

Formulating and Implementing a *Shari'a*-Guided Legal System in Brunei Darussalam: Opportunity and Challenge

ABSTRAK

Sejak pertengahan dasawarsa 1950-an, cendekiawan dan tokoh agama di Brunei mulai menegaskan bahwa berbagai peraturan dalam urusan agama Islam dan sistem hukum, yang merupakan warisan zaman protektorat Inggris, adalah berat sebelah dan mengelirukan karena semuanya akan bermuara pada penganaktirian hukum Islam dan dalam jangka panjang meminggirkan agama dari wacana publik. Mereka melihat tantangan ini sebagai "noblesse oblige" dan memutuskan untuk membawa kembali tradisi hukum dan mahkamah Brunei selaras dengan tuntutan ajaran agama. Memang, Undang-Undang Dasar 1959 menentukan, di antaranya, bahwa Islam sebagai "agama resmi" negara. Kemudian sejak akhir 1960-an, ketentuan undang-undang ini telah mendapatkan perhatian serius dan ulangkaji dari para pakar Brunei. Menarik untuk mempertanyakan sejauh mana pengaruh pencarian akar Islam dan penemuan wawasan Islam di Brunei kontemporer mempengaruhi perumusan dan sekaligus proklamasi Melayu-Islam-Beraja (MIB) sebagai falsafah yang juga bertindak sebagai ideologi bernegara-bangsa? Sebagai realisasinya, sistem hukum dan penanganan keadilan di Brunei sudah selayaknya dijadikan sepenuhnya berwatak Islam, sebagaimana yang berlaku sebelum campurtangan Inggris. Namun uniknyanya, dan ini menjadi pembahasan penting dalam artikel ini, argumen yang berkembang di kalangan pakar hukum Islam di Brunei sejak pertengahan 1990-an adalah bahwa sistem hukum yang ada dan berlaku tidak perlu dirombak total, melainkan ia perlu disusun semula dan dirapikan sehingga selaras dengan prinsip hukum Islam. Bagaimana caranya? Seorang petinggi agama, yang memegang jabatan Hakim Shar'i, berdalih bahwa memang perlu dilakukan ulangkaji menyeluruh terhadap semua produk hukum di Brunei untuk memastikan semuanya selaras, atau minimal tidak bertentangan, dengan ajaran dan prinsip hukum Islam.

Kata-kata kunci: agama Islam dan hukum shar'i di Brunei, warisan hukum kolonial Inggris, dan perlunya reformasi hukum Islam.



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INTRODUCTION

In the post Pacific War (1939-1945), Brunei scholars and religious leaders consider diverse schemes in the administration of Islamic affairs and their legal stipulation – legacy of the British residential period – as biased and tendentious as they aimed to undermine religious law and in the long run push the religion aside from the public sphere. For them it is their primary duty to bring back Brunei's legal and judicial tradition consistent with its pledge to religious principles. Indeed, the 1959 Constitution stipulates, among other things, that Islam is the official religion of Brunei. Since the late 1960s, this stipulation has won serious re-consideration and examination by various religious experts in the country. Can then the promulgation of the Malay-Islamic-Monarchy (in Malay MIB, *Melayu-Islam-Beraja*) as the national philosophical-cum-ideological underpinning an outcome of that search for Islamic roots and realization of Brunei's Islamic vision?

For them, Brunei's legal system and administration of justice must be turned fully Islamic as was the case in the pre-residential period. This does not mean, however, they argued in the mid-1990s, that the existing legal system should be totally abrogated, rather it should be restructured and fashioned in accordance with Islamic principles. How? An higher religious official, today's *Hakim Syar'ie* (*Shar'i* Judge), maintained that exerted and comprehensive reviews of all laws in the country are necessary to ensure that they are in accordance with Islamic teaching and principles, or at less not incongruous with them.

The demand to maintain Islamic identity, including the *shari'a*, found more listening ears in the post Pacific War. Despite the fact that the residency gave a special niche to Islam, the *shari'a* was only given a token presence with the codification and implementation of the Mohammedan law after 1911. In the 1950s, the major reform of Islamic institutions and law, concomitant with the overall first development plan launched in 1953, was initiated. The Mohammedan law was amended in 1955 to accommodate more truly Islamic contents, even though the Islamic court remained untouched. With independence achieved in 1984, the demand to fully implement the *shari'a* became more vocal. Can this be seen as another version, in an opposite direction, of what the British resident had done in 1906 with the Westernization of Brunei's legal system? Is such a revolution in the legal matters more politically motivated than any other inspiration, including ideology or philosophy?

This paper seeks to elucidate the conducive environment and opportunity for Islamizing Brunei's legal system referring to the executive decrees, resurgent Islamic spirit and vigor and institutional reforms. At the same tone, the legal status quo which has proven to bring order and stability and create the atmosphere of living justice remains the major challenge to the proponents of the *shari'a* law and its judiciary. This is especially so since professionalism of the existing *shari'a* court has been considered second after that of the conventional one. In other words, many in Brunei continue to insist that before discarding the prevailing legal system, including judiciary, the proponents of the *shari'a*

law must prove that it deserves priority, a kind of the *da'wa bil-'âl* in the legal issue. This paper will show that this last point forms the most pressing issue which must be dealt by all those who love to see the *shari'a* and all its paraphernalia fully inspire the legal system in the country.

LEGAL INSTITUTION AND ISLAMIC LAW IN BRUNEI: A BRIEF SURVEY

Daniel S. Lev regards legal institutions, whether secular or religious, as basically derivative from the primary institutions of political process. What law is, according to him, depends upon what it is allowed to be by conditions of political power and authority, and these conditions in turn are determined by a wide variety of social, cultural and economic forces. When the conditions change, the law must also change, sometimes explicitly but at the very least implicitly. In new states, the conditions of political power and authority have changed. In some the change has been violent, in others peaceful. The consequences of such efforts for legal institutions, in many new states, have been "to render them shell-like, pristine on the outside but with indeterminate contents" (Lev, 1972:2). In order to understand legal systems in the midst of political transformation, Daniel S. Lev insists that we must examine them from the ground up to find out what sort of political and social space is allotted to them, what kinds of functions they are permitted to serve, encouraged to serve, and forbidden to serve (Lev, 1972:3).

When analyzing the Indonesian legal system in the 1960s, Daniel S. Lev claims that Indonesia's case is unique:

By contrast, the Indonesian case seems curiously the same yet wholly different. Indonesia's governing elite is by no means Islamically inspired, but it has not been able to establish its authority over areas of life controlled by Islamic institutions. Instead of a rapid or gradual decline, Islamic legal institutions have in some ways grown stronger. Although in the long run it appears that civil bureaucratic institutions are likely to win out over the Islamic bureaucracy, for the foreseeable future religious courts and offices seem to be able to hold their own. The present place of Islamic courts and law in Indonesia helps to illustrate essential differences from other Islamic countries [...] (Lev, 1972:231).

Of course Daniel S. Lev's generalization on the eclipse of Islamic law in all other Muslim countries is misnomer as can be seen today. However, the relevance of his argument to this paper is that Brunei's case is the revival of what Daniel S. Lev imagined in the 1960s, the persistence and even resurgence of Islamic law in Brunei. This paper is not pursuing this issue, at least for now, but to look further into the backgrounds and roots of its vitality.

Not only that Brunei experienced a different colonial master and stage of colonial exploitation,¹ it has never been openly exposed to the *Salafi*, let alone

¹For further discussion of colonialism and imperialism in Southeast Asia, see Paul Kratoska (2001). A stimulus to write this article has come from discussion between colleagues and students at my Department (History), University of Brunei Darussalam, especially in

Abduhism, yet Brunei saw the major legal reform after the installment of the British resident in 1906. Immediately by 1908, Islamic judiciary was assigned only a narrow room for adjudication and authority, comparable to what had taken place in many other protectorate states under the British system (Horton, 1985; and Siti Zaliha bte Abu Salim, 1992:106-107).

Political dominance is more influential in the formation and implementation of the colony's legal system than any liberal idea of punishment. The fact that Brunei had developed some stable system and administration of justice, a number of scholars argue, as I have shown elsewhere, that the disrobing of its own legal system by the British was lopsided and unwarranted. Moreover, a comparable phenomenon can also be detected when, as I shall show in the end of this paper, the new generations in the country argue the importance or returning and upholding the true Islamic concept of law and its administration. Now, it is imperative to briefly present what those system and administration are. I shall do this by presenting a brief survey on the legal history of the country.

Such a brief survey of pre-colonial Brunei is necessary putting into relief the idea behind changes wrought after the introduction of the residency system in 1906. The absence of legal documents in the country beyond notes by officials and travelers and a sole text of the well-known *qanun* law,² known as *Hukum Kanun Brunei* (HKB), and the fact that colonial (read British) legal system has come to fore, a general neglect of pre-colonial system prevailed. Since independence in 1984, a few studies on the background of the country's legal system emerged, understandably a response to national pride and search for national identity. Almost naturally this trend led to focusing on Islamic character of the Sultanate, including its legal system and judiciary.

A few recent studies on Brunei's legal history and system shed more light on the character of its traditional judicature. Siti Zaliha bte Abu Salim (1992:437-438), who has a thorough and comparative study of Islamic legal system, pre-colonial Brunei's judiciary and the prevailing system, argues that despite the acceptance of Islam by the state and society in Brunei, its legal system was not fully Islamic. Its legal concept and judicial practice were a mixture of the *adat* and the Islamic law. Siti Zaliha bte Abu Salim contends that the major defect in 19th century Brunei's judiciary can be traced to the role played by the executive in administering justice.³ The role of the executive in the judiciary led to the

the past three years. I also benefited from ideas and questions put forward by paper presenters in various seminars, particularly *International Seminar Islamic Law in Southeast Asia: Opportunity and Challenge*, December 7-9, 2007, Syarif Hidayatullah State Islamic University, Jakarta and *5th Euroseas Conference*, September 12-14, University of Naples "l'Orientale", Naples, on Islam and the Legal System. None, of course, bears any responsibility whatsoever for the following discussion.

²Siti Zaliha bte Abu Salim (1992:528-572), however, insists that a different text of Brunei's law digests has some interesting details at variance with the widely referred text.

