

DATO' YUTITAM IN THE CIVIL COURT SYSTEM OF THAILAND

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Abstrak: Dato' Yutitam adalah seorang hakim Muslim yang berwenang menangani kasus-kasus yang berkaitan dengan Islam bersama dengan seorang hakim sipil di Pengadilan Tingkat Pertama di empat provinsi Islam di Thailand Selatan. Kewenangan ini didasarkan pada ketentuan Undang-Undang Penerapan Hukum Islam di Pattani, Yala, Narathiwat dan Satun 1946. Tanpa Dato' Yutitam, kasus keluarga tidak dapat diputuskan. Namun, kekuasaan yang diberikan kepadanya sangat terbatas, dan keputusannya tidak dapat diajukan banding. Studi ini mengandalkan studi dokumen dan wawancara dengan hakim dan Presiden Dewan Agama Islam Yala untuk menganalisis sejauh mana peran yang diambil oleh Dato Yutitam dalam membuat keputusan kasus di bawah sistem peradilan perdata Thailand. Kajian ini mengungkapkan bahwa seorang Dato' Yutitam memiliki kekuasaan yang terbatas dibandingkan dengan hakim sipil, namun ia memiliki dampak yang sangat positif bagi umat Islam di empat wilayah Thailand Selatan.

Kata kunci: *pengadilan perdata; Dato' Yutitam; sistem keadilan; Thailand*

Abstract: *Dato' Yutitam* is a Muslim judge authorized to deal with cases related to Islam together with a civil judge in the First Instance Court in the four Islamic provinces in southern Thailand. This authority is based on the provisions of the Act on the Application of Islamic Law in Pattani, Yala, Narathiwat and Satun 1946. Without *Dato' Yutitam*, family cases cannot be decided. However, the power given to him is very limited, and his decisions cannot be appealed. This study relies on the study of documents and interviews with judges and the President of the Yala Islamic Religious Council to analyze the extent of the role taken by *Dato' Yutitam* in making decisions on cases under the civil justice system of Thailand. This study reveals that a *Dato' Yutitam* has limited power compared to civil judges, but he has a very positive impact on the Muslim community in the four southern regions of Thailand.

Keywords: civil court; *Dato' Yutitam*; justice system; Thailand

Introduction

This article discusses the role of *Dato' Yutitam*, its functions, jurisdiction and the decisions concerning Islamic cases in the civil courts in the four southern regions of Thailand. The discussion begins with the history and position of Islamic law in the civil court, then the judiciary and the administration of Islamic law. This is followed by the role of *Dato' Yutitam* as the Islamic *Kadi*, *Dato' Yutitam* as a *kadi* in the Civil Court, Regional Islamic Religious Council, and the differences between *Dato' Yutitam* and the Regional Islamic Religious Council. The conclusion draws the analysis of *Dato' Yutitam's* role and his decisions in cases heard in the civil court.

Thailand is predominantly a Buddhist country. According to the United Nations statistics, 68,207,210 million people lived in Thailand in 2000, of which 3,110,249 million, or 4.56%, of the population identified as Muslims (Kettani, 2010). Although Thailand is considered a “non-Muslim country”, it has decreed that Islamic family law applied in the four southern Islamic provinces: Pattani, Yala, Narathiwat and Satun.

Islamic law first began to develop in Thailand in 1902. Its application continues to the present day among Muslim communities located in the four southern Thai provinces. Specific legislations include the Administrative Law of the Seven States Act 1902, the Islamic Protection Act 1945, and the Act on the Application of Islamic Law in Pattani, Narathiwat, Yala and Satun in 1946. These developments can be viewed as “positive” for Muslim communities in the South. However, a deeper examination reveals shortcomings, such as the right to appeal to *Dato' Yutitam's* decisions.

Historically, the Pattani government was part of the Malay clan in the Malay Peninsula, which Islam externally influenced via trade with Muslim merchants of India and Arabia. In the present day, Islamic law still exists and works well regardless of the Muslims' status as a minority (Muhaimin, 2020) in Thailand. By contrast, the internal factor is underpinned by the roles of religious bodies in spreading and sustaining Islam. These roles include, for example, defining religious leaders by appointing a *kadi* and *mufi* to resolve conflicts that arise in society (Che Man, 1998).

The decision to appoint a *Dato' Yutitam* (Islamic judge) by the Civil Court to hear Islamic-related cases represents a significant element of the development of Thailand's legal system, especially in the South. *Dato' Yutitams* equate to civil judges and are categorized as assistant judges in a civil court within the scope of the law of Thailand. *Dato' Yutitam* is granted jurisdiction to decide and dismiss cases relating to Islamic legal issues in this region. This study aims to analyze those practices by civil judges with the embodiment of *Dato' Yutitam* in the four southern Thai provinces.

Method

This study uses legal analysis, with data from interviews and document study. The primary legal sources analyzed are the Application of Islamic Law Act in Pattani, Yala, Narathiwat, and Setul Areas 1946, Islamic Religious Protection Act 1945, The King's Act for Islamic Law 1948, Islamic Mosque Law Act 1947, Ministry Regulation 1948, and Religious Administration Act Islam 1997. The data was obtained from the *Kadi* Court and Regional Islamic Religious Council. The interviews were conducted with the Chief Judge of the Pattani Provincial Court, *Dato' Yutitam* of Pattani Province, Yala Province and the Chairman of Yala Islamic Religious Council. The secondary data is used to examine the factual background and the theoretical underpinnings.

