

# The application of Islamic law in Thailand

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**The Application of Islamic Law in Thailand**

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**Abstract**

Many Southeast Asian Countries, whether or not they are Islamic country, have Syariah Court system as a formal governmental institution for the resolution of disputes relating to family and inheritance issues among Muslim. Thailand, a Buddhist dominant country, allows the application of Islamic law to the disputes among Muslim only in Provincial Courts of four southern border provinces which have the substantial portion of Muslim population. This paper illustrates the historical development and institutional configurations of the system of application of Islamic Law in Thailand.

**Keywords:** Thailand, Islamic Law, Syariah Court

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## The Application of Islamic Law in Thailand

Shinya Imaizumi

### Introduction<sup>1</sup>

Most Southeast Asian countries, like other non-Western countries in the world, have experienced the transplantation of Western modern law in the period of colonization or modernization. The current legal system of non-Western countries is deeply influenced by the transplanted Western law. For example, we cannot imagine the current legal system of the former British colonies or protectorates, such as Malaysia and Singapore without considering common law tradition. In other words, common law tradition is deeply embedded in the formal legal system of these countries with any adjustment. However, it does not mean that the customary law, indigenous and religious law that had existed in that society before the Western impact was completely disappeared. Actually customary and traditional law, with adjustment to the changing society to some extent, still work in the daily life of people outside formal institutions, and they sometimes influence the implementation and enforcement of formal legal system. Furthermore, traditional and religious law has been incorporated into the formal legal system through the written Constitutions and other legislation. Syariah Court is the most prevailing example of such formalization of traditional and religious law in Southeast Asia. The modernization of Islamic law has been achieved through legislation (Yuasa 1997).

Many Southeast Asian Countries have Syariah Courts as a formal governmental institution for the resolution of disputes among Muslims, whether or not they are Islamic country (Table 1). Syariah Courts are constituted as a part of the (secular) Judiciary, or independent from the Judiciary. Syariah Courts have civil jurisdiction especially on the cases relating to family and inheritance under Islamic law. Criminal jurisdiction of Syariah Court is not vested, or vested but very limited in most Southeast Asian countries; however, some jurisdictions such as Brunei ad Ache, Indonesia, have expanded the criminal jurisdiction of Syariah Courts through the enactment of Syariah criminal legislation. There are series of Islamic legislation on family relations, inheritance, civil procedure, and so on.

Thailand allows the application of Islamic law to the disputes relating to family and inheritance matters among Muslims only in four Southern border provinces which have the substantial portion of Muslim population; however, it does not follow the approach of other

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<sup>1</sup> This is the pdated version of the author's article that was published in 2002 in Japanese (Imaizumi: 2002).

Southeast Asian countries which have developed Syariah Courts. Instead, Thailand appoints special Islamic law judges, called *dato yutitham* in Thai, in Provincial Courts. How has the system of Islamic law application evolved? How does it work?

The aim of this paper is to illustrate the features of the application of Islamic law in the four provinces of Thailand, and the role of *dato yutitham*, a special Islamic law judges. This paper is divided into two sections. The section I overviews the historical development of the Islam-related legislation including the application of Islamic Law in Thailand, whereas the section II examines the framework and the practical implementation of the Islamic law application as well as the role *dato yuttitham*.

**Table 1**  
**Syariah Courts in Southeast Asia**

Country	Muslim Population	Islamic State?	Does Syariah Court belong to the Judiciary or independent from it?
Indonesia	Majority	No	Part of the Judiciary.
Malaysia	Majority	Yes	Independent
Brunei	Majority	Yes	Independent
Singapore	Minority	No	Independent
Thailand	Minority	No	Part of the Judiciary (Islamic law Judges are dispatched to Provincial Courts, instead of organizing Syariah Court)
The Philippines	Minority	No	Part of the Judiciary.

(Source) Author.

## **I. Historical Development of Islam-related Legislation in Thailand: Overview**

Thailand is generally seen as a Buddhist country because approximately 90% of its population is a Buddhist; however, it has the substantial number of Muslim population which amounts to 4.9% of its total population in 2010 (see Appendix). The Muslim population in Thailand is classified into several ethnic groups;<sup>2</sup> the largest group is Malay Muslims, many of whom inhabit in the Southern border provinces adjacent to Malaysia, especially three Provinces:

<sup>2</sup> Imanaga (2000) classifies Muslim in Thailand into some groups including Persia, India, Cham, Indonesia, Thai, Chinese, Malay and others.

Pattani, Yala, and Naratiwat.<sup>3</sup> Thai Buddhist and Malay Muslim areas are overlapping in these provinces.<sup>4</sup> According to the Population and Household Census of 2000 and 2010, respectively, the ratio of Muslim population amounts to 84.4% in Pattani, and 85.9% in Naratiwat. Compared with 2010, the number of Muslim population has slightly increased. Furthermore, according to the report of the Department of Religion, half of the registered Masjid (mosque) locates in these provinces.<sup>5</sup> This concentration of Muslim population is one of the reasons that the application of Islamic law is allowed only in this area. There is the long history of separatist movement and violence in this region. The separatist movement or violence are very important factor that determined the way of realizing Islamic law application in the southern border are; however, this short paper will give much priority to consideration of its institutional features for dispute resolution.<sup>6</sup>

## **1. Incorporating into Modernizing Thailand: The Beginning**

The formation of the application of Islamic law in Thai Courts can be traced back to Thai modernization period from the late nineteen century to early twentieth century. In Malay Peninsula, there were several Malay sultanates or cities. Many Sultanates fallen into British protectorate, which now consists Malaysia. On the other hand, some Malay Sultanates of Northern Malay Peninsula were under the control of Thailand due to the failure to Ayutthaya in 1785 including Pattani. In responding to the growing pressures from the United Kingdom and France, Thailand started modernization policy in the nineteenth century, and started directly governing peripheral areas, in order to build the Western style territorial state with centralized

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<sup>3</sup> The situation of Muslim community in Satun Province is different in many aspects from other three provinces where violence occurs due to the separatist movement and Thai governments countermeasures.

<sup>4</sup> The interpenetration of Thai and Malay cultures in both sides of the boundary attracts many studies. *See e.g.* Mohamed (1993), Damrongsak (2004).

<sup>5</sup> Omar (1999) cites another data on masjid in Thailand. Fifty six provinces out of seventy six provinces of Thailand have the registration of masjid. The registered masjid is around 2,800, and 52.7% of the registration concentrate to four southern border provinces (1,476 masjid). Omar (1999: 231).

<sup>6</sup> Some part of this paper rely on the information provided by Anusorn (1998). Anusorn is a judge of the Court of Justice. His survey was done when he was dispatched to the Pattani Provincial Court. The survey was made toward ten *dato yutitham* (including three retired *dato yutitham*) and twenty judges working in the Southern region (all of them have experiences of presiding a case with *dato yutitham*. 45% of them have worked in the Southern region more than four years). This paper also reflects the author's observation mainly from the interviews with some judges and *dato yutitham* in four provinces since December 2002.

government. As for the southern border area, King Chulalongkorn promulgated the Decree to introduce the new governing system in 1901. The Decree abolished the Sultanates in seven Malay states (*hwa muang*) including Pattani, and placed the new Thai political institutions. Raja of Pattani rebelled in 1902 against Thailand's new governmental policy, but it was controlled. Such early movements, which were mainly led by the Sultans, aristocracy and religious leader, were recessed after the failure of the revolt in 1922.

Thailand's territorial sovereignty over this area was internationally endorsed by the conclusion of treaties between Thailand (at that time, Siam) and the United Kingdom. Under the treaty of 1826 with the United Kingdom (Bani Treaty) determined the boundary between Thailand and the British Malay States. Under this agreement, three Sultanates, namely, Kedah, Kelantan and Terengganu belong to Thailand. Later, under the treaty of 1906, Thailand ceded these Sultanate state to UK in the exchange of Satun (now Satun province).