³Siti Zaliha bte Abu Salim (1992:438) said that "*Satu kesilapan yang dilakukan Brunei mengenai pembahagian bidang kuasa ini [mentadbir kehakiman] ialah penyerahan tugas kehakiman kepada ahli-ahli eksekutif yang tidak memenuhi syarat-syarat perlantikan hakim dalam Islam*".

corruption and injustice, especially when the executive came from among the greedy officials. Misuse of power and interference in the administration of justice by the executive were not limited to the capital city but also spread to the outlying regions which had enjoyed their own autonomy.⁴ Consequently when the country was at its nadir and foreign powers sought for reasons to interfere such corruption and injustice provided them with plausible moment. Indeed, the smooth implementation of legal reform during the residency period (1906-1959) underlines this state of affairs in legal practice (Siti Zaliha bte Abu Salim, 1992).

Masnon binti Haji Ibrahim (1991) and Mahmud Saedon bin Othman (2003) maintain the prevalence of Brunei's versions of the Melakan Digest (HKB, *Hukum Kanun Brunei*), a mixed, fragmentary, but rich, legal text, as an all inclusive treatise on the legal practice in Brunei before the introduction of the British administration in 1906. They insist that with the enforcement of this legal document, Islamic law has been enforced and that it had become the basic law and policy of the country at that time. Like many others in Brunei, they argue that the imposition of Islamic '*udûd*' punishment on murder and theft cases, even as late as toward the end of the 19th century demonstrates that definite administration of justice prevailed based on Islamic law.

Pengiran Mohammad bin Pg. Haji Abd. Rahaman asserts that some form of Islamic legal system survived in Brunei until the introduction of the British residency in 1906. From the scattered evidence culled from the Brunei sources, Pengiran Mohammad bin Pg. Haji Abd. Rahaman suggests that the main components of the law consisted of the *shara'* and the *resam*. The continuing application of this principle in the 19th century led the British to insist on extra-territoriality clause in the agreements of 1847 and 1856 (Pengiran Mohammad bin Pg. Haji Abd. Rahaman, 1991:210-218).

As a demographic feature that Brunei Darussalam has an area of some 5,700 square kilometers and a population of about 380,000. According to government statistics of citizens, there are 171,892 Muslims; 8,901 Buddhists; 3,530 Christians; 372 Catholics; 32 Baha'is; 131 Hindus; 23 Atheists; 22 Taoists; 18 Sikhs; 17 Jews; and 3 Nasranis; as well as 32 individuals of other faiths and 7,884 who did not state their faith.⁵

Among permanent residents, according to the same statistics, there are 13,911 Muslims; 9,088 Buddhists; 3,088 Christians; 322 Catholics; 40 Baha'i; 99 Hindus; 11 Atheists; 18 Taoists; 15 Sikhs; 13 Jews; and 2 Nasranis; as well as 31 of other faiths and 6,910 who did not state their faith. These statistics did not cover a large expatriate population of temporary residents that included Muslims, Christians and Hindus. There are 109 mosques and prayer halls, 7

⁴*Ibid.*, pp.47-48. Obviously the open and participative structure of local communities had given way to exerted pressure from the center.

⁵See "Brunei" in *International Religious Freedom Report 2007*, released by the Bureau of Democracy, Human Rights and Labor on September 14, 2007, The U.S. Department of State. Available at: <http://www.state.gov/g/dd/ds/irf/2007/90130.htm> [accessed at Bandar Seri Begawan: 10/9/2008].

Christian churches, 3 Chinese temples, and 2 Hindu temples officially registered in the country. Proselytizing by faiths other than the officially sanctioned branch of Islam is not permitted. There are no missionaries reported working in the country.

ASSESSING THE ROOTS AND OUTGROWTH OF LAW AND ITS ADMINISTRATION: SOCIO-LEGAL HISTORY

Brunei has been proud of preserving its traditional political system, which left a written legal document the *Hukum Qanun* (Legal Digest). Opinion, however, markedly differs on its historicity and actual implementation before the 20th century. Whatever the actual implementation and positive legality of the Digest, it is clear that during the heyday of the Brunei Sultanate in the 16th century, as witnessed by the Spaniards (Boxer Codex of 1599), it had established courts administered by definite legal officials-cum-executives. Four higher officials (*Wazir*) such as *Bendahara* and *Temenggung* had their respective autonomous courts using the *adat* laws, such as or comparable to those listed in the Digest. At the same time, the *shara'* laws as prescribed in the *Shafi'i* texts were used by the Muslim judge (*qadi*), appointed by the Sultan to administer justice based on Islamic law. The stipulation of such *shara'* laws is also found in the Digest. A Brunei historian has recently suggested that if during the British residency, the *qadis* and their courts were subordinate to the civil judges, before the 20th century, the *qadis'* court had been overwhelmed by the *wazir'* courts as the latter, unlike the *qadis*, were not responsible or answerable to the Sultan (Dato Haji Metussin bin Haji Baki, 2005). Although such a claim is not satisfactorily proven,⁶ it is an interesting comparison since the legal system and judiciary of pre-20th century Brunei remained an enigma. During its political nadir in the 19th century, Brunei's administration of justice had become the object of criticism by the many British officials.

The central government as seen by Spencer St. John, for example, failed to administer justice, even in its own backyard. It was the self-help of the local community that kept order and administer justice. He writes in the following:

Even in the capital itself justice is not to be obtained. The instances which came to my knowledge were innumerable. I will mention a few to illustrate my meaning [...]. The result was they inflicted a fine of 120 L. on Abdullah, at which he laughed contemptuously and never paid a farthing. He was considered to be under the protection of the De Gadong, and no one would interfere to punish him (St. John, 1862:250-252).

From the very beginning, the administration of justice in Brunei had been seen by the colonial officers in the context of governance and administration. As Brunei had undergone critical decline by the mid-19th century, what

⁶Evidences were cited from observations in the second half of the 19th century when Brunei was in serious decline, facing direct external challenges from the Brookes and internal division. For details information, see Iik Arifin Mansurnoor (1998).

remained was a dying kingdom without proper government and administration, the state was fragmented and went through involution. This view of the state strongly influenced what should be done in the field of law and administration of justice. Despite hesitation in acknowledging Brunei's system of justice, it was not altogether discarded and declared defunct. The main problem as seen by these officers, including influential Malcolm S.H. McArthur, was the disjunction and fragmentation of the justice system. As a result, justice became relative and applied inconsistently.

When Malcolm S.H. McArthur came to Brunei in May 1904 to prepare a report, he did a marvelous job of observing, studying and assessing the conditions in the state. For some his ostentatious little sympathy to the local conditions and population is intended simply to give credibility to his critical report, however, for this paper such an undertaking will be taken seriously. Seen in the popularity and influence of Malcolm S.H. McArthur in Brunei, as reported by many eyewitnesses (Horton, 1987:8-11 and 71-72), when he received honor by the ruler who just underwent the coronation and also respect by the other Brunei high officials, including the coining of this name as identity of a major street in the capital Bandar Seri Begawan, it is clear that Malcolm S.H. McArthur, unlike many other colonial officials, has been considered a national reformer, if not hero. In the following brief examination, I shall summarize what his report emphasizes concerning the administration of justice.

Among the major concerns of Malcolm S.H. McArthur's report are the weakness of the central authority, poverty and taxation methods. Yet in passing, he notes how the administration of justice and the judiciary actually fared in the field. His major ideas on these issues can be summarized as follows:

- Brunei suffered from the absence of political centralization and thus fragmentation and disunity of the judiciary, consequently justice was relatively and unequally administered.
- The weak government which had produced rulers with only symbolic power directly affected the implementation of law. The higher officials and other privileged classes often could not be touched by law for the crime they committed.
- The skeleton of judiciary was sound, however, the procedures and the manpower were mediocre and inadequate (McArthur, 1987).

When assessing the overall crime in the country, Malcolm S.H. McArthur was as extremely frank as highly surprised to find out the low rate of crime, despite all the negative characters of the state and the administration as he detailed them in the Report. Indeed, like the earlier observations by other British officials [see Treacher, 1889:36], he could not see proper security apparatus. In assessing Malcolm S.H. McArthur's report, A.V.M. Horton suggests to locate it in the context of the current dominant "orient" discourse and at the same time the eroding British superiority (Horton, 1985:24-25).

The formation of the British residency in Brunei led to the major reform in all aspects of public life, not less the administration of justice. Despite the

determination of the Resident to impose a totally modern judicial system, as had been implemented in the Straits Settlements and the Federated Malay States, in 1906 some other considerations were also taken. For one, the principle of not interfering in religious issues gave way to the establishment of the *Kadi* (religious) court which dealt specifically with family matters such as marriage, divorce and guardianship in accordance with some semblance of Islamic law, known in the colonial literature as the Mohammedan law. This was stipulated in the Court Enactment of 1908 and the promulgation of the proper Mohammedan law in 1911/1912 as well as the Marriage and Divorce Registration Act of 1913 (Salim bin Haji Besar, 1995).

The contradiction, if not confrontation, between the proponents and beneficiaries of the two legal traditions ("orient" and Brunei) in the beginning of the Residency can be noted. For many high officials in Brunei, the nationalization of land, land reforms, launched by the Resident was obviously detrimental to their status and livelihood. Not surprisingly, they maneuvered what they could to prolong their hold over their *appanage*. On the other hand, the Resident considered the land reform as the crux of political and economic reason for the British entry into Brunei, the *raison d'être* of the Residency. As a result when the higher officials supported by the ruler procrastinated or refused to negotiate the surrender of their respective *appanage* in lieu of financial compensation, the Residence did not hesitate to take stern measures, including the cession of the ruler's allowance and even a threat of deposition (Stubbs, 1968; and Horton, 1985:39).

Facing the impending loss of massive and/or potential power and lucrative privileges over administration and landownership, during the early Residential period the Brunei elite showed opposition to the changing law of land tenure, even the conversion of title from *tulin* (land title previously granted for unlimited period) to some compensation.

Based on Malcolm S.H. McArthur's report and other documents, A.V.M. Horton (1987:37-39) shows an episode when immediately after the introduction of the Residency, Brunei elite submitted a petition appealing to preserve what they considered the core legacy of the state.