Historical Review: Position of Islamic Law and Civil Justice System in Thailand

Any foreign power has never colonized the Kingdom of Thailand. The latter development of Islamic law within the four southern provinces of Thailand was dominated and influenced by three dynasties; (a) the Sukhothai Dynasty, (b) the Ayutthaya Dynasty, and the earlier period of the Rattanakosin Dynasty. In the Sukhothai Dynasty (1238-1378), the King could not directly interfere in Islamic matters. The King appointed religious scholars, like Muftis, who served as religious counsellors in the Kingdom, similar to present-day *Dato' Yutitams*. In the Ayutthaya Dynasty, neither the King nor the governors of the provinces could interfere in Islamic matters like marriage, divorce, and inheritance. Islamic judges thereby depended on customs and practices adopted from Indian, Persian and Arabian traders to resolve Muslim family disputes.

The Rattanakosin Dynasty (1782-1932) saw the earliest instances of a king imposing his influence on the Islamic justice system. Early in the reign of King Chulalongkorn Rama V (1868-1910), the King was very quick to reform his administration. The Thai government took great steps to introduce the application of Islamic law in the four southern border provinces of Thailand. These measures were carried out in several stages. In the first stage, the government began by giving state kings the authority to preside over cases or trials related to Islamic laws. However, in cases involving death sentences, the state ruler did not have absolute authority to hear such cases except within a minor scope, such as applications for commuted sentences.

According to Mulsin (1982), these policies proved that the Thai government was concerned about the implementation of Islamic law in Muslim societies and that the commission was in accordance with local culture and customs. Thai court judges should hear each case according to Islamic law when it concerned Muslims' affairs. Conversely, if cases involved matters related to Buddhism, they would be tried in accordance with the civil law of Thailand.

In the second stage, surveillance measures were undertaken by King Chulalongkorn Rama V to curb terrorist activities against people, mainly in the three provinces of Southern Thailand (Pattani, Yala and Narathiwat). The policy change saw the large country's division into seven smaller states (divide and rule) under a *Khaluang Beriwin* (Governor General). With the establishment of the system, Pattani became part of Thailand and fell completely under Thai rule. This policy was known as the "*Kha Bangkhab Jedhua Muang Code*", meaning "Administrative rules for the seven regions of the state of Rattanakosin 120 Years B.E. 2444 (1901). The seven states involved were Pattani, Nongcik, Ya'ring, Raman, Yala, Thaiburi and Ra'ngat (Yusof, 2007).

The new policy was extended to kings who ruled the seven-state areas, and all rulers thereafter had a clear idea about the implementation of the law and important changes due to the policy change. Efforts by the government to introduce laws specific to the seven-state areas affected to some extent the application of Islamic law, such as the administrative law, also called the "*Wa Duai Karn Sal*" (the case of the organization of the Court). The provisions come under Section 30 of the Sal Pera Act "*Tammanun Hua Muang Rattanakosin 114*":

This law should be used in the seven regions of the state, except for a few words, which must be modified, such as “*Sal Monthon*”, which is to be changed to “*Sal Beriwin*”, and then the word “*Khaluang Thesaphibal*” which is to be converted to *Khaluang Pera’cham Beriwin*.

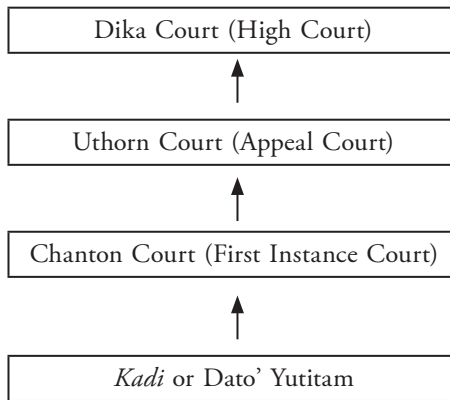
Section 31 of the Act provides three levels of courts: the *Beriwin Court*, *Muang Court* and *Khuweng Court*. Judges of these courts hear cases per the procedure of law. Section 32 of this Act states that civil law shall be applied to all people of Thailand. However, it excludes people who are Muslims living in the four provinces of Southern Thailand. Islamic law would be applied to these people, particularly in family and inheritance cases. *Dato’ Yutitams* play the role of judges for matters relating to Islamic law (Jones, 2007). The law was enacted on 10 December BE 2444 (1901) for the seven-state area. Therefore, this law is considered the region’s premier lawn. Its application and provisions have been clearly stated.

Judiciary and Administration of Islamic Law in Thailand

The Thai Constitution provides for four courts: (a) Constitutional Court, (b) Courts of Justice, (c) Administrative Courts, and (d) Military Court (Dressel & Tonsakulrungruang, 2019). The Courts of Justice is the mainstream judiciary court with actual jurisdiction to try all cases except in instances specified by Thailand’s Constitution or other laws. The Court of Justice is divided into the Supreme Court, Court of Appeal and Court of First Instance. Islamic-related cases have traditionally been grouped under the Court of First Instance, under the Application of Islamic law within the provinces of Pattani, Narathiwat, Yala and Satun, 1946.

One must remember that there is no Sharia Court in Thailand. But there is a Sharia Court judge known as *Dato’ Yutitam*. Within each province, there are two of these Sharia Court judges. One of them works with the judge of the Provincial Court (Court of First Instance) in Muslim personal law cases. The exception is in Yala Province, where there are four Sharia Judges or *Dato Yutitams*; two judges in Yala and two in Betong. This is mostly because Yala province is larger than Pattani, Narathiwat and Satun.