Under the 1901 Decree, Thai court system was extended to this area. However, as for Muslim, Section 32 of the Decree states that "Islamic law shall be applied in the trial and adjudication of any civil dispute concurring with Islamic law, in which both a plaintiff and a defendant, or a defendant is Muslim, whether or not the subject is the matter between a husband and a wife, or of inheritance, and *To Kali* (kadi) who is an expert and professing Islamic religion shall be the person to decide under Islamic law". The word "*To Kali*" comes from the local pronunciation of the term Kadi in Arabic and transmitted into Thai.

This Decree seems to have established the basic principles on the application of Islamic law in Thailand: (1) Islamic law is applied only to family and inheritance cases among Muslims. (2) Islam law judges (*kadi*) continue to adjudicate such cases.<sup>7</sup> Traditionally, the dispute resolution of cases under Islamic law was conducted in masjid or Imam's residence; however, under the new system, the litigation should be conducted in the same place with Thai judiciary in the Thai Court building. This would be a realistic and only available option for Thai government under the circumstances where most inhabitants there could not speak Thai at that time, and Thai officials could not understand Malay language as well as Islamic religion.

## **2. The Modernization of Thai Law and Islam Law**

Modernization of law in Thailand since the late nineteen century had a significant impact on the

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<sup>7</sup> At the beginning, Satun Province was not covered by the application of Islamic law. Because it has large Muslim population, the establishment of a religious court, i.e. *dato yutitham* system, was approved by the Letter of the Ministry of Justice, on the request from the Governor of Satun Province.

design of Islamic law application in Southern border provinces in the two ways: codification and constitutionalism.

### *Codification and Syariah*

Under the Ministry of Justice which was established in 1891, the traditional courts were reorganized into the Court of Justice. The modern codification of laws also started with the help of foreign legal advisors, which resulted in the promulgation of a series of Law Codes in 1920-30s. The Civil Procedure Code, the Criminal Code, and Criminal Procedure Code were promulgated in 1934. The Civil and Commercial Code (CCC), which consists of five Titles, was promulgated from 1925 to 1934 by each Title.

The drafters of these Codes well recognized the necessity to include special provisions in order to continuously authorize the application of Islamic law in the southern border provinces. Title IV “Family” and Title V “Inheritance” of the CCC were promulgated in 1934. It is provided that the Code would not affect the provision on family and inheritance for Muslims described in the Royal Decree of 1901.<sup>8</sup> Furthermore, the Act Promulgating the Civil Procedure Code of 1935 states that “if there is any law, under which custom or religious law shall be applied in any court, the court shall apply such custom or religious law instead of this Code, except for that the parties to the dispute have agreed to the application of this Code”.<sup>9</sup>

### *Constitutionalism: Thai Muslim and King’s Patronage*

Constitutional law is another dimension of the modernization of law that influenced the formation of the Islamic law application in Thailand. Thailand (Siam) shifted from Absolute Monarchy to Constitutional Monarchy through the “Constitutional Revolution” in June 1932. In the course of drafting the new constitution under the Interim Constitution of 1932, the drafters had to harmonize the traditional King’s role to make Buddhism prosperous, and the modern concept of the freedom of religion (Ishii 1994: 456). The 1932 Constitution that was promulgated in December 1932 stated that “The King shall be a Buddhist, and shall be a *sasanupathamphok* (a supreme supporter of religions)”<sup>10</sup>. According to Ishii (1994), the term “*sasanupathamphok*” traditionally refers to only Buddhism, but the drafters of the 1932 Constitution extended the concept to include other religions, and by this, tried to reconcile the

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<sup>8</sup> Section 6 of the Act on the Promulgation of the Provisions of the Title V of the Civil and Commercial Code 1934; Section 4 of the Act on the Promulgation of the Provision of the Title Six of the Civil and Commercial Code 1934.

<sup>9</sup> Section 3, paragraph 2 of the Act on the Promulgating the Civil Procedure Code 1935.

<sup>10</sup> Section 4 of the Constitution of the Kingdom of Siam, 1932 (hereinafter called 1932 Constitution).

traditional role of the King as a protector of Buddhism, and the modern concept of the freedom of religion (Ishii 1994: 456). When the People's Assembly under the 1932 Interim Constitution adopted the 1932 Constitution, the chairman of the drafting committee explains that:

The Constitution states that “the King shall be a Buddhist, and the Supreme Guardian of Religions”. The “*akkhasasanupanthamphok*” (the royal protection of the Sacred Religion) traditionally means the “the supreme supporter for the Buddhist religion”, as it was used for the however, the drafters of the Constitution extended that conception to include other religions.<sup>11</sup>

After the promulgation of the 1932 Constitution, the Division of Religious Promotion (*Kong sasanupatham*) was established within the Department of Religious Affairs, Ministry of Education. The division has the power and duty on supporting administration of the Buddhist temples and *Sangha* as well as upholding other religions that Thai citizens profess (Ishii 1994: 457).

There are seventeen written Thai Constitutions in 1932-2016, mainly due to the frequent abolishment of Constitutions by the military coups. All of these Constitutions followed the pattern of the 1932 Constitution as for the royal patronage on religion. The newly published draft of the Constitution also follows this pattern. The Section 7 of the draft Constitution of the Kingdom of Thailand 2017<sup>12</sup> provides that “the King shall be a Buddhist and Upholder of religions.”<sup>13</sup> This provision follows the pattern of the previous Constitutions in the past. The term “religions” is understood as meaning all religion including Islam. The chapter on human rights contains two sections relating to religions. First, the Section 27 on equality before the law provides that “unjust discrimination on grounds of difference in origin, race, language, ...religious belief” is prohibited (Section 27, paragraph 3). Secondly, the freedom to profess religion is also guaranteed in Section 37. It states that:

“A person shall enjoy full liberty to profess religion, religious sect or creed,

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<sup>11</sup> According to the record of the drafting committee of the Constitution of Kingdom of Siam 1932, a member explains the concept of “religious guardian” meaning that various religions in which people have faith, such as Islam religion, generally is under protection. The member continued to say that Chinese temples, Vietnamese temples are under protection, and Roma Catholic also under protection, and it has already been practice. Thus, the word such as the guardian of Buddhism, was not included. The minutes of the House of Representatives, 35/2475, dated 25 November 1932)

<sup>12</sup> The 2007 Constitution was abolished by the Coup in May 2014. At the time of writing this paper, the draft of the Constitution is yet to be signed by the King.

<sup>13</sup> Translation by the author, based on the translation of the 2007 Constitution by the Constitutional Court of Thailand: <<http://www.concourt.or.th/download/Constitution2007byIFES.pdf>> (Retrieved on December 5, 2007).

and observe religious precept or exercise a form of worship in accordance with his or her belief; provided that it is not contrary to his or her civic duties, public order or good morals.

In exercising the liberty referred to in paragraph one, a person is protected from any act of the State, which is derogatory to his or her rights or detrimental to his or benefits on the grounds of professing a religion, a religious sect or creed or observing religious precepts or exercising a form of worship in accordance with his or her different belief from that of other.”

### **3. The development of the Islam-related Legislations in Thailand**

#### *Retreat of Islam-related legislation in the 1940s*

The government led by Prime Minister Pibunsongkram (1937-44) encouraged Thai nationalism and challenged the special status of Malay Muslims. The government repealed the Section 4 of the Act Promulgating the Civil and Commercial Code, which was the basis for the application of Islamic law in 1943.