In August 1906, however, Sultan Muhammad Jemalul Alain, who had succeeded his father the previous May, along with the Regents, presented to the High Commissioner a petition listing five demands, the adoption of which was essential for the "increased happiness and peace" of Brunei. In a commentary written for the guidance of the High Commissioner, Malcolm S.H. McArthur noted that the document which was "written in a somewhat peremptory style," dealt with questions "which were certain to arise as soon as an attempt was made to introduce a (from the European standpoint) more enlightened form of administration" (McArthur, 1987).⁷

⁷Among the relevant demands, for this papers, included the post of the *hakim* in the Islamic courts; warrants should not be issued against persons of standing; and assurances that the customs and laws of Brunei would be kept inviolate and unaltered forever.

Obviously, the proponents of the orient won the day as only a minor concession was offered and the use of “gunboat diplomacy” was launched to silence Brunei’s voice. Indeed, any revival of such voice in the legal sphere would not have taken place until after the Pacific War, more specifically when the increasing wealth materialized, more sophisticated knowledge acquired and new prestige gained. Accordingly, there is essential to note here to elaborate as follows:

Firstly, How Did the British Resident Substitute the “Severe” Retribution With New One? Let’s have a brief look at what happened with the administration of justice in North Borneo. First in the newly ceded Sarawak, there is no published Code of Laws, but the Raja, when the occasion arises, issues regulations and proclamations for the guidance of officials, who, in criminal cases, follow as much as possible the Indian Criminal Code. Much is left to the common sense of the Judicial Officers, native customs and religious prejudices receive due consideration, and there is a right of appeal to the Raja (Treacher, 1890:24).

W.H. Treacher also shows, as he saw it, the reason for the success of the Brookes in Sarawak with much enthusiasm bordering partisanship and self-righteousness. The administration of justice under the new order in Sabah took a shape in this fashion. The laws are in the form of “Proclamations” issued by the Governor under the seal of the Territory. Most of the laws are adaptations, in whole or in part, of Ordinances enacted in Eastern Colonies, such as the Straits Settlements, Hongkong, Labuan and Fiji. The Indian Penal Code, the Indian Codes of Civil and Criminal Procedure and the Indian Evidence and Contract Acts have been adopted in their entirety, “so far as the same shall be applicable to the circumstances of this Territory”. The Proclamation making these and other Acts the law in North Borneo was the first formal one issued, and bears date the 23rd December, 1881 (Treacher, 1890:86). The reform of punishment in Sabah was stipulated, among other things, in the following: “[C]ustoms which are altogether repugnant to modern ideas are checked or prohibited by the new Government” (Treacher, 1890; and Yegar, 1979).

The British Resident, Malcolm S.H. McArthur, quickly acted to buttress his newly acquired power through legal means. After elevating the Sultan to the status of “ruler” but only with the advice and consent of the Resident by 1909 and from then on the laws and administration of Brunei were more or less those of the Malay States. M.B. Hooker contends that from the purely formal point of view, the laws of England and the judicial process introduced into Brunei before the Pacific War was “rather minimal ... [A]part from penal law, a land law and a judicial system involving few people and little bureaucracy, there was no substantive introduction of English law as such” (Hooker, 1988:439). Obviously M.B. Hooker, unlike Brunei’s modern Muslim scholars, underestimates the quantity and intensity of these changes as well as the impact they wrought upon the state and society.

Two major enactments of 1906 and 1908 laid the foundation of the legal reform in Brunei. An enactment “*providing for the establishment of civil and criminal courts for the administration of justice throughout the State as far as possible on the lines in force in the Federated Malay States*” was passed in 1906. Furthermore, the 1908 Enactment established several tiers of justice: the Resident’s Court, which exercised “*original and appellate jurisdiction in all civil and criminal matters and might pass any sentence authorized by law*”; Magistrates Courts of the first, second and third classes; and the Court of *Qadi* (Horton, 1985; and Siti Zaliha bte Abu Salim, 1992:101-109). The formation of the latter for all purposes served the idea of ending cruel punishment, as the *Qadi* court was disrobed of adjudicating criminal and civil cases of note. It was left, as I shall show shortly; with minor legal issues and values.

Second, Administrative Apparatus and Law Material: the Introduction of Separate Religious Courts and the Mohammedan Law. The discussion of the change wrought under the Resident remains incomplete without thorough examination of the contents, structure and stages of new laws and judiciary introduced in the country, especially during the early years of the residency period. In this section my discussion focuses on the Mohammedan law introduced in 1911-1913. Immediately after formalizing the beginning of the residency, the judiciary and law became the priority to settle.⁸ In principle, the legal system was revamped giving predominance, like in most Malay Peninsular states, to the British legal tradition and practice. From the rudimentary court of civil and criminal cases, the judiciary was developed in 1908 into more complex structure encompassing: (1) Resident court; (2) Magistrate court grade I; (3) Magistrate court grade II; (4) Native magistrate court; and (5) *Kadi* court.

I shall take the major examples of law material from the last court, the *Kadi* court for its clearer link with the Islamic law proper and the *adat*. More specifically it is this court that gave some justification for the Islamic character of Brunei and its ruler. Indeed, it is this court that keeps the revival of the full-blown *shari’a* continues inspire the contemporary generation in the country (Mansurnoor, 2002 and 2006).

Since 1911, the State Council had examined the possibility of implementing positive law dealing with specifically Muslim religious matters. In South Asia and the Malay peninsula, this generation of law had been known as Mohammedan law (Geertz, 1983; Krastoska ed., 1983; and Darling, 2007).

As enacted in Brunei in July 1912, the law consists of 18 sections specifying 12 forms of religious offence and their respective retribution. Interestingly, the *qadi* court was assigned to adjudicate six offences which can be considered lighter in substance and retribution; the other six cases came under the jurisdiction of the Magistrate court. These first six include: (1) failure to attend the Friday prayers [Section 3]; (2) the unilateral ending of engagement [Section 8]; (3) an instigation

⁸Enactment no.1 of 1906; Enactment no.1 of 1908; and Enactment no.7 of 1920 clearly show these, and for more details see Siti Zaliha bte Abu Salim (1992:102-109 and 120-124).

to end an engagement [Section 9]; (4) estranged wife who abandons the couple's home [Section 11]; (5) failure of husband to provide family support [Section 12]; and (6) unmarried couples who live together [Section 14].⁹

The retribution of these six offences are as follows:

- Offence 1: the guilty should be warned by the *qadi* and obliged to come to the mosque to have some advice from the *imam*. For any subsequent offence a fine of 50 cents is imposed.
- Offence 2: the guilty must pay the amount of "the marriage present" (*mahr*) which is due when marriage actually takes place. Any gift presented during the engagement must be returned.
- Offence 3: A fine of \$ 10.00 or a jail term of 14 days is imposed on an offender.
- Offence 4: A fine of \$10.00 is imposed.
- Offence 5: This offence carries a jail term of no more than 10 days and a fine of no more than \$10.00.
- Offence 6: First the offenders are warned by the *qadi* to marry according to the *shari'a* law. If they persist a fine of no more than \$ 10.00 is imposed.

Ironically six other offences which normally fall under the jurisdiction of the religious court were assigned to the Magistrate Court.¹⁰ Obviously they are considered more serious and thus carry heavier fine or retribution. These six heavier offences include: (1) to abduct or persuade a girl and separate her from her guardian or parents [Section 4]; (2) a girl who runs away from her guardian to commit immorality [Section 5]; (3) unlawful sexual intercourse with a married woman in a non-rape condition [Section 6]; (4) incest which involves kin specified by the *shari'a* [Section 7]; (5) religious teaching in public, beyond one's own home and family, without the permit from the Sultan or the propagation of deviant teachings [Section 10]; and (6) woman prostitutes [Section 13].

As we shall see below, the retribution of these last six offences are heavier:

- Offence A: An offender is jailed for no longer than six months or fined twice the value of the *mahr* due to be paid to a woman of her equal status.
- Offence B: This offence carries a jail term of no more than one month or a bail of promise to behave properly. If she still fails to morally improve, she is given a jail term of no more than three months.

⁹Offences under sections 3, 8, 9, 11, 12 and 14 of this enactment shall be triable before the Court of the *Kathi* who may summon two or more Mohammedan of standing to sit with the Court as assessors. See Mohammedan Law, 1912, Section 15 (1). An appeal shall lie to the Sultan in Council from any decision whereby any person has been convicted and sentenced under section 8, 9, 11, 12 and 14; and an appeal to the Resident from any sentence under section 4, 5, 6, 7, 10 and 13. The Resident may consult the Sultan with reference to such appeal. For more details see *Law of Brunei Darussalam* (1984).

¹⁰Offences under section 4, 5, 6, 7, 10 and 13 shall be triable before the Court of a Magistrate who shall cause a *Kathi* or two more Mohammedans of standing to be summoned from a list of persons nominated in their behalf by 40 the Sultan to sit with the Court as assessors. See Mohammedan Law, 1912, Section 15 (2). For more details also see *Law of Brunei Darussalam* (1984).

- Offence C: A male offender is jailed for no more than one year and fined no more than \$250.00. And the female is jailed for no more than six months. Both offenders are not allowed to get married to each other.
- Offence D: A male offender is jailed for no more than five years; where a female for no more than one year.
- Offence E: This offence carries fine of no more than \$25.00.
- Offence F: The *qadi* will send a woman offender a warning to stop her immoral activities. If the warning fails, she will be sent to jail for no more than three months for the first offence. If she repeats the offence she will be sent to exile.

The Brunei case of implementing the Mohammedan law was made easier because of the earlier model developed in the Malay states during the British protectorate. In Brunei the simple beginning of Islamic autonomy surprisingly led toward empowerment of the crown and Islam, including the latter's legal tradition (Yegar, 1979:40; and Mansurnoor, 1996).

Third, the Impact of the British Legal and Judicial Reform. When assessing the impact of the legal reform on the Federated Malay States in 1927, the High Commissioner, Laurence Guillemard, claimed "*the establishment of laws that were applicable to everybody and enforceable against all, without distinction of rank or wealth, was in the Malay States fifty years ago a wholly unknown conception [...]*" (quoted in Yegar, 1979:139-40).