Figure 1: Organizational Structure of Thailand's Civil Court



Source: Narathiwat Province Court

Cases involving disputes between husband and wife and inheritance cases in the region are decided by Islamic law, whether resulting from complaints from two (inter-parte) or many parties (Ismail Hari, 2022). Exemptions are granted for cases involving inheritance claims of not more than one year. These claims will be tried in civil court because such cases must follow civil law procedures. Case trials involving Muslims in the Subordinate Courts are not considered complete until judged by the *Dato' Yutitam*. His judgements are final, and no further appeals are accepted. Thus, many questions arise concerning the procedures that should be followed in those cases where mistakes or errors in judgment were made.

Islamic law applies only to Muslims in an area where Muslims are the majority and when the parties involved have agreed to adopt this law; otherwise, civil law would be used. Islamic law applies only in the context of Islamic family law and inheritance issues. Civil law procedures guide the investigation of the case facts and hearing procedures. Therefore, when there are reasons to doubt the ability/competency of a judge, or middle person, the plaintiffs and defendants have the right to choose their preferred people or representatives. They can choose up to, but not more than, three people for each party. The Court's Chief Judge is one of the possible replacements for a *Dato' Yutitam* in such an instance (Section 5 Islamic Law Application B.E. 2489, 1946).

This law is not applicable prior to the declaration of a pending case unless the defendant or the prosecution does not attend the case within 30 days after the announcement of the law. The Court adopts Proceedings of the Law to decide whether or not to hold a new appeal. The Act also stipulates that a Dato' Yutitam and a judge must attend a trial. Judges are generally those responsible for proving facts in accordance with the law of evidence, while the *Dato' Yutitam* is responsible for deciding the case based on Islamic law.

Dato' Yutitam: As a Muslim Judge

The term *Dato' Yutitam* is a combination of Thai and Malay vocabulary. "Dato" comes from "Datuk", which incorporates traditional titles given to socially respected persons in Malay society. However, the spelling here reflects the pronunciation of people in southern Thailand who speak more quickly (Shinya, 2017). The word "yutitam" means "justice" in Thai. Therefore, *Dato' Yutitam* means Dato' Justice.

Before enacting the law, the Tok Imam and Tok Guru both served as leaders of a village selected to resolve Muslim family inheritance disputes in the southern part of Thailand. Because of an absence of law, Muslim communities focused on people with the deepest knowledge of Islamic Sharia and *fiqh* (Islamic jurisprudence) (Brown, 2014).

Therefore, *Dato' Yutitam* developed into an established concept in Thailand, especially in the south. *Dato' Yutitams* were first appointed by the "Act on Application of Islamic Law in the Provinces of Pattani, Narathiwat, Yala and Satun, B.E. 2489 (1946)". This Act served as the first judicial Act codified by the government in the southern provinces of Thailand and came into full force on 19 November 1946. *Dato' Yutitams* only presided over Muslims living within the southern provinces of Pattani, Yala, Narathiwat and Satun (Kraus, 1998).

Dato' Yutitams act as experts in Islamic affairs. In fact, from the perspective of Thai law, a *Dato' Yutitam* is a person who is authorized to adjudicate cases related to Muslim personal matters according to Islamic law or Sharia law (Suttasana, 1987). A *Dato' Yutitam* acts only as an advisor or assistant to the civil judge in Muslim cases. Therefore, a *Dato' Yutitam* does not necessarily have to be a specialist in Sharia Law but must have knowledge of Islamic law or *fiqh* as stated in

Section 52 of the *Kharachkaran Tu'lakaran* Act (2000). However, a *Dato' Yutitam* needs to be appointed and undergo repeated processing (Wan Muhammad, 2009). Eventually, a declaration is made to Muslims about the acceptance of the nomination following the *Kharachkarn Tu'lakaran* Act Number 7 B.E. 2535 (1992) and the Special Rules of the Ministry. After that, guidance and testing courses on the Fundamentals of Islamic law, Judicial Officer Regulations and Ministry Judicial Manners will be held. After sitting for a written examination, the candidate is required to attend another oral examination session managed by the committee.

Furthermore, the director of the southern division of judges is also responsible for discussing and reviewing the candidates with the chief justice and the governor of the province. The names of those who passed the program are sent to the Ministry of Justice for the next steps in the process. Then, those selected will be appointed as *Dato' Yutitam*. However, in some instances, even if a person passes the examination stage with the highest score, he could still be passed over for *Dato' Yutitam*. This is because most committee members are non-Muslims. So, it is justifiable to say that the real power in *Dato' Yutitam* appointments remains in non-Muslims, who may not be entirely sympathetic to Islamic principles (Cheha, 2007).

Dato' Yutitams, who have been appointed to the post but intend to resign, must submit a letter of application to the head of the court where they work. If the application is accepted by the Ministry of Justice and approved by the Judiciary Committee Members (KOTO), then the *Dato' Yutitam* will cease carrying out his duties. Section 44 of Judicial Official Act BE 2521, 1978 states that if the incumbent declares his intention to continue in service but is found to have done immoral things, then the ministry has the right to terminate his position after being approved by the Members of the Committee on Justice. If a *Dato' Yutitam* is alleged to have violated the rules, proven negligent while on duty, incapable of shouldering his duties or behaving immorally, he can be removed from his position. Other reasons for termination include being deprived of his Thai citizenship, discovering that the officer never fully qualified for the office under Section 27 (1) of the Judicial Officers Act B.E. 2521 (1978), or becoming a politician or Senate member.

Dato' Yutitam: As a Kadi

Kadi is a common term in Sharia, meaning “judge.” Technically the term can be succinct: “One who adjudicates between people according to the Sharia Law” (Almaany, n.d.). The meaning of judge, as defined according to the Law Dictionary, is a public officer, appointed to preside and administer the law in a court of justice; the chief member of a court and charged with the control of proceedings and questions of law, or discretion (The Law Dictionary, 2011). The *Kadi* listens to the litigants, relates their cases to the relevant provisions of the Sharia and renders judgement.