However, the period of denying the application of Islamic law did not last so long. After the resign of Pibunsongkram, new sophisticated scheme for Islam affairs was sought for. There are two factors for the rebuilding of the new scheme. First is the political change in Thailand. In replace of Pibun, who led nationalistic policy, the leaders of the Free Thai Movement, which was leading Anti-Japanese activities with cooperation of United States and Pridi Panomyong took a leadership in Thai politics after the World War II. Pridi and some political leaders took more friendly position toward Malay Muslims. Second, the Malay Muslim groupd purported to join the former British Malay states which were promised to be independent from British government. They supported the anti-Japanese military operation during the World War II. After the war, they tried to internationalize the matter of Malay Muslims in Southern Thailand. They sent a letter to the United Nations, and developed the activities to support the independence of Malaya (Surin 1982; Onozawa 1987). Although Malay Muslims' attempt was not successful, Thai government found it necessary to take more Muslim friendly and sophisticated policies in order to keep Malay Muslims remain in Thailand, and to avoid international interference to the region.

After 1945, Thailand enacted a series of statutes to rebuild Islam law regime. They are: (1) the Royal Decree on the Patronage of Muslims 1946, (2) the Act on the Application of

Islamic Law in the Area of Pattani, Naratiwat, Yala, and Satun Provinces (hereinafter called Act on the Application of Islamic Law) (1946), (3) Islamic Masjid Act 1947.

The Preamble of the Royal Decree on Patronage of Muslims of 1945<sup>14</sup> states that “the Constitution of the King of Thailand provides that the King is the Guardian of the religions, and Thai people have full freedom of religion. Taking into account that Thai people in some areas having faith to Islamic religion, it is appropriate for the King to assist and protect Muslims so that they can proceed religious matters in an appropriate way as people of independent Thailand.” In this Royal Decree, Muslims are regarded “Thai people having faith to Islam” and the King of Thailand as the Guardian of Religions will extend his protection to them (Ishii 1994). The Royal Decree also established the position of *chularachamontori*, a leader of Islam and working as an advisor on Islam matters to the King. The Royal Decree also established the Central Islam Commission and the Provincial Islam Commission, and appointed the Islam leaders to these organizations. Such legalization of Islam organization modeled the legal framework for the Buddhist organization, *Sangha*. This system does not work well as for Islam, which “characteristically has no distinction between clergy and laity (Ishii: 458-9). Legal institutionalization of Islam may, on the one hand, helps to extend legal protection to Muslims and to admit Muslim leaders’ public role, on the other hand, for the government to handle the matter of Islam more easily (Surin 1982: 101-110).

The Act on the Application of Islamic Law restore the application of Islamic law which was abolished by the Pibunsongkhram government. This Act empowers *dato yutitham* to decide the Islamic Law cases, and enables it to apply Islamic law instead of provisions of the Civil and Commercial Code. The Act is procedural, and does not have substantive rules. Islamic law cases are decided by the Principles of Islamic Law on Family and Inheritance written in Thai. Legally it has no binding effect, but it is supposed to be used in the courts. The early drafting works inaugurated in 1929; however, due to many difficulties of the drafting process, it takes a decade until finalized in 1941. This codification of Islamic law was conducted by the committee consisting of members of Ulama and Thai judges. The reason that the codification was sought are (1) The content of Islamic law differs depending on the regions, (2) It was necessary to look into some literature to determine the content of the rule, (3) Many of *dato yutitham* at first cannot speak Thai, and translator is necessary in the court proceedings, where more definite and precise wording is required. The works did not show much progress until one Thai judge started his initiative in 1939 (Surin 1982: 83).

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<sup>14</sup> The King has a power to promulgate the Decree, unless not contrary to law (Section 56 of the Constitution of 1932). The Royal Decree on Islam was proclaimed by the Regent (Pridi Panomyong).

Act on Islam Masjid introduced the registration system for Masjid, and required the approval of the Provincial Islam Commissions in appointing Imam.

When Pibul took the power again by the coup in 1947, Pridi and Cham, a Churarachamontri at that time, escaped abroad (Surin 1982: 83). In 1948, the Royal Decree on Islamic Patronage was amended, and the post of Churarachamontri was degraded merely to the advisor to the Department of Religious Affairs (Surin 1982: 83). However, the legislative framework for the application of Islamic law is never changed. Later, Sarit Tanarat took a power in replacing for Pibun by coup in 1957, assimilation policy against Muslim was strengthened again. However, the application of Islamic law was not targeted this time, and some measures were taken for traditional Islamic school (pondok or in Thai, bono) in the south, trying to reorganize them to private schools, or to interfere the curriculums (Surin: 1982; Onozawa 1987)<sup>15</sup>. The pro-democratic atmosphere in the mid-1970s after the Incident of October 14, 1973, in which the students' anti-government movements defeated the military-led government, also encouraged Malay Muslim's political movements. Some groups resorted to armed struggle and terrorism.

The increasing of education of Thai language, as well as kind of affirmative action for Muslim student in University or other educational opportunities have caused the enlargement of working opportunity of Malay Muslims in Thai society. On the other hand, there was an increase of the people who chose studying in Middle East instead of seeking for career up in Thai society (Onozawa 1987: 200). Under the authoritarian regime from the 1950s to early in the 1980s, there were only a few changes have made to the statutes relating to Islam region most of which were enacted in the 1940s.

In the 1980s, due to the increase of the people who study in Middle East countries, the examination was introduced for the selection of *dato yutitham*. In 1981, in order to give convenience to Muslims who will take Haji, the Act on the Promotion of Haji was enacted (amended in 1989 and 2016).

#### **4. Changes of the Legal Framework for Islam in 1990s**

Under the pro-democratic political changes in the 1990s, there have been some

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<sup>15</sup> Thailand introduced the primary education system under the Primary Education Act 1921, which was also applied to Southern border regions. Generally, primary schools were closely connected with Buddhist temples, and Thai teachers taught in Thai there. The curriculum also include Buddhist value. Muslims preferred traditional education institutions, Pondok. (Onozawa 1987: 197).

changes in the legislative framework relating to Islam. The Democratic Party, one of the leading political parties in the 1990s political arena, has much support in the South. Democratic movement is more favorable factor for Malay Muslims.

The most eminent achievement of Thai democratization is the promulgation of 1997 Constitution. However, as for the religious matters including Islam, the 1997 Constitution did not introduce many changes. It basically follows the logic already developed in the previous constitutions. The Constitution expands the local autonomy, and adds the provision to respect as well as encourage local culture. This provision may be useful to maintain Malay culture in Southern inhabitants.

The 1990s is the period in which Thailand experienced legal and institutional reforms in many areas due to the pro-democratic movements under the circumstances of economic development and Economic Crisis in 1997. There were some legislative changes relating to Islam in this period.

Act on Administration of the Islam Organization 1997 replaced the Masjid Act 1947 and the Decree on the Protection of Islam 1945 (amended in 1947), streamlined the provisions on Islam organizations. The basic structure of the Islamic organization does not change: It has the *Chularachamontori*, the leader of Islam, on the top, consists of three levels of commissions: Central Islam Commission, Provincial Islam Commissions, Masjid Islam Commissions. The organization and function of those commissions are provided in details. The Act also provides the procedures for registration of Masjid. The Act makes the dispute resolution officially added the function of the Central Islam Commission and the Provincial Islam Commission. This function will be reviewed later.

### *Administration of Islam religion*

The administration of Islam religion was streamlined by the Act on Administration of Islam 1997<sup>16</sup>, which replaced the relevant laws<sup>17</sup>. The basic structure of the administration of Islam is similar to that under the previous legislations. This Act is administered by the Ministry of Interior and the Ministry of Education. The Act stipulates three levels of Islam commissions: (1) the Central Islam Commission of Thailand as a national level, (2) the Provincial Islam

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<sup>16</sup> This Act consists of forty six sections, and is divided into five chapters: General Provisions (Chapter 1), The Establishment and Abolishment of Masjid (Chapter 2), Islamic Commission of Thailand (Chapter 3), Provincial Islamic Commission (Chapter 4), Masjid Islam Commission (Chapter 5), and transitory provisions.