Comparable to what took place in other contemporary British colonies, Brunei under the Residential system underwent a major revolution in legal and political spheres. Although the coming the British had been negotiated and welcomed, the implementation of the British scheme did not always run smoothly, at least in the early stage of the Residency. The challenges faced by the British officials in Brunei can be seen in the Minutes of the State Council and Stubbs's report of 1911 (Stubbs, 1968:108).

The major shift in the administration of justice in Brunei under the British Resident is aptly described in a brief account of 1911 by S. Reginald Stubbs as follows:

The Consular jurisdiction exercised under Order in Council in Brunei had already been transferred to the Resident. Eventually it was abolished, as soon as a proper system of Courts of justice had been introduced into Brunei, and the administration of justice was left to the Sultan's [i.e. practically the Resident's] Courts with an appeal in important cases first to the Straits Settlements Supreme Court and then to the Privy Council [...] (Stubbs, 1968:107).

The early Residents were busy in getting a system of law into force, applying as a general rule those provisions of the Federated Malay States laws which are suitable to the circumstances of Brunei, and generally doing what they can in a state where there is little or no money.¹¹

¹¹Siti Zaliha bte Abu Salim (1992:106-107) explains this way (my translation): "Laws of England indirectly came to reshape Brunei's law through the law making process based

The British residency undoubtedly revolutionized many different spheres in Brunei, particularly its legal system. Comparable to most other countries, the Muslim legal systems were replaced by European legislation or an imitation of it. Nevertheless, parts of the *shari'a*, especially those that touched upon personal status and a few other such subjects, remained in force and were incorporated in the new legislation. After all, it could not have been otherwise. In the words of Moshe Yegar, “[Al]though it may seem paradoxical, the British Administration by its legislative activity brought about the spread of the *shari'a* and its strengthening at the expense of the customary law – a phenomenon not unfamiliar in other colonies” (Yegar, 1979:40).

Communications between the Malay states were intense, thus opening the opportunities to consult, exchange ideas and learn from each other. Moshe Yegar suggests that a typical feature of religious life in the Malay States under the British tutelage was the development of a series of Mohammedan laws, constituting a legal system that dealt with infractions of religious precepts.

[T]he compensation which the Sultans sought by engaging themselves in an area which was almost exclusively their own after they had, for all practical purposes, been stripped of their sovereign rights. This did not conflict with the fact that while wanting to give a religious complexion to their States, they still needed the aid of the British authorities for the legal process itself (Yegar, 1979:233).

When noting the positive impact of the legal reform in Sabah under BNCC (British North Borneo Chartered Company), W.H. Treacher expresses his optimism this way:

The Company [...] has substituted one strong and just government for numerous weak, cruel and unjust ones; it has opened Courts of Justice which know no distinction between races and creeds, between rich and poor, between master and slave; it is rapidly adjusting ancient blood feuds between the tribes and putting a stop to the old custom of head-hunting; it has broken down the barrier erected by the coast Malays to prevent the aborigines having access to the outer world [...] (Treacher, 1890:112).

Despite the legal revolution, the matters in the field changed very little. A.V.M. Horton sees it this way: “An Enactment was passed in 1906 providing for

on laws enacted in the Federated Malay States [Law of Contracts] and those in the Straits Settlements [Criminal Codes]. Laws of England were formally accepted as the laws of Brunei”. Chapter 2 “Application of Law” [*Laws of Brunei 1908-1930*, Enactment no. 1, 1908, p. 25; Revised Edition of 1984, vol. 1, chapter 2, p.3] specifies: “Subject to the provisions of this Act and save in so far as other provision has been or may hereafter be made by any written law in force in Brunei, the common law of England and the doctrine of equity, together with statutes of *general application*, as administered or in force in England at the commencement of this Act, shall be in force in Brunei: Provided that the said common law, doctrines of equity and statutes of general application shall be in force in Brunei so far only as the circumstances of Brunei and of its inhabitants permit and subject to such qualifications as local circumstances and customs render necessary”. See also *Law of Brunei Darussalam* (1984).

the establishment of civil and criminal courts and for the administration of justice throughout the state as far as possible on the lines in force in the Federated Malay States” (Horton, 1987:66 and 69-70).

THE LEGAL ENACTMENTS IN BRUNEI DARUSSALAM

The crucial moment and legal watershed in Brunei’s modern history was the introduction of the British residential system in 1905/1906. Immediately an enactment “*providing for the establishment of civil and criminal courts for the administration of justice throughout the State as far as possible on the lines in force in the Federated Malay States*” was passed in 1906. This enactment, however, was abrogated by the Courts Enactment of 1908, partly in response to the protest to the neglect of Islamic law. As a result, comparable to what had taken place in the Malay peninsular states, the *qadi* court was founded. This was followed, as shown above, by the provision of several acts related to law material, especially the Mohammedan law (Hj. Asri bin Hj. Puteh ed., 2003).

The rapid development of the country and the growth of its population after the Pacific War necessitated the improvement of religious services. For example, on January 31, 1948 Sultan Ahmad Tajuddin approved the formation of a board of 18 religious advisers (*Penasehat2 Jumaah Sharaiah*) with the stipulation that all religious appeal cases be “heard and decided by the Board”. On 16 February 1948, the Resident issued a circular notifying the appointment of 19 religious advisers as members of the Board. In order to facilitate the work of the Board, various enactments on the administration of Islamic law (*Jumaah Sharaiah*) in the Malay Peninsula were introduced for observation and consideration (Low, 1848; and Mansurnoor, 1996).

In 1951, a proposal was made to replace the Courts Enactment of 1908. With regard to the Islamic court, the proposal made a special reference in Section 3 of 6 consecutive chapters (Chapter 13 to 18) to the Courts of *Kathis*. The Section specified the formation of the courts of *qadis*, their authority, appointments, dismissals, the cooperation with the Courts of Magistrates of the First Class and appeals to their decision. Although the 1951 Enactment maintained the status quo, that is, the status of the Courts of *Qadis* was equal to that of the Courts of Magistrates of the Third Class, it improved the administration of Islamic law by specifying that, appeals concerning a decision of the Courts of the *Qadis* should be made to “the Sultan in the Religious Council”. This is a significant shift from the previous enactment, especially the Mohammedan law of 1912, which specified that appeals be made to “the Sultan in the State Council”. The change was made possible primarily because of the formation of the board of *Penasehat2 Jumaah Sharaiah* in 1948. On 14 August 1959, the Board was renamed Religious Advisory Board (*Majlis Meshuarat Jumaah Penasehat Share’ah*). It had 16 members. In 1958, the Board was chaired by the most senior *Wazir, Pengiran Bendahara*. It had 14 members. Under this arrangement, the administration of Islamic law became solely under the supervision of Islamic experts in the board.

In 1954, the Religious Consultative Council (*Mejlis Meshuarat Sharaeyah*) was established. According to the letter sent by the officer of the Department of State Customs, Religion & Social Welfare dated 27 July 1954, five religious officials were re-appointed to the Board for Religious Officials. The Official Notification was, then, issued by the Resident on 16 August 1954. Ten days later, on 27 August 1954, the notification of 153/1954 was issued by the Resident announcing the appointment by the Sultan of ten prominent figures to be “members of the Sultan-in-Religious Council” for the State of Brunei.¹² The Sultan was chairman of the Council. All five members of the Board for Religious Officials, except Pehin Tuan Imam Haji Sa’at, were included in the list of appointments. Indeed, the formation of the 1954 Religious Consultative Council was “in pursuance of Section 17 (2) of the Courts Enactment [of] 1951”. Following the establishment of the Department of Religious Affairs, various activities on the propagation of Islamic teachings and the administration of Islam were taken over from the Office of the Chief *Qadi*.

The link between the Board and the Council was strong. Many proposals put forward by the Board were adopted and ratified by the Council. On many occasions the two bodies held their meetings concomitantly, particularly during 1969. Following the proclamation of the 1959 Constitution on 29 September 1959, both the Council and the Board were dissolved. Their last meeting was held on 17 September 1959. During the occasion, the Sultan formally announced that the meeting was to be the last. Nevertheless, the decision did not imply that the reorganization and institutionalization of religious affairs in the country was to come to an end.

From the brief discussion above it is clear that the Residency heralded a new development in the application and administration of Islamic law. During this period, the application of Islamic law was circumscribed and restricted to family matters. Yet under the residency system, the application of the law became more systematic and fixed. If previously most of the legal issues were dealt with at the local levels through the *ulama* and other local leaders – and only if no solution could be reached at this level, were they submitted to the ruler – by this time, certain legal cases were reported and transferred to the *Qadi* Court. Although such a legal institution was not a novelty in Islamic law and Islamic history, in Brunei it means much in terms of the systematization of Islamic reform and institutionalization of law.

The 1955 Religious Enactment. The overall administrative reform in Brunei required other government bodies, including the religious bureaucracy, to work more efficiently and professionally. In the eyes of the Resident, for instance, the codification of Islamic law was necessary. Further development during the

¹²The establishment of the Council since 1948, and particularly the implementation of the 1951 Courts Enactment on May 1, 1952, improved the reconsideration of appeals submitted by the Courts of *Kathis*, as the cases would be handled by experts in Islamic law in the Council. Previously the appeals were made to the State Council. See Iik Arifin Mansurnoor (1996); and Dato Haji Metussin bin Haji Baki (2005).

post Pacific War even created pressure upon Islamic leaders to respond quickly in this direction. They eventually came up with a plan and a collection of religious enactment.

The application of the Religious Council, State Custom and *Kathis* Courts Enactment of 1955 led to various changes in the administration of Islam in the country. For one it automatically abrogated the Mohammedan Laws Enactment of 1912, the Mohammedan Marriage and Divorce Registration Enactment of 1913, and the [*Kathis*] Courts Enactment of 1951 (No.6). The 1955 Enactment No.20 came into force on February 1, 1956.¹³ With regard to Islamic affairs, it made provision for the establishment of a religious council for Muslims and for matters relating to marriage and divorce, and revised the powers and duties of the *Qadi* Courts. Nevertheless, one important outcome of the 1955 Enactment was the re-organization of religious courts (*qadi* courts). For example, they were soon emancipated from the magistrate courts. The religious courts stood autonomously as a religious institution.