This term was used in Thailand in 2007 when legislation Act R.S. 120 B.E. 2444 (1901) was enacted, which defined the *Kadi* as To’kali or To’kathi. On 24 September 1971, the term To’kali or To’kathitern was changed in favour of the new term, *Dato' Yutitam*, who works in the Civil Court (Uwanno, 1987). According to the Application of Islamic Law in Provinces of Pattani, Narathiwat, Yala and Satun 1946, all Islamic personal law is applied by the Court of First Instance.

When addressing any action, the Court of First Instance consists of one *Kadi* who signs the judgment, carried out by his decision and other judges. The decision of the *Kadi* on questions of Islamic law is final. In case of any insufficiency in the provisions of the Civil Procedure Code, the judges may apply the rule of *mutatis mutandis* to the *Kadi*, where in instances of an absent *Kadi*, the parties may by agreement appoint one Muslim as a *Kadi* for their case.

The *Kadi*, who sits in the provincial courts of the southern provinces, assists civil judges and adjudicates Islamic personal law matters, is called *Dato' Yutitam*, or *Dato Kadi*. He possesses the required competency in Quran, Hadis, or *fiqh* knowledge, and his qualifications are publicly accepted (Rule of Administration in the Seven Principalities of Thailand, 1902). Here we find that a *Dato' Yutitam's* position in case trials involving Islamic religious affairs in civil courts is relatively low compared to the country’s civil law. This is because a *Dato' Yutitam* cannot make his own decision without the presence of a civil judge. The qualification of a civil judge to handle the legal proceedings of Islamic evidence can cast doubt among the Muslim community since the civil judge determines everything, including endorsing *Dato' Yutitam's* decision in family cases.

However, it is necessary to know in detail the characteristics that a *Kadi* should possess, as outlined in the *Kharachkaran Tu'lakaran* Act (Judicial Official Act) rules as: 1) qualified by Section 26 (1), (5), (6), (7), (8), (9) and (10); 2) aged not less than 30 years; 3) have knowledge of Islam, and be able to decide matters related to family and inheritance according to Islam; 4) knowledgeable in Thai, have a certificate of at least level 3 Secondary School or any certificate certified by the Ministry of Education not lower than form three.

The third condition is having knowledge of Islam that concerns every provision of law. For example, Section 36 of the Judicial Rules Act B.E. 2497 (1954) stipulates "having knowledge of the religion of Islam in matters of family and inheritance". In this context, we argue that the qualifications or conditions are not in line and balanced with the obligation entrusted to *Dato' Yutitam* to decide and resolve matters and questions of religion. This is because all of them are closely related to the affairs and interests of Muslims.

In this regard, the law stipulates that the condition for a person to become *Dato' Yutitam* is someone who is knowledgeable in Islamic religious affairs and can handle or resolve a case. The requirements are broad, general and not specific to any major, field of study, or certificate level.

Therefore, assessing the extent of a person's abilities and capabilities is difficult. More detailed qualifications or conditions need to be laid out, such as setting certain conditions through courses in the Islamic Religious Department, Chularajmonteri and Islamic Committee Members as implemented in the states of Malaysia. In addition, *Dato' Yutitam* needs to have knowledge in other appropriate fields that can help smoothen the implementation of tasks such as sociology, economics, politics and so on.

However, a *Dato' Yutitam's* status can be revoked or transferred to an administrative officer or government official in a field other than the judiciary (Section 6(2) *Kharachkaran Tu'lakaran* Act, 2000). The Secretary of the Committee has the power to apply for the removal of a *Dato' Yutitam*. Once agreed, the Chief Justice of the High Court (Court Dika) is responsible for ruling following the manner and procedures set out in the rules of the Judiciary Committee (Section 53 *Kharachkaran Tu'lakaran* Act, 2000). A *Dato' Yutitam* needs to possess good ethics,

work discipline, and present himself according to the rules provided. A violation of a work ethic code could lead to his dismissal. The Chief Justice of the High Court then has the power to form an investigation unit to determine whether the individual should be terminated or returned to service.

Administration of Islamic Law: Religious Council in Southern Thailand

In 1939, after drafting the fifth and sixth civil laws, laws of B.E. 2486 (1943), by the third Thai Prime Minister, Phiburn Songkeram (1938-1944), came a major upheaval within Thailand's political and legal system. They (the fifth and sixth laws) affected not only civil law but also Sharia law, rendering it ineffective in the three southern Muslim provinces of Thailand. In the wake of this upheaval, Muslim communities began to protest the abolishment of Islamic law. In 1945, when Phiburn Songkeram was removed from his post (Tsukamoto, 2020), the Khuag Apaiwong (the fourth Prime Minister) government passed the Administration of Islamic Affairs Act named *Sasnu Fatam Fai Islam in B.E. 2486 (1946)*, which was influenced by Chemperomyong (*Shaykh al-Islām*), representing the first Islamic law in Thai history.

Since the Constitution provides freedom of religion to the people of Siam, Muslims should be supported and given protection by the King in their religious affairs. The law empowers the Sal Chan Ton Court (Subordinate Courts) in Pattani, Yala, Narathiwat and Satun to implement Islamic Law and to consider and decide on cases relating to family and inheritance. The *Dato' Yutitam* is the person who serves as a judge presiding in these courts.

Subsequently, Chularajmonteri (*Shaykh al-Islām*) was appointed as a mediator between the Government and the Muslim community. He was not only appointed as a mediator but also as an advisor to the Ministry of Home Affairs and the Ministry of Education on matters of Islam, such as issuing fatwas. Besides that, Chularajmonteri approved religious education, including the publication of Islamic texts to religious and national educational institutes. Furthermore, he declared *Ramaḍān* and *Hajj* as legally approved in Thailand.

