiorized the value of diversity, which fosters peace, freedom, tolerance, and strength among different groups. Its legal system has been shaped by external forces: Islamic law (via the Muslims' request) and the legal systems of colonial Europe (by force) In contrast, the country's courts used the Ottoman empire's *Majallah al-Aḥkām al-'Adliyyah*, the Ḥanafī code of Qadri Pasha (later called the *Majallah Aḥkām Johor*), and the *Undang-undang Sivil Islam* as the main sources for judicial rulings. In this article, Kayadibi explores the Malay legal system's evolution in relation to constitutional law, indigenous customary law and tribal legal systems, Shari'ah and civil court procedures, first contacts with Islamic law, the influence of colonial law, as well as the Ottoman-Malay connection and strong relationships.

It is hoped that this humble work will contribute to the heritage of Malay-Turk relations as well as that of other Muslim nations.

Allah knows best. Praise be to Him, the Lord of the heavens, planets and all that exists.

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Judicial pluralism in the Malaysian legal system

Saim Kayadibi

Abstract

Malay society, beside its determination to preserve its own traditions, has allowed other communities to live freely according to their own cultural values and traditions. Diversity is a source of cultural and social wealth that reflects an extraordinary degree of freedom in both legal and cultural richness. Such features resemble the Ottomans' approach. Malay society has apparently interiorized the value of diversity. Its people believe that for peace, freedom, tolerance, and strength between the different groups to continue, judicial pluralism must be maintained. In connection with this, the Malay legal system has been shaped by different legal systems, among them Islamic law, which has been implemented as per the society's request at will as a part of life in a natural way, the legal systems of Western colonial powers rather have been used by force on demand. In contrast, the Ottomans' *Majallah al-Ahkām al-'Adliyyah*, the Hanafi legal code of Qadri Pasha (later called the *Majallah Ahkam Johor*), and the *Undang-undang Sivil Islam* were all used as the main source of judicial matters in the courts.

In this paper, the historical development of the Malay legal system is analyzed and the following themes are elaborated upon: Malaysia's constitutional law, customary law, and tribal legal

systems; Shari'ah and civil court procedures; the first contacts with Islamic law; the influence of Portuguese, Dutch, and English law; and the Turk-Malay connection and strong relationships.

Introduction

A multiethnic and multicultural county often confronts the question of how to deal with pluralistic legal system. Social engineers investigate the possibilities of whether it can govern the society in a peaceful atmosphere, might cause chaos, or might cause discrimination. Social harmony requires faithful and serious approaches.

In this time of globalization, people's material and spiritual needs are constantly changing. If these needs are not met, problems will arise. While material needs can be easily satisfied, this is not always the case with spiritual needs. In fact, not meeting the latter needs may result in a severe, wide-ranging crisis from which one may not recover. In addition, both sets of needs are in constant flux.

The basic needs of modern people are sufficient food and clothing, a place of residence, freedom of thought in order to devise and elaborate upon new ideas, and the freedom to believe in one's religion or to have no religion at all. Islam teaches that honouring the five essentials needs of life (viz., religion, life, intellect, lineage, and property) will ensure human happiness, security, and peace.

In the globalized world nothing can be hidden, for transparency is the main tool of a multi-cultural society. Human rights and the indispensable rights of each person have to be implemented and guaranteed in order to create a just, calm, and peaceful society. If such an environment cannot be created, the country may be dragged into anarchy and consider such concepts as peace, dialogue, integrity, harmony, justice, and unity to be no