After the implementation of the 1955 Enactment, the offices of *qadis* were established in all the districts. The office was led by a full *qadi* who also acted as head of it. Four *qadis* were appointed for all four districts Kuala Belait, Temburong, Brunei-Muara and Tutong respectively. Their authority and duties were specified in the Enactment. In addition to their official duties they were also heads of local mosques and *surau* administration.

One major realization of the 1955 Enactment was the formation of the Religious Council (*Majlis Ugama Islam dan Adat Istiadat Negeri*) in 1956. The Council was given the highest authority in religious affairs, and at the same time it functioned as assistant and adviser to the Sultan in religious matters. The members of the Religious Council were appointed by the Sultan for a fixed period.¹⁴ For example, in 1957 the Sultan appointed the 10 members of the Religious Council from among the core nobility, higher officials and the *ulama*. Interestingly, most members of the new Council had served in the Religious Consultative Council, founded in 1954. Until the proclamation of the 1959 Constitution, the Sultan acted as chairman of the Religious Council.

According to the 1955 Enactment, the religious Council is responsible to many aspects of religious affairs and activities in the country. Its authority includes: (1) the collection of the religious taxes [*zakat* and *zakat al-fitr* or *fitrah*], No.114; (2) issuance of permits to mobilize funds for religious purposes, No.122; (3) supervision of mosques throughout the country, No.123; (4) registration of new converts, No.164; (5) supervision over the belief and practice of Muslims according to the concept of the *Ahl al-Sunnah wal-Jama'ah* and the *Shafi'i* school

¹³The Enactment was adapted from the Islamic Laws Enactment of Kelantan. Some adjustment was made in accordance with the local conditions. See also Iik Arifin Mansurnoor (2000).

¹⁴A member of the Council should be male, Muslim, literate in Malay, and over 21 years old. The Council should have a chairman, his deputy and at least 6 other members. The *Mufti* is automatically an *ex officio* member of the Council.

respectively, No.42-43; (6) taking care of wealth and property or *amanah* which are left without inheritors, No.9, 99; (7) dealing with other parties in all matters under its authority, No.7-8; (8) supervision over the implementation of Islamic law or *Hukum Shara'* and ascertaining that all written laws in the country and the state customs are observed and implemented, No.39; and (9) the highest body in managing Islamic affairs and the assistant/ adviser to the Sultan, No.38.

The 1955 Enactment shows the strength of Islam in Brunei. Nevertheless, it also explains the influence of the British in the administration of justice in the country. It is stated, for example, in Chapter 39 of the 1955 Enactment that the Council should consider and implement the meaning (*kehendak*) of all written laws in the country, the Islamic law (*Hukum Shara'*) and the state customs. Since the written laws were derived mostly from Western and British laws, it is clear that the *Majlis* cannot fully implement the *shari'a*. More particularly, the 1955 Enactment did not fully reflect the *shari'a*.

The implementation of the 1955 Enactment brought about the formation, among other things, of two committees under the authority of the Religious Council. In 1956, the Committee of Law was formed, when the Sultan appointed nine eminent figures to the Committee.¹⁵ The appointment was then countersigned by the British Resident in the same period. This Committee continued to serve until 1963 when the Sultan appointed a new committee. Out of the 9 members only three did not belong to the Council. The most important role of the Committee was to provide legal counsel (*fatwa*) to the community.¹⁶ Interestingly, the Committee was also responsible in proposing a list of candidates to the posts of *imam*, *khatib*, and/or *bilal* when vacancy arose. If it was true, it means that the Committee, or rather the Religious Council, for some time, especially in the 1950s, also functioned as executive in religious affairs.

Furthermore, the Committee of Courts was formed in 1956. The Sultan appointed two "regular members" and three "additional members" to the Committee; the appointment was then countersigned by the Resident. After the promulgation of the 1959 Constitution, such an interference by the Resident, of course, elapsed. According to the 1955 Enactment, the *Mufti* automatically assumed the chairmanship of the Committee; however, this stipulation could be implemented only in 1967. The main responsibility of the Committee was to advise the courts in the country on matters related to Islamic law.

¹⁵According to the 1955 Enactment, the Committee should consist of the *Mufti* as chairman, two members of the Religious Council, and six others either appointed from among the members of the Council or qualified religious experts. The quorum is specified to be a chairman and four other members. Even though the *Mufti* was specified as chairman of the Committee, the post of *Mufti* was left vacant until 1962, and thus the chairmanship was held by others. Only after the formation of the third Committee in 1967, the *Mufti* occupied the chairmanship of the Committee.

¹⁶The procedure of issuing a *fatwa* was specified that the *Mufti* was required to act meticulously by paying more attention to the opinions of the *Ahl al-Sunnah wal-Jama'ah* school and the benefit and interest (*maslahat*) of the community.

Further examination of the Mohammedan Laws of 1911, the Marriage and Divorce Registration Act of 1913, ratified by the State Council in November 19, 1912 and in June 17, 1913 respectively, and *Undang-Undang Ugama* in 1955 is necessary to understand the development of religious intellectual life and legal issues in Brunei during the Residency period. If the text of the early 20th century emphasizes the centrality of upholding the *Shafi'i* scholars' opinions, the new legal enactments opened the possibilities of using, for example, a non-*Shafi'i* scholar's view if it conformed to the general welfare of the community (*Undang-Undang Ugama*, 1955:17).¹⁷ Even though this is stipulated only for cases wherein the *Shafi'i* school offers opinion (*qaul*) which contradicts the general welfare of the community (*berlawanan dengan m[asla]hat orang ramai*), the spirit is novel in the context of the Islamic law school, particularly among the *Shafi'is*.¹⁸ If previously the choice was limited to the *Shafi'i* scholars' opinions, including those based on weak argument (*qaul yang dzaiif*), now the jurisprudential bases were broadened to cover: general welfare, rationalization (*difikirkan*), explanation and interpretation (*diterangkan*). Here it is only appropriate to recast the general view about religious change: Islam has central meanings and symbols, which motivate and become the model for Muslims. Yet individual Muslims have no stable and unified decoding mechanism, which is of course open to challenges and changes, to internalize and grasp fully the symbols, despite the claim to the centrality of and eternity of these symbols and meanings.¹⁹

APPLYING THE ISLAMIC SHARI'A UNDER DIFFERENT POLITICAL ATMOSPHERES: EXPEDIENCY OR LEGITIMACY?

The introduction of the British residential system to Brunei in 1906 has been commonly seen as the watershed in the governance, especially the administration of justice. For Bruneians, the system formally ended the role of the *shari'a* in public life,²⁰ as the Resident enjoyed full influence on all aspects of

¹⁷This option is given in cases where the views of the *Shafi'is* are against the general welfare of the community.

¹⁸It should be mentioned that among the *fuqaha'* a negative term (*talfiq*) has been used to indicate an individual's way of following the *shari'a* eclectically, by choosing suitable opinions of the diverse schools for very personal reasons.

¹⁹It can be argued that Islamic civilization has produced various works on many different fields, including *tafsir* (*Qur'anic* exegesis), *usul al-din* (principles of belief), *fiqh* (Islamic jurisprudence), *usul al-fiqh* (principles of Islamic jurisprudence), and Sufism. All claimed to have been derived from the two original sources, the *Qur'an* and the *Sunna* of the Prophet. Are these works intended to provide Muslims with the standard means and reference? Nevertheless, history of Muslim societies has shown the recurrent emergence of original thinkers (*mujtahids*) and reformers (*mujaddids*) who have also been sanctioned by Islam.

²⁰For M.B. Hooker, the various legal digests in the Sultanate were not positive laws or references for the judges. They were designed to emphasize the sovereignty of and the defined law. "[...] the Digests were not manuals for the legal administrator except in a fairly remote sense ... [they were] merely a book of reference kept by a private family and used by members of that family when called upon to advise the Sultan. [...] The reality of *fiqh* lay outside the Digests in 'the mosque and market'; it was the elements of sovereignty and definition of law which were the real concern of the Digests" (Hooker, 1988:35).

governance except those related to religion in a true Western sense. Indeed his advices must be listened to and implemented. On the other hand, by design and also domestic pressures, including a motion containing three judicial petitions by the Sultan in 1906, the Resident was also determined to implement the spirit of the 1905/1906 Agreement for leaving Islamic affairs free from his interference. As stated above this led to the revision of the 1906 Courts Enactment in 1908 leading to the formation of the *Qadi* Court and the introduction of the first series of positive Muslim laws, the Mohammedan Law in 1912. I shall argue that this stipulation and opening have become a major highway in introducing further Islamization of the legal system and the administration of justice in Brunei.

One significant long term impact of this dual system has been competition between the respective proponents to show and prove their relevance to the establishment of order and peace in the country. At first the competition was unbalanced and unfair as the primacy of British law and its judiciary were almost taken for granted as shown in the key legal turn with the introduction in 1906 of what is widely known the Applications of Laws Act, CAP.2. Increasingly, especially after the Pacific War, various reforms in the wider context also led to the promotion of religious institutions, including Islamic judicature. By the end of the day, the opening of more rooms for participation led to the increasing sophistication through education and formation of supporting bodies (Mansurnoor, 1996 and 2007).

The most significant impact of better education and training of Islamic legal experts and practitioners was the determination to establish truly Islamic legal system through stages. As shown earlier, the promulgation of the Religious Council, State Custom and *Qadi* Courts' Law Act of 1955 can be considered a further step toward the Islamization of the legal system in the country. Indeed, both proponents have enjoyed support and patronage from the authority as can be seen in the education and training of officials and human resources responsible for manning the judiciary. First of all, candidates who are interested in joining the *qadi* career were sent to best available Islamic school locally, regionally and later al-Azhar. The more sophistication of the administration of Islamic affairs, including the *shari'a*, introduced by these newly educated Bruneians led to various novel initiatives in making Islam more evident in daily life. Such resurgence was crucial in ascertaining the role of Islam in the fully independent country in January 1984. Indeed, as early as 1980, the Committee on the Modification of Brunei Laws in accordance with *Hukum Shara'* was chaired by one of the leading al-Azhar graduates. The aim of this Committee was to examine all the laws in force in Brunei Darussalam and point out whether any law or any provision of any law is contrary to *Hukum Shara'* and to propose necessary amendments so as to bring it in conformity with *Hukum Shara'*, and where necessary draft a new law based on *Hukum Shara'* and put all the draft amendments and new draft laws of the Religious Council for perusal and onward submission to His Majesty for final approval and implementation.