Although Chularajmonteri was considered a highly respected religious leader by Muslims in Bangkok and Malaya, Muslim communities still preferred their own (local) scholars and religious teachers. On the other hand, some Malay leaders believed that Chularajmonteri *fatwas* would never be effective without the support of the Thai government (Che Man, 2008). Regardless, Chularajmonteri was still followed by the majority of Muslims, although some were critical of him.

In 1947, the government enacted the mosque law, or the Mosque Legislation Act (1947). This Act dealt with construction procedures for mosques and jurisdictions over *waqf* land. The government declared the Mosque Law a protective law to avert disputes over mosques and lands. The concept was that mosques were used to perform prayers, *fard* (obligatory) worship, *i'tikāf* (isolation in a mosque for worship), marriage ceremonies and religious lectures.

Because of that, the Thai government wanted to improve this Act by drafting the Islamic Religious Body Administration Act B.E. 2540 (1997). Unfortunately, this Act did not specifically define the terms of *Dato' Yutitam*, although The Islamic Religious Protection Act B.E. 2488 (1945) had discussed the role of *Dato' Yutitam* in the Thai judiciary. This Act, known as “Act on the Application of Islamic Law in Pattani, Narathiwat, Yala and Satun, B.E. 2489 (1946),” categorized *Dato' Yutitam* as a member of the Thai judiciary system (Kraus, 1998).

Moreover, this Act established a council known as the Islamic Council in the Southern Provinces of Thailand, charged with various goals, such as advising regional governors in the provinces to liaise between Muslims and the government. The Sal Chan Ton Court (lower court) in Pattani, Yala, Narathiwat and Setul were subsequently empowered to solve Muslim family and inheritance-related disputes.

Thailand's codified law for its Muslim community—the Islamic Religious Protection Act B.E. 2488 (1945)—concerns the application of Sharia in rural areas and ensures the protection of religious organizations. The Act's provisions mainly deal with Chularajmonteri (*Shaykh al-Islām*) and Islamic institutions (Provincial Religious Councils). The appointment of Chularajmonteri essentially represents a portion of Islam here. Thereafter, in 1947, the government declared the mosque

law. According to this Act, mosque *imāms* (leaders) were authorized to help settle Muslim personal matters. According to the Administration of Islamic Organization Act B.E. 2540 (A.D. 1997), the chairperson of the Islamic religious council must be the *Shaykh al-Islām*.

The Regional Islamic Religious Council is not only an advisory panel in disputes but also decides cases in matters relating to *talaq* (divorce), *ta'liq* (a divorce caused by a husband's breaching of marriage solemnization), *fasakh* (the dissolution of a Muslim marriage contract by judicial decree), *khulū'* (a woman divorces herself from her husband), *nafkah* (maintenance), matrimonial property and inheritance. In an agricultural society like Thailand, the land is the main asset sustaining life (Karjoko et al., 2021), and any land-related inheritance disputes need to be resolved by *Dato Yuttitam*.

Cases of Muslim divorce must be first presented to the local *imām*, and the applicants must fill in the divorce application form at the Muslim Religious Committee Council. The committee will then ask the couple to come before the committee, accompanied by the *imām*. The committee will endeavor to effect a reconciliation (Watson, 1994). If the committee is satisfied that the marriage has irretrievably broken down, the committee will ask the husband to pronounce *ṭalāq*. The committee will then issue a certificate of divorce according to the nature of the pronouncement of *ṭalāq*. For reference, a copy of the certificate will be kept at the Muslim Religious Committee Council. If the husband refuses to pronounce *ṭalāq*, the committee will ask the husband to pronounce a divorce by redemption after the parties agree upon the payment amount. In other words, not every *ṭalāq* case can be granted directly by an *imām* or the committee (Scupin & Joll, 2020) as there are various reasons for divorce, including lack of religious understanding, social media influence, early age Marriage, and lack of attention between spouses (Kassim et al., 2022).

Table 1 shows that in 2014, 291 talaq cases were filed, which steadily increased through 2019. The increase in divorce is a legal reality that occurs in all Muslim countries in the world (Djawas et al., 2021), including Thailand. In 2014, 161 cases were filed for counselling of husbands, which fell to 88 cases by 2017. In matters of matrimonial property and maintenance, the cases peaked at 208 in 2017 before decreasing again over the next two years. In 2014, there were 110

inheritance cases filed in Pattani. The number of cases mentioned in the table demonstrates that the Pattani Provincial Islamic Religious Council was able to reduce inheritance claims to single digits by 2019.

Table 1: Case claims at the Pattani Islamic Religious Council

Resolved Cases	2014	2015	2016	2017	2018	2019
<i>Talaq, ta'liq</i> & Other	291	410	507	542	632	680
Husband counselling	161	120	106	88	96	110
Matrimonial property and maintenance	44	48	62	208	30	50
Inheritance	110	82	92	78	98	70
Overall total	606	660	767	916	856	910

Source: Pattani Regional Islamic Religious Council File 2020

Differences Between *Dato' Yutitam* and the Regional Islamic Religious Council

Dato' Yutitam and the Regional Islamic Religious Council are not the same. This is because *Dato' Yutitam* is a legal post recognized by Thai Civil Law, appointed by the Thai government, and further listed as a member of the Thai judiciary under *Kharachkarn Tu'lakarn* (Judicial Official Act) of B.E. 2535 (1992). *Dato' Yutitam* receives a monthly salary according to the Judiciary Committee (KOTO) rules. His monthly salary increases every year, except when he has already attained the highest rate of pay possible for a *Dato' Yutitam* (Section 52(4) *Kharachkarn Tu'lakarn* Act BE. 2543, 2000). In contrast, the Regional Islamic Religious Council represents the governing body that the government has approved to deal with matters relating to Islam in the Muslim majority areas. Council representatives are not considered government employees but only private appointees by the Council (Section 26 (11), Islamic Religious Administration Act B.E. 2540, 1998). Their efforts are considered volunteer work in helping to resolve marital issues.