<sup>17</sup> The following legislations were repealed and replaced by this Act (Section 3): (1) Royal Decree on the Royal Patronage of Islam Religion 1945; (2) Royal Decree on the Royal Patronage of Islam Religion (No. 2) 1948; (3) Act on Islam Masjid 1947.

Commissions which is established in each province, and (3) the Masjid Islam Commissions which are organized in each masjid. *Chularachamontri*, selected from Thai Muslim and appointed by the King, shall act as the leader on the religious matters, and an advisor on religious matters. Some features of the administration of Islam religion in Thailand is summarized in Table 4.

Thai business sector has much interest in develop business in Muslims in and outside Thailand. Krungthai Bank, a state-owned commercial bank, is the first commercial bank that started Islamic banking service. The Islamic Bank Act of 2002, established the Islamic Bank as a special governmental bank.

## **II. The Application of Islamic Law in the Provincial Courts**

This section examines the legal framework for the application of Islamic law as the mechanism for the resolution of disputes among Muslims, as well as the actual function of Islamic law application.

### *The Structure of Thai Court System*<sup>18</sup>

The Court of Justice has three tiers: (1) the Supreme Court, (2) the Court of Appeal, and (3) the First Instances Courts. The Supreme Court is located in Bangkok. There are one Court of Appeal and nine Regional Courts of Appeal nationwide. There are a few types of First Instance Courts: They include Provincial Courts and Small Claims Courts (*san khweag*) in provinces, and the Civil Courts, the Criminal Courts in Bangkok.<sup>19</sup> In addition to these, there are five specialized courts which belong to the Court of Justice: the Family and Juvenile Courts, the Bankruptcy Court, the Tax Court, the International Trade and Intellectual Property Court, and the Labor Court. These specialized courts have the status as the first instance courts, and the appeal to the decision or order of these courts is made directly to the Supreme Court, except the Family and Juvenile court (appeals to the judgment and order of the Family and Juvenile Court

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<sup>18</sup> Since 2000, Thailand has established a French style Administrative Court system which is completely independent from the Court of Justice as the part of the pro-democratic judicial reform in the 1990s. Because the application of Islamic law is allowed in family and inheritance cases among Muslims before the First Instance Courts (of the Court of Justice) in the four southern border provinces, the Administrative Court is not relevant here.

<sup>19</sup> The first instance courts, except for the provincial court and small claims court, in Bangkok are (1) Civil Court, (2) Criminal Court, (3) Southern Bangkok Civil Court, (4) Southern Bangkok Criminal Court, (5) Thonbri Civil Court, and (6) Tonbri Criminal Court.

are made to the Courts of Appeals, like other first instance courts). There were Family and Juvenile Division in the Provincial Courts, but they were gradually replaced by the Family and Juvenile Courts in most provinces. Thailand consists of seventy seven provinces including Bangkok. Provinces are grouped in nine regions (*phak*). Southern border provinces are in the Region Nine. Among the four southern border provinces, only Yala Province has two Provincial Courts: the central district and Betong district. Usually a provincial court has the family and juvenile division, and in some large city there is a provincial family and juvenile court.<sup>20</sup>

### *Islamic Law Cases*

The application of the Islamic law in the Provincial Courts is governed by the Act on the Application of Islamic Law of 1949, which has only seven sections. The Section 3 states that, in the first instance courts in Pattani, Naratiwat, Yala, and Satun provinces, in deciding any civil case relating to the matter of family and Islamic inheritance in which both a plaintiff and a defendant are Muslims, or, if it is undisputed case, a claimant is a Muslim, Islamic law on family and inheritance shall be applied instead of the provisions of the Civil and Commercial Code on these matters, except for the provisions on limitation of inheritance, whether or not the cause of action occurs before or after the effective date of this Act.

There are three requirements on the application of Islamic Law. First, the subject matter of the case must be on family or Islamic inheritance. Islamic inheritance can be broader than inheritance provided in the Civil and Commercial Code. When it is questioned *nasa*, a kind of gift before death under Syariah falls within the meaning of “inheritance” under Section 3, the Supreme Court decided affirmative (Anusorn: 1998: 37-38).<sup>21</sup>

Secondly, both parties to the dispute must be Muslims. If the case is undisputed, the claimant must be a Muslim. When a person files suit or makes a complaint under Islamic law, the person is required to explain expressly that the parties, administrator, or a claimant is Muslim, and that the subject matter is on the matter of family and inheritance that Islamic law should be applied (Anusorn 1998: 56). Whether a person is a Muslim or not would be usually determined according to the indication of religion in identification card.

Thirdly, the case must be filed to provincial courts in four provinces. One may ask whether this special procedure under this section available only for residents in the four provinces, or Muslims other part of Thailand can recourse to that procedure. The answer adopted by the Supreme Court is not restrictive, but not too liberal. The Supreme Court held that

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<sup>20</sup> Recently, it is started to assign *dato yutitham* to the Family and Juvenile Court. This change is yet to be studied by the author.

<sup>21</sup> The Decision of the Supreme Court 1203/2494 (1951).

the parties or a claimant is not necessary to have domicile in four provinces, however, the subject matter has to be within the jurisdiction of the provincial court of four provinces.<sup>22</sup>

Under Islamic law in Thailand, a Muslim male can have four wives, but the second and more wives cannot register under the current resident registration system. For the second and subsequent wives can be registered only to the Provincial Islamic Commissions. If there is any conflict whether a woman is the second or subsequent wives or not, they must consult to the Commission. The statuses of the second and subsequent wives are recognized before the Courts other than southern border provinces, e.g., the damages for a husband's death by traffic accident.<sup>23</sup>

The Act expressly excludes the limitation of inheritance from the application of Islamic law. This is because Syariah does not have any rule on the limitation of inheritance; furthermore, this was one of the problems Thai government had to resolve soon after starting its governance of the region under the Regulation of 1901, as there was no uniformity in handling cases by *To Kali* (Islamic judges). In 1905, the Ministry of Interior issued a notification entitled, the Notification regarding the Limitation of Inheritance between the Persons Professing Islamic Religion. It states that *To Kali* and To Imam of this region in total forty one persons, convening in the Pattani Regional Court on 16 June 1903 agreed that the limitation of inheritance should be one year.<sup>24</sup> The inheritance cases after November 1, 1905 shall be one year.<sup>25</sup>

In the codification works of Islamic law Principles in 1930's, some drafting member proposed to extend the limitation of inheritance to five years. They argued that one years was too short as Muslims are usually in mourning for a year, and would not contest each other. This proposal was not adopted (Anusorn 1998: 27).

Instead of giving the substantive rules on prescription of inheritance under Islamic law, the Act of Application of Islamic Law 1946 just refers to general rule on this matter under the Civil and Commercial Code. Section 1754 of the CCC provides that “[a]n action concerning inheritance cannot be entered later than one year after the death of the *du cuius* or after the time when the statutory heir knows or ought to know of such death”<sup>26</sup>

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<sup>22</sup> The Decision of the Supreme Court 102/2517 (1974).

<sup>23</sup> Information from the Secretary-general of the Office of the Judiciary on the author's interview on November 2001.

<sup>24</sup> The Section 2 of the Notification regarding the Limitation of Inheritance between the Persons Professing Islamic Religion, dated 28 April 1905.

<sup>25</sup> Section 3, *ibid*.

<sup>26</sup> English translation of §1754 of the Civil and Commercial Cord is taken from Kamol (1996).