The confidence of the new generation in facing the challenges can be seen, for example, in formulating the legal principle. If the 1955 Act opens the possibility of referring to more choices of legal opinions in special cases, more straightforward legal opinions were expressed by some young officers. I shall refer here to the legal views expressed by one of the leading *shar'i* judges, formerly Chief *Qadi* [my translation] as follows:

From these two fundamental legal sources [the *Qur'an* and the *Sunnah*], other related sources have been derived such as *ijma'*, *qiyas*, *masalih-mursalah*, *istihsan* and others. Out these derivative sources, a wide range of principle methods of Islamic jurisprudence were born. Inspired by the spirit, soul and philosophy of Islamic law with its values, reflection and wisdom, meaning behind appearance is understood, truth behind fact is exposed, wisdom is discovered out of letters, essence out of object and allegory out of words. All these can be deciphered through Islamic jurisprudence, legal principles, philosophy of legislation and principles of jurisprudence (Haji Salim bin Haji Besar, 1995).

Moreover, the judges at all levels of the Civil Courts must have undergone professional training recognized by the British Bar Association, whatever that means, or any other. Perhaps I can be accused of presumption to suggest that the judiciary in Brunei has been relatively successful in maintaining prestige, dedication and of course law and order in the country. Certainly the peaceful nature and law-abiding culture of the Bruneians must also be taken into account. This is especially so since many early British officials and observers who had been very critical of the administration of justice in Brunei during the second half of the 19th century acknowledged that crime was very low (Horton, 1987:126-127).²¹

Interestingly, the ruler did not push too far to favor one over the other, but rather acted to keep the balance and thus law and order prevailed. During the periods of residency and internal autonomy (1906-1983), the changes introduced in the field of the *shari'a* and Islamic courts did not negatively or adversely affect the civil courts. Even when the re-reading of the Islamic stipulations in the 1959 Constitution, including the meaning of "official religion", rose from the late 1960s and the slogan of "Islam as way of life" in the 1970s, the legal and judicial *status quo* prevailed.

The dawn of independence following the ratification of the 1979 Treaty of Friendship and Cooperation between Brunei and Britain which paved the way for full independence by 1984 had created euphoria and determination among the nation to live equally among world communities based on its great heritage and the newly gained achievements. In the light of all these we may locate why in 1980, the Sultan formed a committee (Committee on the Modification of Brunei

²¹With no public expenditure [...] to talk of a Government seems ridiculous. There are no salaried officers [...] no forces, no police, no public institutions, no coinage, no roads, no public buildings - except a wooden mosque, and - most crying need of all no goal. There is the semblance of a Judicature, but little justice, [...] and, as a rule, cases are settled by a system of Arbitration among the recognized, if unauthorized, Headmen of *kampung*s.

Laws in accordance with *Hukum Shara'*) to bring all laws in the country in accord with Islamic legal principles. Yet, despite the several moves following the 1980 legal initiative, no major upheaval or controversy arose in the legal field. One of the factors that worked here is the silent pledge of all parties to show the benefits of changes in the legal system, the ruler to decide, so far so fine.

The opening of level playing field has facilitated the ongoing healthy competition between the two wings of the country's legal institutions. This has been shown by the full support extended by the ruler to both addressing the grievances among the proponents of the *shari'a* and lending open hand to the smooth functioning of the civil courts and all its paraphernalia. The fact that the civil courts have been part and parcel of the Abode of Peace cannot be easily discarded in favor of any alternative until the latter can prove better and at least more meaningful in establishing law and order as well as addressing justice. Therefore the immediate challenge to the proponents of the *shari'a*, as I shall elaborate below, come from the public and elite demand of "argument by example". Can the alternative offer as just and professional legal service as the *status quo*, or even more meaningful?

Benefiting from, or rather in spite of, the British interference in administering its justice, Brunei has enjoyed some continuing direct handling of Islamic positive law, albeit serious limitation. Moreover, the stipulation of a clause "*the official religion of Brunei Darussalam shall be the Islamic Religion*" in the 1959 Constitution (Part 11, 3/1) has provided handy legitimization for furthering the cause of Islam through formal channels, including legal system. Despite the fact, that observers have slighted the incremental improvements which were initiated between 1912 and 1984, the fact remains that changes and improvements have continued and indeed become a pattern. For Bruneians this is in line with what the Monarch, head of Islamic religion, reiterated in his speeches, including that on March 13, 1993, that changes and initiatives must be undertaken gradually and efficiently: "[...] endeavors have been made to adapt our existing legal system to the Islamic legal one. However, at the level of implementation, we shall proceed in steps and in accordance with our ability".²²

The formation of the Committee on the Modification of Brunei Laws in accordance with *Hukum Shara'* in 1980 had snow-balling effect on the development of the *shari'a* in the country. In addition, independence euphoria and hope intensified the search for better ways to build the nation and run governance. Concerning the *shari'a* and its courts the 1955 Enactment was revamped and given more authority. It is eventually known under a new name the Religious Council and the *Qadis'* Courts Act, Chapter 77, or simply Chapter 77 of the 1984 Act. The new name obviously signifies changes, particularly on

²²[...] Usaha-usaha sedang rancak dibuat bagi menyesuaikan system perundangan yang kita pakai selama ini dengan system perundangan Islam. Cuma bagi perlaksanaannya, kita akan melakukannya secara berperingkat-peringkat, sesuai dengan keupayaan yang ada". See the news paper of *Pelita Brunei* (Bandar Seri Begawan: Mac 1993).

the authority of the *qadi* courts to handle and adjudicate all the cases specified in the Act, except a few.

The works and suggestions of the 1980 Committee on the Modification, supported by many quarters, including legal experts, convinced the authority to reform the Act and restructure the *qadi* courts in the wider context of Brunei's overall judicial system. The reform in a sense forms a response to several new developments such as the necessary accommodation for the growing legal matters concerning Islamic finance and banking, determination to bring all legal aspects consonant with the Islamic principles and increasing demand to live legally and religiously Islamic. The culmination of these trends in 1998 led to the promulgation of the *Shari'a* Courts Enactment, Chapter 184, addressing the major reform in the administration of the *shari'a* and some amendments to its material. Other legal materials on various subjects have been continuously issued until today, including: (1) *Perbadanan Tabung Amanah* Islam Brunei Act, CAP.163; (2) Islamic Banking Act, CAP.168; (3) *Halal* Meat Act, CAP.183; (4) *Halal* Meat Rule, CAP.183; (5) *Shariah* Courts Act, CAP.184; (6) Emergency or Islamic Family Law Order, 1999; (7) *Shariah* Courts Evidence Act, 2001; (8) Pawnbrokers Order, 2001; (9) Islamic Adoption of Children Act, 2001; and (10) Islamic Family Law of Rules, 2002 (Metussin bin Haji Baki, 2005:153).

The background of such an evolutionary approach to the Islamization of the legal system can be properly explained by referring to the major political signposts after the Pacific War. Although early nationalism in Brunei shared some nascent nationalism in Malaya, it never materialized into some formidable political movement, even though it has nurtured strong national orientation. For example, the widely referred early "nationalist" movement, the Youth Front (BARIP, *Barisan Pemuda*), soon died out in the early years of post-war Brunei. Nationalist movement in the 1950s and early 1960s was taken over by a new generation of radicals, represented by the People's Party of Brunei. In short, the rebellion launched by the Party in December 1962 gave the monarch a full mandate to steer independence in steps (Haji Zaini bin Haji Ahmad, 1987; and Haji Awg Asbol bin Haji Mail, 2008). Brunei was not ready yet to resume full responsibility of nationhood. It must prepare its citizens to master all fields of running the state and guarding society. Such an approach was indeed translated into many other aspects of governance and judiciary. Even the manning of various institutions and departments continued to depend on non-Bruneians. Brunei had accepted that it must first learn before taking the full responsibility of running the regained nation-state.

In the final analysis, the application of the *shari'a* on or the Islamization of Brunei's legal system has become part and parcel of independent Brunei. Islamization can no longer be seen simply as political lipstick,²³ it has become legitimacy for the entire nation. What is more interesting in this configuration is

²³Several writers have considered many Islamic initiatives in Brunei simply as a political maneuvering. For a review on this, see Iik Arifin Mansurnoor (2000:97-98).

the official declaration of Brunei's philosophy Malay-Islamic-Monarchy (MIB, *Melayu-Islam-Beraja*). Seen in the legal perspective, modern Brunei enjoys legitimacy for its historical Sultanate, meaning Islam with the support of the other two components, "Monarchy and Malay", has become inseparable in the life of the nation. Therefore, the many sides of Islamization that have taken place after 1984 can best be understood if located in this religio-philosophical structure.

Figure 1:
Signposts of the Application of the Shari'a in Brunei

The balancing act between three components of MIB (*Melayu-Islam-Beraja*) ideally and so far practically results in the working formula of checking and competing. As stated earlier, the predominance of the *adat* in traditional Malay polity is undeniable as argued in the context of the administration of justice and even the existing legal digests. In the development of the modern state and its legal system, the place of *adat* has continued to occupy a special place. If in the beginning of the residential system in Brunei, the British rejected the petition by the Sultan to leave the *adat* and its institution intact, the runt supposedly more Islamically inspired law of 1955, indeed continued to bear the mark of *adat*, *Undang-Undang Majlis Ugama, Adat Istiadat dan Mahkamah Qadi* (Religious Council, State Custom and *Kathis'* Court Enactment). The point to be brought home is this: the relevance of law has become the utmost challenge for all three components to defend their respective legal interests. In other words, dogmatic argument must be forwarded in the context of legality, practicality and even philosophy. The role of Muslim monarchs in the legal issue needs no further elaboration as can be seen in the Ottoman *qanun* and *adat Aceh* to cite the most immediate and relevance (Ito, 1974). The relatively generous offer that Islamic classical literature has produced was the plea to the Muslim rulers to act wisely and religiously, thus the production of diverse texts on *Fürstenspiegel* such as Ghazali's *Nasihah al-Mulûk* and Jauhari's *Tâj al-Salâhîn* (Shellabear ed., 1979). In the final analysis, Islamically minded rulers can also be expected to facilitate the process of bringing the *shari'a*-inspired system work and be implemented.