However, this body is practically seen to be superior and more influential than *Dato' Yutitam* due to several factors. First, during the administration of Phiburn Songkeram (1939-1944), Islamic law was

completely abolished by the Thai government. Later, this institution fought for the return of Islamic law. This institution was known before as “*Hay'ah al-Nafaz li Ahkām al-Syariah*”. Second, this institution is also appointed as “*qāḍī al-Syar'iy al-Darūri*” to deal with cases of family, inheritance, *waqf*, wills and *zakāh* from influential people (Grand Master).

Most family cases can be resolved or reconciled at the Regional Islamic Religious Council level compared to civil courts. This is because some cases do not involve large sums of money. The situation is more in line with the perception of society regarding inheritance. It is easy to propose a compromise between a husband and wife who disagree, including maintenance and divorce cases. This proposal can successfully end marital disputes at an 80% rate. Therefore, the 20% of cases the Islamic Religious Council did not successfully settle would be sent to the civil court.

These procedures, easy-to-carry identity cards, and marriage certificates issued by the Islamic Religious Council have improved interaction between council officers and respondents. Both the officers of the council and the respondents communicate with each other in their preferred language, Malay or Thai. Whereas in the Court, the Thai language is the official language used. To solve language challenges, the court provides translators to help respondents understand the proceedings (Ismail Hari, 2022). Every case heard in the Islamic Religious Council does not require a lawyer. So, the respondent who makes a claim must not pay except 300 Baht (USD 8.6) for the registration process. Respondents must use and spend on an attorney in the civil court compared to the Islamic Religious Council. Thus, the Islamic Religious Council can be described as a place of peaceful mediation between quarreling couples, a venue to settle disputes over inheritance and issue any fatwa on local law.

The difference between the civil court (*Dato' Yutitam*) and the Islamic Religious Council is significant. Claims in the civil court are all through counsel, and decisions made by the civil court are enforced by law. While the demands in the Islamic Religious Council can be made on their own or through the *imām* in the village, and decisions made are more akin to a fatwa, not bound by law (Ismail Che, 2022).

However, these two institutions are similar in resolving divorce, inheritance, matrimonial property and custody (*ḥadānah*). Some of

these issues are brought to the Regional Islamic Religious Council, while some are brought to the civil court or *Dato' Yutitam*. The Council is where the affirmation of the rights takes place and is reconciled. *Dato' Yutitam* is where a decision is made and binds the plaintiffs. The decision is enforceable whether the case favours the plaintiff or defendant.

However, in practice, some *Dato' Yutitams* are appointed by the Muslim Religious Committee Council to become committee members. In such a case, marriage or divorce may occur before him as a committee member but not as a judge. The appointment of *Dato' Yutitams* to this committee has been a good move. *Dato' Yutitam* can coordinate issues pertaining to marriage, divorce, maintenance of wife, and the distribution of joint matrimonial property.

Family cases will be decided based on the opinions of the *Shāfi'ī madhhab* (Islamic school of law), as the majority of the Muslim community in southern Thailand follows it. Thus, not even a single view from another sect is considered, such as the views of *Abū Ḥanīfa*, *Mālikī* and *Ḥanbalī* (Sangsian, n.d). For example, in the *walī* (guardian) issue, a couple married by a *walī ḥakīm* (marriage guardian stipulated by the court) will become legally married after passing the application process to the bride's father or if the father refuses to bless the marriage. Then, the guardianship is transferred to the *walī ḥakīm* from the actual *walī*, and the couple is subsequently married (Mohd. Razif, 2022).

The Role of *Dato' Yutitam* in Islamic Law in Southern Thailand

According to the Act on Application of Islamic Law in the Provinces of Pattani, Narathiwat, Yala and Satun, B.E 2489 (1946), *Dato' Yutitams* are authorized to enforce procedures related to the hearing of cases in the lower court along with the chief of the court. The *Dato' Yutitam* has the authority to decide on cases related to Islamic law, and decisions signed by him are designated as court documents.

Dato' Yutitam is not involved in criminal cases or even as an assistant in criminal matters to a General Judge authorized by the Criminal Act or "*Pra'mual Kodmai Aya*". However, a *Dato' Yutitam* can still not exercise his jurisdiction competently as a judge in a trial session procedure without concern and agreement between the plaintiff

and defendant. Should a plaintiff or defendant not agree to select a person to act as Dato Judge, they shall submit a list containing three names, and the Chief Justice of the Court shall appoint one from the list to be regarded as an acting *Dato' Yutitam*.

A *Dato' Yutitam* is appointed as a civil judge in the first instance court and Family Court in the four southern states under (Article) 23 of the *Pera'tammanun Sal Yutitam Act*. For example, in *Mrs Khatijah Chelah vs. Mrs Mea Bikai Deramea*, the Court of Appeals held that “the judgment without *Dato' Yutitam* is not valid”.

In this case, the plaintiff filed an appeal before the Court of Appeals against a lower court's judgment favouring the defendant and her claim of absolute right over disputed land. She also claimed compensation for intrusion on her property. Her relative gave the land as a marital gift for her and her husband. Later, her husband passed away, so the inherited land was divided between her and her son. The plaintiff and defendant were dissatisfied with the lower court's decision and appealed to the Court of Appeals for justice.