### *Procedural features*

The most unique feature of Thailand's system for the application of Islamic law is the existence of a *dato yutitham*, a special judge on Islamic law, in the proceeding of ordinary courts. Section 4 of the Application of Islamic Law states that hearing in the first instance courts on the case under Section 3, one *dato yutitham* shall sit to hear the case with a judge<sup>27</sup>. *Dato yutitham* has the power and duty to decide the matter of Islamic law and to sign the judgment made accordance with his decision<sup>28</sup>. The decision of *dato yutitham* on the matter of Islamic law is final.<sup>29</sup>

The provisions on the challenging against judges of the Civil Procedure Code are applied *mutatis mutandis* to *dato yutitham*.<sup>30</sup> In case there is any ground that any *dato yutitham* is unable to perform its duty, the parties to the dispute can agree to select a Muslim to perform the duty of *dato yutitham* instead. If both parties do not arrive at agreement, each party submits the list of Muslim not exceeding three people, and the Chief Justice of the provincial court will select a person from the list to perform the duty of *dato yutitham* instead<sup>31</sup>.

When any case is filed, in which the application of Islamic Law is sought, the court officer will examine whether the complaint comply with requirements on formality, then send it to *dato yutitham*. If *dato yutitham* decides the case is on Islamic law, the case is handled with as a "religious case", and will be allocated to any judge in the same way with ordinary cases (Anusorn 1998: 55). At the time of the author's interviews in one court, even if the court has a division on family and juvenile division, the "religious cases" are handled in ordinary division, but the author is not sure this is common practice to all the courts.

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<sup>27</sup> Section 4 of the Application of Islamic Law Act, 1949.

<sup>28</sup> Section 4, para. 2, *id.*

<sup>29</sup> Section 4, para. 3, *id.*

<sup>30</sup> Section 5, para. 1, *id.*

<sup>31</sup> Section 5, para. 2, *id.*

**Table 2**  
**Number of Islamic Law Cases in Four Southern Border Provinces**

Year	New Case	Disposed	Pending
1993	432	430	18
1994	584	589	13
1995	693	680	26
1996	946	935	37
1997	760	733	64
1998	559	585	38
1999	445	371	104*
2000	449	454	126*
2001	492	490	128

(Source) Ministry of Justice (1997-2001).

(Note) \* The original data has inconsistency.

The Application of Islamic Law Act does not provide for the composition of the quorum for Islamic cases. The court usually consists of one or two ordinary judges, and one *dato yutitham*.

In the court room, *dato yutitham* put a gown like ordinary judges.<sup>32</sup> In the proceeding, ordinary judges will examine the facts including the examination of witness, because the authority of *dato yutitham* is limited to the matter of Islamic law. However, in practice, *dato yutitham* is involved in writing or making the order or judgment.

According to Anusorn's survey on *dato yutitham*, both retired and active, shows how they work together in the court. According to his survey, except one *dato yutitham* who just appointed at the time of survey, all the active *dato yutitham* has experience in writing a judgment or order in cases without a dispute. On the other hand, only one *dato yutitham* has experience in writing a judgment in the disputed cases. Usually there is no difficulty in undisputed cases in the matter of law and facts. One retired *dato yutitham* do not have any experience writing a judgment or order in any case. Anusorn pointed out that this is due to the negative attitude of ordinary judges against *dato yutitham* in the past (Anusorn 1998: 40).

The number of Islamic law cases is relatively small. Table 2 shows the total number of Islamic law cases in the Provincial Courts in the four Southern border provinces. Compared

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<sup>32</sup> As the time that the author visited, all the court have the room for *dato yutitham* and judges (in some courts, judges share one room, and do not have individual rooms.) The separation may be useful for the people to come to consult Islamic matter with *dato yutitham*.

with the total number of civil cases, the number of Islamic law cases are small<sup>33</sup>. The largest is the cases in Pattani Provincial Court is 200 cases in average.<sup>34</sup> No information on the type of cases is given. According to the author's interviews, 70-80% of the cases was on probation of inheritance, and the not disputed cases. There are many cases on the dispute regarding inheritance, and the cases on divorce and the payment of child support.

### *Alternative Dispute Resolution on Islamic Law Issues*

Why the number of Islamic law cases is small? Some judges and *dato yutitham* explained the reason of small number of cases, as there is a dispute resolution outside the court.

Both Masjid and Provincial Islam Commission have power to conciliate the disputes among Muslims. Sulaiman (2004) reports the activities of some Provincial Islamic Commissions. More study will be needed to figure out the function of dispute resolution in Islam Commission.

**Table 3 Cases under the Pattani Provincial Islamic Commission**

	1998	1999	2000	2001
Talaq	101	120	125	135
Taliq	131	118	120	130
Faskh	-	-	-	-
Khul	-	-	-	-
Total	232	241	245	265

(Source) Sulaiman (2004: 63).

<sup>33</sup> The total number of civil cases of four provincial courts is 847 in one year (may be in 2001). The author is not sure that this number includes Islamic Law cases or not. Probably including Islamic law cases.

<sup>34</sup> Information given by Judge Anusorn Simen to the author's interview on May 2002.

**Table 4**  
**Structure of Administration of Islamic Religion in Thailand**

<p><b>Chularachmontri: Islamic Leader</b></p> <ul style="list-style-type: none"> <li>- Appointed by the King. The name of the nominee is submitted by the Prime Minister, with the approval of all the Provincial Islam Commissions (§6).</li> <li>- Qualification: Being a Muslim; having Thai nationality by birth; Not less than 40 years old; Good knowledge and understanding of Islam; Good relationship with other religions. et al. (§7).</li> <li>- Authority and duty: Giving advices and opinions regarding matters on Islam religion to the government; Appointing the advisory committee members; Promulgating the important dates by astrology; Adjudication in accordance with <i>sharī'a</i> (§8).</li> </ul>
<p><b>Central Islam Commission of Thailand</b></p> <ul style="list-style-type: none"> <li>- Consisting of Chularachamontri, and other members appointed by the King (1) from the representatives of each Provincial Islamic Commission and (2) from the persons selected by <i>Chularachamontri</i> (one third of the number of the representatives of Provincial Islam Commissions)</li> <li>- Qualification: Basically similar to Chularachamontri. Not less than 30 years old.</li> <li>- Authority and duty: (omitted).</li> </ul>
<p><b>Provincial Islamic Commissions</b></p> <ul style="list-style-type: none"> <li>- Composition: Imam (Chair), Kodep, Bilan, and other members (6-12): Selected by the general meeting of parishioner.</li> <li>- General meeting consisting of parishioner (over 15 years old) and presided by the Chair or delegated member of the Provincial Islamic Commission of that province. Register is kept in each <i>masjid</i>.</li> <li>- Authority and duty: (omitted).</li> </ul>

(Source) The author. Act on the Administration of Islamic Religion 1997.

### *Islamic Law Principles*

What is applied in Islamic law cases? All *dato yutitham* whom the author interviewed replied that they were applying or relying on “Islamic Law Principles”. What is Islamic Law Principle? Is this Act of the Thai parliament?

Islamic Law Principles is not the Act enacted by the parliament. This was made by the committee consisting of Muslim (*dato yutitham*) and Thai judges. So it’s a kind of guideline with regard to its legal effect.

The work for drafting the Principle started in 1929 under the instruction of the Ministry of Justice. The most important reason of the codification is that most of *dato yutitham* at that time cannot understand Thai language, and they need translator for the court hearings, and the translators need more accurate authenticated translation of law. The work was finalized in 1941, but due to the ultra nationalist Pibun government, it was 1946 that the Principles came to function (Surin 1982: 83).

### *Influence of Thai Codification*

The drafting process of the Islamic Law Principles was not smooth (Table 5). At first, it seemed very easy job, at least for Thai judges. It did not take much time they realized it was tough work when it became apparent the first translation had many problems. There is the nature of Islamic law, which permits several interpretations on the same issue. Surin (1982) also pointed out there was disagreement between Thai judges and Muslim Ulama, especially living in rural area.

The final version of the Principles was prepared by strong instruction of Thai judges who were educated in Western modern law. At that time, Thailand is in a sense at the final stage of its modernization of law, as it promulgated long debated Civil and Commercial Code. The CCC provided a model for Thai judges for drafting. There is the similarity of the structure and composition between the Islamic Principles and the CCC. The Principles is consisting of 230 sections, and divided in Title I (Family) and Title II (Inheritance). They are corresponding to the Title Five (Family) and Title Six (Inheritance) of the CCC. In Malay states under British colonies, British lawyers were agent of modern Western law, on the same way, in Southern border are, Thai judges functioned as an agents for modern law.