To say that legal reform in Brunei is purely religious and moral act is to declare Brunei apolitical. Any aware citizen is fully cognizant that symbolic political act is as important as substantive policy. Name requires maintenance and polishing. However, the fact that the ruler has enjoyed legitimacy and power *de jure* and *de facto*, requires that more benevolent and fruitful actions are coming, and not the symbolic gestures which serve the citizens little.

REVIEWING THE CHALLENGES AND PROSPECT FOR THE DEVELOPMENT OF THE SHARI'A

Examining the legal trend in Brunei during the last 100 year convinces me that the implementation of the *shari'a* as broadly defined in the country has been promising and advancing. First of all I differ from many writers who insist that the introduction of the British residential system in 1906 abruptly ended the application of Islamic law. In theory, I have little to disagree with such an approach, however, historically little can be used to substantiate the claim. The 1906 petitions on the legal issues, as stated earlier, obviously had little to do with the loss of the *shari'a*, even though it was a strong reminder to the Resident that Muslim legal concern on particular affairs must be carefully handled. This resulted, *inter alia*, in the introduction of the Courts Enactment of 1908 which stipulated the formation of the *Qadi* Court and its concomitant Mohammedan Law in 1911 and others that followed until 1951. The formal establishment on specific legal codes and judicature for the administration of Islamic justice, very limited and inadequate though, has long term impact on the development of the *shari'a* and its implementation in the country. The small opening, as shown above, failed to prevent further Islamization of the law and its institutions, particularly when Islamic atmosphere becomes more conducive and favorable. Indeed, the legal dualism in a sense led to the healthy competition among the legal proponents of both camps. For the *shari'a* proponents the challenges seem to have been taken seriously, especially after the Pacific War that resulted in the opening of more space and authority of the *shari'a* and its supporting courts and institutions. A process that is going stronger and stronger until today (see Figure 1). Yet, they cannot take all these for granted as the challenges of professionalism and argument by exam e will never cease.

The challenges can be seen in the realization of the claimed merits of the *shari'a*, regional and international environment with reference to Islamic movement, and continuing strength and relevance of the Western concept of justice and its domesticated institution and discourse.

Growing in a part of our globalized world, Brunei cannot think separately and in isolation, including the determination to Islamize its legal system and components (Mansurnoor, 2002). Opportunities given to the proponents of the *shari'a* cannot be taken unceremoniously since Bruneians have been familiar with the positive working attitude and professionalism of men and women in charge of the administration of justice in the country. In the past even when the *shari'a* and its courts were considered secondary and peripheral in many

different senses, their proponents never gave up hope and with difficulties kept up to the expectation. Given better opportunities and unspoiled trust, they slowly regained recognition and improvement, especially after 1951. The success in executing new responsibilities supported by more professional law officers and the resurgent Islamic spirit that had driven the Bruneians since the 1970s led to more opening of legal Islamization.

Internal criticism and reflection that came to grips with the religious establishment in Brunei after its independence in 1984 paved the way for internal reorganization, reform and professionalization.²⁴ Recognition of the weaknesses in the existing *shari'a* court can be considered a response to professionalism and endeavor to match the demand of meritocracy in the legal profession. As an agent of the nation and a key keeper of the MIB philosophy-cum-ideology, the alternative and offer extended by the proponents of the *shari'a* are under the challenge of success and even excellence in bringing law and order into the country and society and this should be no less than what have been so far achieved. The trial period and opening, to my understanding, form a test for further concession and recognition.

How can or cannot particular domestic and international environment facilitate the development of the *shari'a*? Is it possible to think the legal development in vacuum? The rapid and positive development of the *shari'a* in Brunei in the second half of the 20th century have been due to several factors, as shown above, including the conducive environment. Although no one, nation or group is in any position to control over such environment, it is still important to consider this shifting environment as challenge to the Islamization of the legal system.

The more immediate challenge come from home, that is the continuing strength and relevance of the Western concept of justice and its domesticated institution and discourse, especially education and schooling. A country like Brunei has put itself in the world map and thus globalized. It cannot simply pick certain elements and reject others, despite conscious endeavors, that the world has offered, especially when all these have been deeply immersed in society. The proponents of the *shari'a* cannot fail to convince and satisfy the stakeholders in relatively stable Brunei. In the legal context, can Brunei, for example, opt to abruptly limit the jurisdiction of the Civil Court, not to mention introduce the *'udûd* into the penal codes, without being ostracized by its close allies? For one the familiarity and proven service which the prevailing system and administration of justice have enjoy and cannot be easily thrown overboard.

Other challenges may come from the changing economic fortune, political shift, serious legal scandal and incompetent law enforcer, however, these are less immediate as far as today's Brunei is concerned. Now it is time to review

²⁴Advanced education, training and special workshop have been offered and launched to develop legal specialists, concomitant with the reform and expansion of the *shari'a* courts. See, for example, Mahmud Saedon bin Othman (2003); and Dato Haji Metussin bin Haji Baki (2005).

the prospects and opportunity of maximizing the trend of legal Islamization in the country. As for prospects, they are encouraging and viable when structurally tuned and carefully planned, conducive as far as political climate is favorable, and continuing positive trends in and optimistic attitude toward Islamic movement.

The continuing rise of religious awakening and enthusiasm among Bruneians has made the development and implementation of the *shari'a* more encouraging and viable. In Brunei, the meaning of the *shari'a* has not been openly and extensively debated, perhaps for the simple fact that the 1959 Constitution has coined that the *Shafi'i* school is the legal school in the country.²⁵ This does not mean, as shown in the early part of this paper, that reinterpretation of the *Shafi'i* legal opinions has never taken place. Rising against such revivalist tide, a well-structured package of legal reform that gives credence to the *shari'a* will have more weight and influence. For example, the relevance of Islamic financial system or principles has led to the codification of various financial and banking codes (Metussin bin Haji Baki, 2005). Despite some sign of worldwide slackening in Islamic resurgence in the shadow of recent world crises, the ongoing enthusiasm to live Islamically continue to surge in Brunei. It is thus not farfetched to suggest that the prospect of furthering the cause of the *shari'a* in the country will maximize.

The peculiar political structure and format of Brunei has given the ruler absolute power, politically and religiously. He is the Sultan, head of culture and religion, and *Yang Di-Pertuan*, head of state and government. Relevant to this fact is the place of Islam in the Constitution and the national philosophy of MIB, accordingly the positive gesture and measures in Islamic direction, including the overall enlightening plan and undertaking to get rid of legal materials which are contradictory to Islamic values and principles, must be related to such conducive atmosphere and favorable opportunity for implementing the *shari'a*. The bottom line shows that constitutionally and politically the prospect for Islamizing the legal system is straightforward: it depends how far the proponents of the *shari'a* are strong enough to offer answers.

So far the response from the *shari'a* supporters has been encouraging and professional. Enjoying the political and popular support, they have been working quietly since the early years of independence to prepare the ground for winning confidence and building professionalism. The first aim was to convince all stakeholders that the introduction of Islamic legal principles to Brunei will lead to better and more satisfactory administration of justice and after all will not reverse the orderly rhythm life in general. They strictly adhere to avoiding any radical gesture.

²⁵"The religion of Brunei Darussalam shall be the Muslim religion according to the *Shafite* sect of that religion: provided that all other religions may be practiced in peace and harmony by the person professing them in any part of Brunei Darussalam".

CONCLUDING REMARKS

By the beginning of the 21st century, two forces of the legal proponents remain comparably matched and competitive. Although as this paper has shown that during the pre-Residential period, Brunei had no singular legal system and justice was implemented in a more multiple fashion than in uniformity, in hybridity than singularity, it has been claimed that the marginalization of the Islamic system of justice is misnomer and unfair. On the other hand, the dominant view of the British officials concerning the inadequacy of Brunei's administration of justice was partial and politically motivated, despite their strong belief in the importance of fairness and universality of the legal system. The fact that the British system of justice predominates Brunei's modern legal system and it prevails today cannot altogether ignore the other opposing view of bringing back Brunei's legal system to its truly own. Clearly a mere return to the past cannot be historically justified nor legally and culturally valid. Even the much claimed Islamically inspired HKB (*Hukum Kanun Brunei*) has strong character of hybridity and multiplicity. In the age of our global world with its strong search and respect for pluralism, Brunei's quest for a more meaningful system of justice cannot be simply considered revivalism nor marginalization.