However, the Court of Appeals held that the lower court's decision was unaccomplished. This case must be tried in the Family Court under the Act on the Application of Islamic Law in Pattani, Narathiwat, Yala and Satun, B.E. 2489 (1946) because both parties are Muslim and *Dato' Yutitam* must be retained as well as a civil judge. Without the oversight of a *Dato' Yutitam*, any decision by the Civil Court was not admissible. In this case, no *Dato' Yutitam* was appointed. The High Court agreed with the Court of Appeals and referred the case back to a lower court as a new case considering some Muslim family and inheritance cases do not come under Thai law.

In most cases, a civil court judge is responsible for documenting any evidence a witness gives. When the witness submits any trial evidence, this evidence must be recorded and signed by *Dato' Yutitam*. The *Dato' Yutitam's* decision is final, and the prohibition of appeal is stated in the Act on the Application of Islamic Law in Pattani, Narathiwat, Yala and Satun, B.E. 2489 (1946). This Act is considered unusual by most academics on the grounds of the absolute power of *Dato' Yutitam* in his decisions (Dorloh, 2015). However, after the 1946 Act, a few appeal cases were allowed under procedural law but not Islamic law (Khrua-Klin,1995; The Ministry of Justice Order No:

30 / 4353, 1917). Some argue that disputing litigants are deprived of their fundamental rights to appeal to a higher court under the Thai Constitution (Dorloh, 2015).

Appeals are allowed by the Court of Appeals. The common practice is that the Court of Appeals will send a case to a *Dato' Yutitam* for reaffirmation and solicit a review of his decision. This practice is to maintain harmony among the Muslim communities in southern Thailand, and Islamic law cases represent a very small claim on the government's legal resources (Sri-Meandt, 2001). The Act on the Application of Islamic Law in Pattani, Narathiwat, Yala and Satun, Act of B.E. 2489 (1946) prevents Muslim litigants from appealing to a higher court. Article 4 Clause 3 of the Act provides, *inter alia*: 'The decision of *Dato' Yutitam* to Islamic law is final.'

The decision made by *Dato' Yutitam* is final and not subject to appeal (Ismail Che, 2022). This provision poses a problem for Muslim communities, as evidenced in a 1982 case, where a *Dato' Yutitam* made a wrong decision, and the accused could not challenge the decision. In this case, the law caused an injustice to the victim because of the lack of an appeal process.

The Decision of *Dato' Yutitam* (Muslim Judges)

The Muslim community of the south objected to the Act of 1946 and rallied for the right to appeal if dissatisfied with a *Dato' Yutitam's* decision. For a closer look, the statistics of decisions made by *Dato' Yutitams* at the Pattani Court from 2003 to 2009 are as follows:

Table 2: Statistics of Case Trials by *Dato' Yutitams* at the Pattani Provincial Court

Types of cases	2014	2015	2016	2017	2018	2019
Divorce	-	4	3	6	-	-
Inheritance	324	474	358	390	214	242
<i>Harta sepencarian (joint matrimonial property)</i>	-	4	-	2	-	-
Custody	-	2	4	6	4	9
Total	324	484	365	404	218	251

Source: Pattani Provincial Civil Court Office 2020

Table 2 shows that no divorce cases were heard in 2014, 2018 and 2019, and in 2016, only three cases. In 2018, the number of inheritance cases was the lowest at 214. By contrast, in 2015, the number of inheritance cases stood at its highest rate compared to the other years. The year 2017 saw a decrease in matrimonial property cases, with just two cases, compared to 2015, which recorded four cases. In instances of *ḥaḍanah*, there were at least two cases in 2015, while the highest was nine in 2019.

This report shows that cases of property and inheritance were the most tried cases in the Civil Court of Pattani. In the case of *Nuriah Che'lea vs. Ma'repeng Che'lea'* (Case Number: 288/2542-1999), the plaintiff and the defendant were married under Islamic law, and this marriage was attached with *ta'liq*. As a result of the marriage, they had two children: five and two years old. However, the plaintiff filed a complaint before the Pattani Islamic Religious Council for a decision against their conjugal life. One of the impacts of divorce is the residential separation between the children and the parents (Hotnidah Nasution & Ahmad Rifqi Muchtar, 2020). When this case appeared before a *Dato' Yutitam* Court, the *Dato' Yutitam* observed that the mother, the plaintiff, had the right to care for the children and was found to be more trustworthy than the defendant. The Court further held that the defendant (father) pay 2000 Baht each month as living costs for the two minor-aged children until they are married or can maintain themselves. In the case of *Mohd. Ahmed Khan & Shah Bano Begum* (1985 SCR (3) 844), commonly known as the Shah Bano Case, an Indian High Court, arrived at the same conclusion as the *Dato' Yutitam* of Pattani Court. The Indian High Court held that the wife's maintenance should continue through her '*iddah*' period (a waiting period applied to Muslim women after divorce).

On the other hand, in the case of *Hasnah vs. Adison Che'ding @ Ma'nasir Che'ding* (Case Number: 152/2545-2002), the plaintiff and defendant were living as husband and wife without any legal registration. In January B.E. 2543 (1998), the defendant left his wife and children and did not pay any *nafkah*. The plaintiff filed a case in the Civil Court, claiming for recognition of the child as the defendant's progeny, and demanded 50,000 Baht as maintenance cost beginning on the day of the Court judgement. The defendant responded that

the plaintiff was not his wife and that the plaintiff's son was not his progeny. Thereby, he was not obligated to pay any maintenance legally and appealed to dismiss the case.