When the author first conducted interviews in some courts in 2001, there was no initiative to amend the Islamic Law Principles; however, some *dato yutithams* had views that it should be amended. Some pointed out that the wording is ambiguous and outdated. Others argued it is necessary to enlarge the Islamic law application to other matters such as evidence.<sup>35</sup>

The informality of the Islamic Law Principles made it difficult to start any amendment. As it need more political initiatives, as well as cost and time. The lack of review procedures of the Principles also makes it impossible to take the benefit of introducing the development of Islamic legislation in other Islam jurisdictions like women's status. In 2012, the Ministry of Justice published the *Handbook of Islamic Law*, which is expected to replace the Principles.

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<sup>35</sup> The Court of Justice issued "Islam Law Handbook" in 2012, which is expected to be used as the revised version of the Islamic Law Principles.

**Table 5****Drafting Process of the Islamic Law Principle**

1929	Ministry of Justice (MOJ) instructed the Chief Justice of the Pattani Monton Court (current Pattani Provincial Court) to make Thai translation of Islamic law on marriage and inheritance. <i>Dato yutitham</i> of the Pattani Court was responsible for this. The translation was made by Mr. Tuanji Denudom.
1930	The first version was submitted to MOJ.
1931	MOJ requested the Governor of Nakhon Sri Thammarat Monton to examine the translation.
1932	<i>Dato yutitham</i> of Pattani Monton Court agreed to revision of the translation.
1935	Judicial Commissioner of Southern Region sent the translation to Satun Provincial Court.
1936	<i>Dato yutitham</i> of the Satun Provincial Court reexamined the translation as requested by the Judicial Commissioner of Southern Region, submitted the opinions against it. The existence of problems came to known.
1937	Judicial Commissioner of Southern Region proposed MOJ to organize a conference of <i>dato yutitham</i> of all the courts in order to revise the translation. The proposal was approved by MOJ.
1938	The first conference was held in Pattani Provincial Court (April 9-14). Further problems come to visible based on the opinions from each <i>dato yutitham</i> . Drafting works was designated as permanent works (Sep).
1939	Second Conference (Jan 24 –March 27). Title on Family completed.
1940	Third Conference (Aug 27-Sep 13). Title on Inheritance competed.
1941	Judicial Commissioner of Southern Region submitted “Islamic Law Principle on Family and Inheritance” to the Permanent Secretary of MOJ.

(Source) Made by the author, based on the information provided by MOJ (1982). MOJ (1982) is the publication compiling the official letters exchanged between MOJ and the judges responsible for the drafting.

*Dato Yutitham*

The next question is “who is *dato yutitham*?” As showed in the previous sections, *dato yutitham* is responsible for the application of Islamic law in Thailand. Who is *dato yutitham*? What is their role in the court proceedings, dispute resolution in general, or in Muslim society?

The term *dato yuthitham* is a combination Thai and Malay words. “Dato” comes from “Datuk”, which means the traditional titles given to socially respected persons in Malay society; however, the spelling here rather reflects the pronunciation of people in Southern Thailand who tends to speak more quickly (Anusorn 1998: 14). On the other hand, the word *yutitham* means “justice” in Thai. It should be noted that it is termed so that it can be distinguished from ordinary judges. Judges of the court of justice are called *phu phiphaksa*, and judges of the Constitutional Court, and the Administrative Courts are called *tulakan*.

The most remarkable feature of *dato yutitham* is that it belongs to the Judiciary. *Dato yutitham* is one of the judicial officers. Section 6 of the Act on Regulation of Judicial Civil

Official of the Court of Justice 2000 defines a “judicial public servant” consists of (1) a judicial officer who acts as a judge, (2) a *dato yutitham* and (3) an officer of the Court of Justice who act as officer. *Dato Yutiham* is defined as “a public officer appointed to have the power and duty to decide the matter of Islamic law”.<sup>36</sup> It seems that the first usage of *dato yutihami* in government gazette is in 1933, when a *dato yutitham* was appointed. The first Act that provides that *dato yutitham* as one of the judicial officer is the Act on the Regulation of Judicial Civil Office of 1942, which replaced the Act on 1936 (amended 1940). *Dato yutitham* as an institution was once repealed in 1943 at the time of Phibul government<sup>37</sup>, the provisions on *dato yutitham* was recovered in the amendment in 1946<sup>38</sup>.

The qualifications required for *dato yutitham* under the current law are as follow:

(1) Satisfying the qualification under Section 26 (1), (5), (6), (7), (8), (9) and (10);<sup>39</sup>

(2) Not less than 30 years old;

(3) Having knowledge of Islamic religion, and being capable of being an adjudicator on the matter of Islamic law relating to family and succession; and

(4) Being a person who has knowledge on Thai language knowledge capable of being certified of a graduate from the secondary school, or the equivalent as accredited by the Ministry of Education as not less than the secondary education.

The requirement of the ability of Thai language was first introduced in 1943, and later the level of the primary school is required.

The remuneration for *dato yutitham* is decided accordance with the schedule annexed to the Act. The schedule for *dato yutitham* is separated from the schedule of ordinary judges, as the working condition and post are different. The remuneration consist of monthly salary and position allowance. The monthly salary for *dato yutitham* has three levels: C1: 25,370, C2: 23,570B, C3: 21,800B, and a position allowance is fixed as 7,900B per month for all levels. Due to the recent judicial reforms, the remuneration for judges and *dato yutitham* has increased.

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<sup>36</sup> The Judicial Civil Official Act 2000, §6.

<sup>37</sup> Amendment by the Act on the Regulation of Judicial Officer (No. 2) 1943. The provisions on *dato yutitham* was omitted.

<sup>38</sup> The Act on the Regulation of Judicial Civil Officer (No. 3) 1946.

<sup>39</sup> They are general qualification required for judges. They include: Section 26 (1) having Thai nationality by birth; (5) not having mal conduct contrary to public moral; (6) not insolvency; (7) not in special leave or suspension of public office by an order under this Act or other laws; (8) not having been disciplinary dismissed or removed from public office, a state-owned enterprise or other office of the state; (9) not having been sentenced to imprisonment for two years and more, except that the crime has conducted inadvertently or misdemeanor; (10) not being a incapacitated person or a quasi-incapacitated person, not having unsound mind, or not having a mind and body not suitable for working as a judicial officer, or not having a disease designated by the Judicial Commission.

*Dato yutitham* is appointed by the King, like other judges. There is no limitation of term of office except for retired age. The provision of retired age as 65 years old also apply to *dato yutitham*.

One difference between ordinary judges and *dato yutitham* is rotation. Ordinary judges change their court periodically (usually one or two years). On the contrary, there is no rotation for *dato yutitham*. They continue to work at the appointed court.

### *Appointment and Selection*

The process of selecting *dato yutitham* was reformed in 1980s. Traditionally, *dato yutitham* is selected by a selection committee of each province consisting of the Governor and imam of that province. As the number of students studying Islam in Middle East countries increased, they started to demand the change of selection system of *dato yutitham* by introducing examination system like other public office (Chumporn 1996: 156-9). In responding this demand, Ministry of Justice introduced a new selection procedures for *dato yutitham* in 1984.<sup>40</sup>

Under the new system, a committee for training *dato yutitham* is set up to provide for training courses and examination for candidates for *dato yutitham*. The committee is headed by the Chief Justice of the provincial court, and include *dato yutitham* and imam as members. When there is a vacancy in *dato yutitham* of any province, the Chief Justice of the Region will make a public offering. Applicant is required to take a training course, which include Islamic law on family and inheritance, and the duty and ethics of judicial public servants. The list of the applicants who has passed the examination after the training course is submitted to the Chief Justice of the Region. After consulting with the Governor of the province and the Chief Justice of the provincial court, the Chief Justice of the Court makes the list of the adequate persons from the candidates, and send it to the Minister of Justice. The Judicial Commission will consider the list submitted by the Minister of Justice. The list is submitted to the King, who appoints the *dato yutitham* (Chumporn 1996: 156-9).