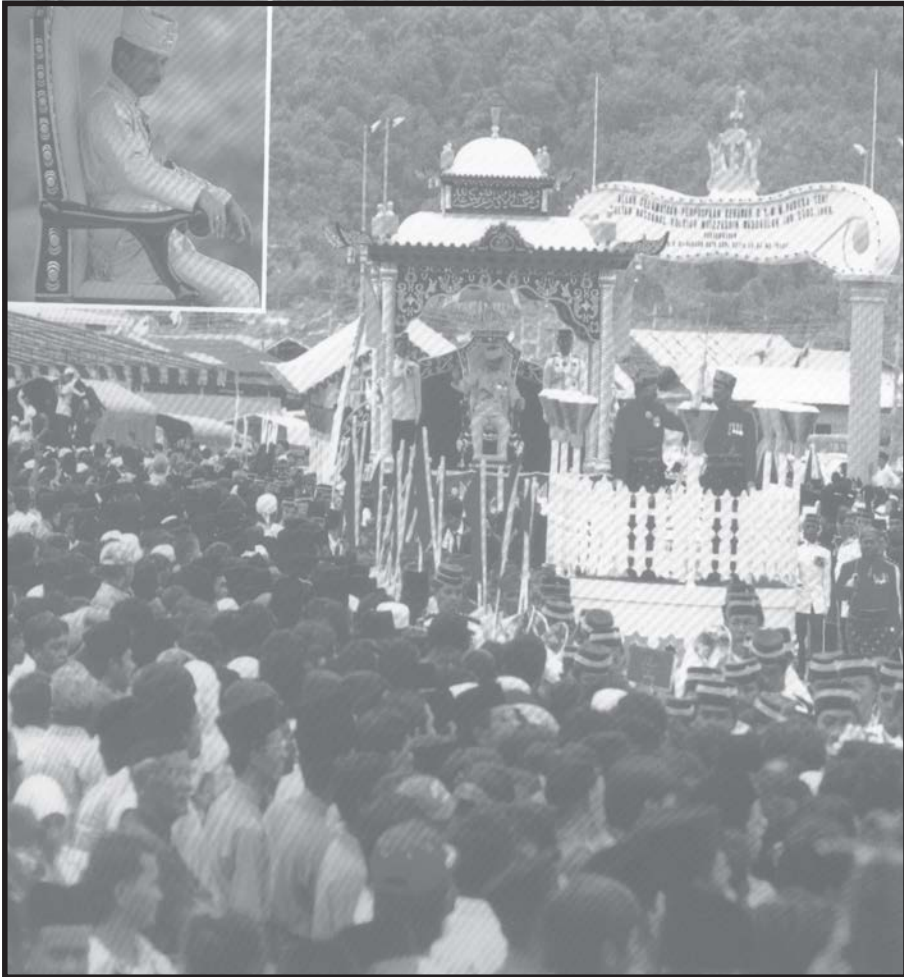
Brunei Darussalam, particularly its Islamization drive, is often misrepresented, misunderstood, or, even worse, altogether neglected. In popular media, it is not rarely presented as post-modernist *Shangri-la* with all its imagined exotics, antics and self-contradictions. In Islamic literature, it has often been glossed simply as a typical oil-driven economy, thus not worth close examining. Perhaps some those biases or claims can be dealt on other occasions, however, in the context of Islamizing the legal system and judiciary, Brunei has shown relentless endeavor in realizing slow but steady progress and incremental developments.

Bibliography

- "Brunei" in *International Religious Freedom Report 2007*, released by the Bureau of Democracy, Human Rights, and Labor on September 14, 2007, the U.S. Department of State. Available at: <http://www.state.gov/g/dd/ds/irf/2007/90130.htm> [accessed in Bandar Seri Begawan: 10/9/2008].
- Darling, Linda T. (2007). "Social Cohesion (*Asabiyya*) and Justice in the Late Medieval Middle East" in *Comparative Studies in Society and History*, 49/2, pp.329-357.
- Geertz, Clifford. (1983). "Local Knowledge: Fact and Law in Comparative Perspective" in *Local Knowledge: Further Essays in Interpretive Anthropology*. New York: Basic Books, pp.167-234.
- Haji Awg Asbol bin Haji Mail. (2008). "Ke Arah Pembentukan Wajah Negara-Bangsa: Hasrat Arkitek Brunei Modern, 1950-1967" in *Historia: Journal of Historical Studies*, IX:1. Bandung: Jurusan Pendidikan Sejarah FPIPS UPI, pp.89-109.

- Haji Zainal Abidin bin Haji Ahmad. (1987). *The People's Party of Brunei: Selected Documents*. Petaling Jaya: Insan Institute of Social Analysis.
- Hj. Asri bin Hj. Puteh [ed.]. (2003). *Hukum Kanun Brunei (HKB)*. Bandar Seri Begawan: Dewan Bahasa dan Pustaka Brunei.
- Hooker, M.B. (1988). "European Laws in South-East Asia" in M.B. Hooker [ed.]. *Laws of Southeast Asia*, Vol.II. Singapore: Butterworth & Co.
- Horton, A.V.M. (1985). "The Development of Brunei during the British Residential Era, 1906-1959: A Sultanate Regenerated". *Unpublished Ph.D. Thesis*. The University of Hull.
- Horton, A.V.M. (1987). "Introduction" in Malcolm S.H. McArthur. *Report on Brunei in 1904*. Monographs in International Studies, Southeast Asia Series Number 74, Ohio University Center for International Studies Center for Southeast Asian Studies, Athens, Ohio, pp.ix-72 and 179-195.
- Ito, Takeshi. (1974). "The World of the *Adat Aceh*: A Historical Study of the Sultanate of Aceh". *Unpublished Ph.D. Thesis*. Canberra: The Australian National University.
- Krastoska, Paul [ed.]. (1983). *Honourable Intentions: Talks on the British Empire in South-East Asia Delivered at the Royal Colonial Institute, 1874-1928*. Singapore: Oxford University Press.
- Krastoska, Paul. (2001). *Southeast Asia: Colonial History*. New York: Routledge.
- Laws of Brunei Darussalam*, Revised Edition (B.L.R.O 1/1984; the first collection was first published in 1931, revised again in 1952), Vol. I, Chapter 2 "Application of Laws." Bandar Seri Begawan: The Government Printing Department, PMO.
- Lev, Daniel S. (1972). *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions*. Los Angeles, London: University of California Press Berkeley.
- Low, Hugh. (1848). *Sarawak, its Inhabitants and Productions: Being Notes during a Residence in that Country with His Excellency Mr. Brooke*. London: Frank Cass.
- Mahmud Saedon bin Othman. (2003). *Jejak-jejak: Kumpulan Kertas Kerja*. Bandar Seri Begawan: The Academy of Brunei Studies.
- Mansurnoor, Iik Arifin. (1996). "Socio-Religious Change in Brunei After the Pacific War" in *Islamic Studies*, 35:1, pp.45-70.
- Mansurnoor, Iik Arifin. (1998). "Contemporary European Views of the Jawah: Brunei and the Malays in the Nineteenth and Early Twentieth Centuries" in *The Oxford Journal of Islamic Studies*, 9:2, pp.178-209.
- Mansurnoor, Iik Arifin. (2000). "The Impact of Territorial Expansion and Contraction in the Malay Traditional Polity on Contemporary Thought and Administration" in H. Yanagihashi [ed.]. *Beyond the Border: A New Framework for Understanding the Dynamism of Muslim Societies*. London: Kegan Paul International, pp.127-163.
- Mansurnoor, Iik Arifin. (2002). "Islam in Brunei Darussalam and Global Islam: An Analysis of Their Interaction" in Johan Meuleman [ed.]. *Islam in the Era of Globalization: Muslim Attitudes Towards Modernity and Identity*. London: Routledge Curzon Press, pp.71-98.
- Mansurnoor, Iik Arifin. (2006). "Living Islamically in the Age of Intense Globalization and Super-Modern ICT: Making Islam Meaningful and Relevant in Rapidly Changing Southeast Asia". *Paper presented at the International Symposium of Islam and Modernity: Muslim Response to Globalization*, 20-22 December, Centre for the Study of Islamic Civilization and Thoughts, National Cheng-chi University, Taipei, Taiwan.
- Mansurnoor, Iik Arifin. (2007). "Reality and Vision: Contrasting Brunei and the 'Orient' in the Beginning of the 20th Century". *Paper presented at the Fifth EUROSEAS Conference*, 12-15 September, Palazzo del Mediterraneo, University of Naples l'Orientale, Naples, Italy.
- Mason binti Haji Ibrahim. (1991). "Perlaksanaan Undang-Undang Keluarga Islam di Brunei". *Kertas Kerja*. Bandar Seri Begawan: Universiti Brunei Darussalam.
- McArthur, Malcolm S.H. (1987). *Report on Brunei in 1904*. Monographs in International Studies, Southeast Asia Series Number 74, Ohio University Center for International Studies Center for Southeast Asian Studies, Athens, Ohio.

- Metussin bin Haji Baki, Dato Haji. (2005). *Sejarah Penubuhan Mahkamah Syariah Negara Brunei Darussalam*. Bandar Seri Begawan: Jabatan Kehakiman Negara.
- Pelita Brunei* [News Paper]. Bandar Seri Begawan: Mac 1993.
- Pengiran Mohammad bin Pg. Haji Abd. Rahaman. (1991). "Kemasukan dan Perkembangan Islam di Borneo British dengan Tumpuan Khas ke Atas Brunei Darussalam (Abad 13-20 Masihi)". *Unpublished Ph.D. Thesis*. Kuala Lumpur: University of Malaya.
- Salim bin Haji Besar, Haji. (1995). "Ke Arah Mengemaskankinikan Undang-Undang Keluarga Islam di Brunei". *Unpublished paper*. Bandar Seri Begawan: Universiti Brunei Darussalam.
- Shellabear, W.G. [ed.]. (1979). *Sejarah Melayu*. Kuala Lumpur: Fajar Bakti.
- Siti Zaliha bte Abu Salim. (1992). "Sistem Kehakiman Brunei dan Perbandingannya dengan Sistem Kehakiman Islam". *Unpublished M.A. Thesis*. Bangi: National University of Malaysia.
- St. John, Spencer. (1862). *Life in the Forests of the Foreast: Travels in Sabah and Sarawak in the 1860s*. London: Smith, Elder and Co., 1862.
- Stubbs, S. Reginald. (1968). "Two Colonial Office Memoranda on the History of Brunei" edited and annotated by D. E. Brown in *JMBRAS*, 41/2, pp.83-116.
- Treacher, W.H. (1889). "British Borneo: Sketches of Brunei, Sarawak, Labuan and North Borneo" in *Journal of the Straits Branch of the Royal Asiatic Society*, 20, part 1, pp.13-74.
- Treacher, W.H. (1890). "British Borneo: Sketches of Brunei, Sarawak, Labuan and North Borneo" in *Journal of the Straits Branch of the Royal Asiatic Society*, 21, part 2, pp.19-121.
- Undang-Undang Ugama*. Brunei: n.p., 1955.
- Yegar, Moshe. (1979). *Islam and Islamic Institutions in British Malaya: Policies and Implementation*. Jerusalem: The Magnes Press.



The promulgation of the Malay-Islamic-Monarchy (in Malay MIB, *Melayu-Islam-Beraja*) as the national philosophical-cum-ideological underpinning an outcome of that search for Islamic roots and realization of Brunei's Islamic vision.