The *Dato' Yutitam* dismissed the case and ordered compensation to the plaintiff on the grounds that the plaintiff failed to provide witnesses on the validity of the marriage. However, this marriage was valid under Islamic law, but, in this case, the plaintiff and defendant had been legal husband and wife, according to Sharia. The plaintiff could not establish that the marriage had any conjugal basis because of a lack of witnesses.

It is noteworthy that in Thai law, a plaintiff may file any suit or claim before a *Dato' Yutitam* of the civil court when the defendant is absent or if the plaintiff has been able to file his written complaint without necessarily having legal representation. In such cases, the trial court allows the suit to proceed, assuming it follows procedural law principles. The court will accede and grant the complaint if proper Court fees have been paid. Should the defendant not appear during the trial period, the judge may continue the trial without the defendant present. In this case, the defendant may be present physically or by appointing an attorney for the hearing. From this perspective, judgment without the defendant is valid. The nature of trial in the Civil Court of southern provinces of Thailand is as follows: a) the claim or complaint file must be made through a lawyer; b) the Court register officer reviews the content of the claim; c) the court registers and provides numbers for the documents; d) the documents of claim are sent to *Dato' Yutitam*; and e) the court provides a fixed trial date.

In the case of *Yati Yama vs. Setapa Wado*, the couple got married at the house of Tok Guru Haji Ismail Bidil, Mayor of Pattani. They had three children. The husband provided 400 Bath for maintenance per month. When her husband contracted into a second marriage, the husband began to neglect the first wife and her children. As a result, the plaintiff filed a complaint before the Tok Guru for divorce. The Tok Guru approved the divorce on 24 September BE 2512 (1969). However, her husband later returned and began to provide maintenance payments (*nafkah*). Subsequently, her husband left again and did not pay any maintenance for nine months. The plaintiff's application was filed before the *Kadi* Court of Pattani, and the *Kadi* investigated and brought the matter under the procedure.

In this case, the husband was a farmer, raising buffalo and drying coconuts. His monthly income was around 200-300 Baht. The Court fixed 200 Bahts per month and collected 2,400 Bahts (RM 240) from the defendant for the plaintiff. The Dato' Yutitam held that the husband was bound to provide maintenance (*nafkah*) for his wife and children. However, the wife and children's maintenance responsibilities were fulfilled when the husband spent 2/3 of his income on the family as living costs. The Dato' Yutitam distinguished between the plaintiff's needs and the husband's income to avoid injustice.

Likewise, in the case of *Sulaida binti Wamea vs. Ruslan bin Abd. Razak*, the plaintiff and the defendant lived as husband and wife for about two years. The defendant made a *ta'liq* agreement with the plaintiff as in the marriage certificate. Their life as husband and wife continued during which the defendant did not provide maintenance to the plaintiff (wife) for a whole year, starting on the 21st Tanwakum (December) 2551 (2008), until the 18th Singhakum (August) 2552 (2009). Therefore, the Islamic Religious Council divorced the plaintiff from the defendant by a single *talāq* and obligated the defendant to pay maintenance of *'iddah* to the plaintiff according to the amount set by the two of them.

All judgments and settlements in the Court or Muslim Religious Council were based on the Islamic Family Law 1946. This law ensures women's protection from neglectful and abusive husbands. However, the authorities and Non-Governmental Organizations (NGOs) should continue to raise legal awareness and disseminate knowledge on how the law protects a wife's rights in marriage and divorce.

Conclusion

The development of Islamic law has positively impacted the Muslim community in southern Thailand. Islamic law in Thailand is divided into two categories: The Islamic Religious Protection Act of 1945, related to administration, and the Islamic Law Enforcement Act of Pattani, Yala, Narathiwat and Setul 1946, which extends Islamic protections within the Thai judiciary system. The latter was the first (Islamic-related) law in Thai history. Under both Acts, two legal organs were established: The Regional Islamic Religious Council and the Dato'

Yutitam (Muslim Judge) as part of the civil justice system in the southern provinces of Thailand.

The government entrusts the Regional Islamic Religious Council to deal with matters related to Muslim family disputes and counselling couples on family matters and inheritance under Islamic law. Meanwhile, *Dato' Yutitams* are authorized to resolve family cases with a magistrate when the Islamic Religious Council fails to resolve a dispute. If the Islamic Religious Council cannot resolve a case, it would be forwarded to a court where a *Dato' Yutitam* will take up the case.

The Regional Islamic Religious Council is established and chaired by individuals appointed by the Thai government to deal with Islamic matters. A *Dato' Yutitam* serves as a judge along with a civil judge in a civil court and deals with cases referred to him by the council. The Council and *Dato' Yutitams* mostly defer on points of jurisdiction and legal acknowledgment of their decisions. *Dato' Yutitams* are not used as assistants of a general judge.

A *Dato' Yutitam* is considered a *Kadi*, who lacks complete authority to decide all civil cases, although the *Dato' Yutitam* was established by law for the southern Thai Muslim community. Decisions of *Dato' Yutitams* are considered absolute and are not subject to appeal under the Law of 1946. Similarly, a decision on Muslim legal matters without the oversight of a *Dato' Yutitam* is considered invalid. *Dato' Yutitams* are given wide powers and jurisdiction to decide Muslim legal matters. By contrast, the Islamic Religious Council has more legal knowledge but isn't attached to the Thai judiciary.

This article's primary findings and significance show that a *Dato' Yutitam* serves as a *kadi* and adviser to civil judges. This is because *Dato' Yutitams* are not exclusively appointed from among those who graduated in the field of law or Islamic law. The law even allows anyone who has knowledge in the field of Islamic law or *fiqh* to serve. Furthermore, when hearing Islamic cases, a civil judge must still be present; these cases are only those pertaining to Muslims.

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