Two *dato yutitham* are appointed for each provinces. So there are eight *dato yutitham*. Yala Province has two Provincial Courts: Yala and Betong. When the author interivews in 2001, *dato yutitham* are appointed only in the Yala Provincial Court, and they are responsible for the cases in Betong Provincial Court. Later the number of the *dato yutitham* in Yala Province increased to three.

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<sup>40</sup> Ministerial Decree No. 11, dated December 24, 1984.

### *Educational Background*

As mentioned before, the increase of the students to Middle East has encouraged to the introducing examination system in 1984. How is the educational background of *dato yutitham* now.

According to Anusorn's survey, the educational experience in Thailand of *dato yutitham* is not so high. There is no person who graduated only primary school, but the number of those got Bachelor degree in Thailand remain three. All of them had an educational experience in abroad, and mostly Middle East countries. In this survey, no information given on which country they graduated.

Among six *dato yutitham* with whom the author interviewed, five have experience of education in Middle East countries including, Saudi Arabia, Kuwait, Jordan, Egypt, and one *dato yutitham* educated only in Thailand.

In addition to working in the court, *dato yutitham* sometimes give lectures on Islamic law for Muslim and sometimes for *imam* in masjid and Islamic educational organizations. Though such contribution to the community is not required by the law, *dato yutitham* perceive that it is their duty to lead the people in Muslim community. After the exam was introduced, for those graduated from Middle East countries, becoming a *dato yutitham* would be one career path of a leading person in Muslim community.

### *Dato Yutitham as a Conciliator*

One important feature of *dato yutitham* is that he may work as a conciliator in and outside the Court. According to Anusorn (1998), all the *dato yutithams* except one just appointed at that time, have experiences of conciliation in the court. The cases they worked as a conciliator are the cases on family and inheritance (40%), others (20%). On the other hand, 20% of the judges answering the question on what they expect *dato yutitham*, replied conciliation (Anusorn 1998).

Sometimes *dato yutitham* are involved in criminal cases, in which they don't have any authority under law. When a suspect in a criminal case is Muslim, judges sometimes ask *dato yutitham* to conciliate or mediate between parties.<sup>41</sup> These cases include rape or other sexual matter, the relationship with people of other religion. Although the survey uses word "conciliator", the role of *dato yutitham* here seems rather broad. In Thailand private

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<sup>41</sup> It seems a local practice as when the author interviewed at the Satun Provincial Court in November 2002, the *dato yutitham* of the Court were not involved in criminal cases like other courts. The Chief Justice of that court was interested in this idea to have *dato yutitham* involved in criminal cases as the author informed him about that.

prosecutions is allowed by law, and in such cases the process of conciliation or mediation between parties sometimes works very well. Another type of involvement is that *dato yutitham* contacted Muslim suspect informal. Sometimes it makes the suspect change his mind to confess, and it results in the reduce of penalty. *Dato yutitham* perceive that these are their important function and these function comes from not the official status as Islam law judge, but from sympathy sharing common language (*Yawee*; Malay language) and being Muslim.<sup>42</sup>

### *Dispute Resolution outside the Court: Islam commissions*

*Dato yutitham* whom the author interviewed have a perception that the number of Islamic law cases in the court is small, and the reason of this is the existence of dispute resolution procedures outside the court such Islamic Commissions.

Any dispute or disagreement among Muslim is usually resorted informal dispute resolution such as consultation with imam in masjid or in the residence of imam, before referring their conflict to more formal dispute resolution process in the Islam Commission. As already showed in Table 4 (p. 21), there are three level of Islam commissions: Central Islamic Commission of Thailand, Provincial Islamic Commission, and Masjid Islamic Commission. The dispute resolution is conducted by the commissions of masjid and province level. According to one *dato yutitham*, the commission's authority was not limited to the matters on marriage and inheritance, so the parties can bring any problem relating to Islamic law. *Dato yutitham* sometimes gives advices to the Commissions in dispute settlement. But they tried not to be a member of the committees organized to resolve the particular case, as such case may come to the court later. Other than this, some people come to consult *dato yutitham* about the legal matters. Such functions seem to contribute to reducing the number of cases going into the formal procedures in the Courts.

### *Relationship with Community*

There is a rotation system for judges of the Court of Justice, and the judges attached to one Court may change in a few years. It is not unusual that a judge newly attached to the court in Southern border region, lacks any knowledge about Islamic law<sup>43</sup>. There is no such rotation system for *dato yutitham* like ordinary judges, and they continue to work in the same Court, in the same province. Nobody in the Court will know better than *dato yutitham* about the

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<sup>42</sup> The author's interview in 2002. .

<sup>43</sup> Anusorn argues that it is necessary to have a training course of Islamic law for the newly attached judges to the provincial courts in Southern border region, in order to fill the perception gap between judges and *dato yutitham* (Anusorn 1998).

communities there. *Dato yutitham* has much free-hand in deciding Islamic Law issues. Furthermore, his authority as an expert on Islam law enable them to work in Muslim society like a conciliator or mediator. The actual authority of *dato yutitham* come from not only its legal status as a member of the court, but also may be much more from its leading position in Muslim community. High educational background of Islam law and long working experience would give them the highly respectable status.

## Conclusion

In handling the matter of application of Islamic law, Thailand has not established the Syariah Court system that have been adopted by other Southeast Asian countries after their independence. Instead, Thailand appoints *dato yutitham* to decide Islamic law issues in the cases relating to family and inheritance between Muslims in the Court of Justice. Historically, this system emerged from the needs of Thai government which did not want Muslim law experts working outside the control of Thai officials in the early twentieth century, when Thai central government started to extend its substantial control to the southern border area. From the viewpoint of (secular) judges, *dato yutitham* has been an essential factor in doing justice because they cannot handle cases in Muslim-prevailing Southern communities without help of *dato yutitham*.<sup>44</sup> Two different legal systems -- Thai State law and Islamic law -- work differently in the same place of the Court, and *dato yutitham* work as a connecting point.

The ordinary judges' perception of the role of *dato yutitham* may be similar to their willingness to use the expertise of the expert other than judges in the exercise of its function for dispute resolution. For example, the system of "Associate Judges" (*phuphipaksa somthop*) enables the Court to utilize the knowledge and skill of the experts outside the Court. It is introduced in five specialized courts that belong to the Court of Justice: Family and Juvenile Court, Labor Court, and Intellectual Property and International Trade Court. Associate judges are appointed by the King among experts on that area, but not a professional judge. They are ad hoc member of the bench. Their background of associate judges differs depending on the subject matter that each court deals with. The aim of this system is to encourage and improve quality of court proceedings.<sup>45</sup> From the viewpoint ordinary judges, *dato yutitham* provides supplementary

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<sup>44</sup> Anusorn (1998) explained that the basis of *dato yutitham* system was on the fact that the people confessing and studying the religious understand the matter of that religion most, and that Islam has many schools and its content is very difficult to understand.

<sup>45</sup> There are some differences between *dato yutitham* and associate judges. Associate judges are

knowledge like associate judges.<sup>46</sup>

### **Selected Bibliography**

- Anusorn Simen 1998. *Botbat khong dato yutitham nai kanchai prarachabanyat waduai kanchai kotmai isalam nai khet cangwat pattani narathiwat yala lea Satun phor sor 2489*. [in Thai] (The Role of *Dato Yutitham* in the Application of the Act on the Application of Islamic Law in the Area of Provinces of Pattani, Naratiwat, Yala, and Satun, 1946) [in Thai], Unpublished Paper prepared for Songkhlar Nakhalin University, Thailand.
- Chaiwat Satha-anand 2005. *The Life of This World: Negotiated Muslim Lives in Thai Society* (Singapore: Marshall Cavendish).
- Chumporn 1996. *Phrarachathammanoen san yutitham* (Charter of the Court of Justice) (11th edition, Bangkok: Nititham Publishing) [in Thai].
- Damrongsak Ayuwatana 2004. *Thai nai malesia* (Thai in Malaysia) (Bangkok: Ekalak Nansue Di) [in Thai].
- Funston, John 2006. "Thailand," in Greg Fealy and Virginia Hooker, comp. and ed., *Voices of Islam in Southeast Asia: A Contemporary Sourcebook*, (Singapore: Institute of Southeast Asian Studies, Singapore), pp 77-88.
- Imaizumi, Shinya 2003. "Tai Shiho Saibansho ni okeru dato yutitamu no yakuwari (The Role of Dato Yutitham in the Court of Justice in Thailand)," in M. Kobayashi and S. Imaizumi eds., *Ajia Shokoku no Funso Shori Seido* (Dispute Resolution Systems in Asian Countries), Tokyo: Institute of Developing Economies) [in Japanese].
- Imanaga, Seiji 2000. *Islam in Southeast Asia* (Kyoto: Keisuisha).
- Ishii, Yoneo 1994. "Thai Muslims and the Royal Patronage of Religion," *Law and Society Review*, 28(3), pp. 453-460.
- Kamol Sandhikshertin 1996. *The Civil and Commercial Code, Books I-VI, and Glossary*

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appointed by the King, but not permanent governmental official, and there is little restriction on doing other jobs or business. *Dato yutitham* is a permanent Judicial Civil Officer similar to judges, and court clerks. *Dato yutitham* has authority to really decide cases within its authority; on the other hand, associate judges, in practice, usually do not write a judgment, though there is no explicit restriction their power and duty. Their function is usually not more than advisory for judges. The real function of associate judges differs depending to the courts.

<sup>46</sup> According to Anusorn's survey, there seems to be disagreement among judges about whether the authority or power of *dato yutitham* should be broadened or not. Many judges see *dato yutitham* need more training in investigation or examination of evidence and facts. Some expects *dato yutitham* to take much role on the matter of fact, as *dato yutitham* know well of the situation of the jurisdiction more than professional judges. One *dato yutitham* told that the matter of law in Islamic law cases was not difficult, and the matter of fact was more complicated.

(Bangkok: Nitibannagarn).

Ministry of Justice (MOJ) 1982. *Kansamana kanchai kotmai islam nai khet cangwat Pattani Naratiwat yala lea satun* (Seminar on the Application of Islamic Law in the Area of Provinces of Pattani, Naratiwat, Yala, and Satun) [in Thai].

\_\_\_\_\_ (1997-2001), *Raigan prajam pii athibodhi phuphiphaksa phaak 9*. (Annual Report of the Chief Justice of the Region Nine) [in Thai].

Mohamed Yusoff Ismail 1993. *Buddhism and Ethnicity: Social Organization of a Buddhist Temple in Kelantan* (Singapore: Institute of Southeast Asian Studies ).

Omar Farouk Banunid (1999), “The Muslims in Thailand: A Review”, *Southeast Asian Study* (Kyoto University, Japan; Japanese title: *Tonan ajia kenkyu*), 37. pp. 197.

Onozawa, Masayoshi (1987), *Tai noisuramu kyo toniokeru bunka to kyouiku* (Culture and Education of Muslims in Thailand), in *Ajia no bunka to kyouiku* (Culture and Education in Asia) (Yoshio Gondo and Kazuhiko Hironaka eds., Kyushu University Press) [in Japanese].

Sulaiman Dorloh 2004. “Enforcement of Shari’iah in Thailand: Islamic Family and Inheritance Laws in Southern Thailand,” in Hussin Mutalib ed., *Islam and Democracy: The Southeast Asian Experience* (Singapore: Kornad-Adenauer-Stiftung Singapore/ Center for Contemporary Islamic Study, Singapore).

Surin Pitsuwan 1982. *Islam and Malay Nationalism: A Case Study of the Malay-Muslims of Southern Thailand*. A thesis Harvard University.

Yuasa, Michio (1997), *Isuramu ho no dento to kindaika* [Tradition and Modernization of Islamic Law] in Masaji Chiba ed., *Ajia shokoku niokeru isuramu ho no ishoku* [Transplantation of Islamic Law in Asia] (Tokyo: Seibundo), pp. 25-27. (in Japanese).

## **Appendix I. List of Legislation**

1. Constitution of the Kingdom of Siam B.E. 2475 (1932)
2. Constitution of the Kingdom of Thailand B.E. 2550 (2007).
3. The draft of the Constitution of the Kingdom of Thailand B.E. 2560 (2017)
4. Regulation regarding the Governing the Area of Seven *Hua Muang* 1901 (R.S. 120) (Government Gazette, Vol. 18, pp. 314-320, dated December 22, 1901). (repealed)
5. Notification Prescribing the Limitation of Inheritance between the Persons Professing Islam Religion, dated 28 April 1905 (Government Gazette, Vol. 22, p. 121, dated 7 May 1905). [repealed]
6. Act on the Application of Islamic Law to the Area of Provinces: Patani, Naratiwat, Yala, and Satun Province B.E. 2489 (1946) (*Government Gazette*, vol. 63, no. 77, dated 3 December 1946, pp. 633-637. Come into force on 4 December 1946 under Section 2).
7. Notification of the Office of the Council of Ministers No. 2 Re: under the Royal

- Decree on the Protection of Islam Religion, dated 13 November 1954 (Government Gazette, Vol. 71, No. 76, pp. 1774-5, dated 23 November 1954).
8. Act on the Administration of Islam Religious Organization B.E. 2540 (1997). (Promulgated in the Government Gazette, Vol. 114, No. Kor65, dated November 9, 1997).
  9. Act on the Judicial Public Servants of the Court of Justice B.E. 2543 (2000).
  10. Act on Promotion of Haji Act B.E. 2524 (1981).
  11. Act on Promotion of Haji (No. 2) B.E. 2532 (1989).
  12. Act on Promotion of Haji (No. 3) B.E. 25
  13. Act on Islam Bank of Thailand B.E. 2545 (2002) (Promulgated in Government Gazette Vol. 119, No. Kor108, pp. 1-15, dated October 21, 2002).
  14. Act on Mosque B.E. 2490 (1947) (repealed in 1997)
  15. Royal Decree on Patronage on Islam B.E. 2488 (1945) (repealed in 1997)
  16. Royal Decree on Patronage on Islam (No. 2) B.E. 2491 (1948) (repealed in 1997)

## Appendix

### Muslim Population and the Number of Masjid in Thailand

	2000 Census				2010 Census				Number of Masjid
	Total (A)	Buddhist	Muslim(B)	B/A	Total (A)	Buddhist	Muslim(B)	B/A	
Pattani	595,985	114,488	480,456	80.6%	609,015	94,507	513,841	84.4%	580
Yala	415,537	128,398	285,695	68.8%	433,167	100,778	331,747	76.6%	356
Naratiwat	662,350	118,198	542,954	82.0%	670,002	93,968	575,585	85.9%	523
Satun	247,875	78,821	167,447	67.6%	274,863	89,715	184,552	67.1%	167
4 Provinces	1,921,747	439,905	1,476,552	76.8%	1,987,047	378,968	1,605,725	80.8%	1,626
Whole Kingdom	60,916,441	57,157,751	2,777,542	4.6%	65,981,660	61,746,429	3,259,340	4.9%	3,109

(Source) *Population and Housing Census*. 2000 & 2010. Annual Report of the Department of Religion, Ministry of Education.