

# Ahmad Ibrahim and the Islamization of Law in Malaysia

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**To cite this article:**

Ahmad Nabil Amir. Ahmad Ibrahim and the Islamization of Law in Malaysia. *Advances*. Vol. 4, No. 3, 2023, pp. 84-92. doi: 10.11648/j.advances.20230403.12

**Received:** June 17, 2022; **Accepted:** July 5, 2022; **Published:** August 17, 2023

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**Abstract:** This paper explores the work and contribution of Ahmad Ibrahim (1916-1999) in his effort to Islamize law in Malaysia. He had constructed and formulated comprehensive and unprecedented structure of instructive and highly possible method to Islamize law and to bring about harmonization of Islam and civil law in Malaya. In this context, he had espoused for independent legal and criminal administration of Islamic law and formation of the highly anticipated Shariah court in Malaya. The reform and shariahization of law undertake was brought forth with strategic move and develop in step. The paper discusses in depth his method to apply Islamic law as set forth in his works and the consistent effort in striving to espouse and bring about harmonization of Islamic and civil law of the British colonies. This is to replace the draconian law inherited from the colonialist, arguing that shariah canon law had been implemented in Malacca, Terengganu and Kedah before being abolished by the colonial, and that its application has been proving superior to reducing crime rates. The study is based on qualitative method using primary and secondary sources. The data was systematically analyzed in a descriptive, historical and comparative manner. The finding shows that Ahmad Ibrahim has bring about unprecedented reform in the administration of Islamic law in Malaysia and espoused instructive ways for the realization of the maqasid and shariahization spirit in contemporary context.

**Keywords:** Islamization of Law, Ahmad Ibrahim, Islamic Criminal Law, Syariahization of Law

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## 1. Introduction

In his writing on the historical development of law in Pakistan and its underlying effort at Islamization, Mohamad Amin defined Islamization of law as “a process and activity whereby laws are brought into conformity with the injunctions of Islam”. [13] In the case of Malaysia, efforts towards realizing the ideals of Islamization had been geared by the illustrious Emeritus Professor Tan Sri Datuk Ahmad bin Mohamed Ibrahim (15 May 1916-17 April 1999) who arguably had made significant contributions at transforming the framework of Syariah law and in forging unprecedented and meaningful vision of Islamic project and acclaimed as father of modern Islamic law in Malaya.

This paper focused on his leading work and struggle to uphold Islamic law and Syariah institution in Malaysia. The theme of Islamic law has deeply preoccupied his conscious thought, as articulated by Abdul Aziz Bari in his paper “issues in Islamization and the law in Malaysia constitute the main themes in the works of Ahmad Ibrahim” [1]. According

to Ahmad Ibrahim, his foremost and radical consciousness to espoused Islamic law was inspired from the case of Natrah (Maria Hertogh), that brought him to defend the right and freedom of religion, aspiring to find solution to the inherent tension and conflicts between civil and Syariah law: “the case made me personally realize the importance of putting Islamic law at the centre stage.” [12]

## 2. Biography

Tan Sri Datuk Professor Ahmad bin Mohamed Ibrahim was born in 12<sup>th</sup> May 1916 in Singapore. He grew up in the old town of the Race Course in Serangoon Road, Singapore. His father work as physician and leading activist in the social and intellectual movement. He played major role in initiating and promoting charity and welfare and initiating religious bodies that served to safeguard the interest of minority Muslim people in Singapore. This is evidenced in the early historical record of the social and political growth of the community with regard to the joined social and religious

forces that served to reinforced such cooperation and espoused the sovereignty of Singapore. [16]

Ahmad Ibrahim received his early education at Victoria Bridge School, then continued to pursue his secondary school at Raffles Institution, Singapore. He sat for Junior Cambridge examination in 1931, and passed at the tender age of 14. He was admitted to Raffles College at the age of 15 and passed the Senior Cambridge with honors, and earned distinction in the subject of Geography. In 1935 he pursued studies abroad at University of London and passed first class B.A. degree with honors of London External Degree. Later in 1936 he received Queen Scholarship to pursue higher degree at St. John College, Cambridge University in England. He successfully completed his studies in 1939, earning his first degree in Economic Tripos I, dan Law Tripos II. While studying at Cambridge, he won the George Long Prize for his Roman Law course, and earned the McMahon Law Medal representing St. John College. [16]

In 1941, he took Final Bar examination in Singapore and passed with distinction, and obtained a Certificate of Honor from Middle Temple, England. He was called to practice in absentee (due to the war) at Bar Council Middle Temple in November 1941. Later he went on to pursue higher studies for Master program and accomplished with first class M.A. degree in Economics and Law from Cambridge University in 1965. Considering his role in the studies and development of law, especially in labor law, he was conferred with honorary Doctorate (LL.D.) in Law by the University of Singapore (now known as National University of Singapore) in 5<sup>th</sup> June 1965. [20]

Beginning his early career, he served as editor for Malayan Law Journal in early 1940s and received payment of 100 ringgit a month. He was assigned to read cases send to the Court for report, preparing headnotes, and summarize news in gazette. Since he was yet to qualified as barrister because his term of practice was interrupted due to war, he was placed under the supervision of Lord Nogi, who was then Head of Department of Japanese Law in Singapore. He later served as secretary to Judge Raja Musa, a High Court Judge in Singapore. The experience under Raja Musa gave him chance to seat by the side of Judge during the proceeding.

He was subsequently recruited as assistant in the Department of Justice of Singapore and embarked on professional career as Magistrate in 1946 after the end of World World II. A year later he was promoted as District Judge in 1947. He was the first solicitor and advocate admitted in Singapore in 16 September 1946 after British return and run Singapore. [18]

In 1948, he left civil service and taught law at Raffles College, Singapore. Among those luminaries and renown pupils of him were as Tunku Jaafar (Yang Dipertuan Besar Negeri Sembilan), His Highness Tan Sri Datuk Raja Mohar, former Chairman of MAS and Petronas, Tan Sri Syed Othman and S.S. Gill, former Chief Justice of Malaya, S.R. Nathan, former director of Institut Pertahanan dan Kajian Strategik (Institute of Defense and Strategic Research), Shad Faruqi, Professor of Law at Universiti Teknologi MARA and

many other highly respected figure in the nation.

From 1949 to 1955, he worked as advocate in private legal firm. While serving in this position, he was appointed Commissioner of the Singapore Municipal Council and Members of the State Legislative Assembly. He also became members of Singapore Judiciary Bodies from 1952 to 1955. After that, he continued his service with the Singapore government and appointed as Magistrate on 28<sup>th</sup> February 1955, and became District Court Judge in June 1955. In 1956, he was transferred to Attorney General Office and served as Crown Council and Deputy Public Prosecutor, and subsequently promoted as Senior Crown Council in May 1957.

After Singapore effectively formed independent government in 1959, he was made State Advocate-General until 1963. When it achieved independent through Malaysia in 16 September 1963, he was absorbed into civil service and appointed as State's first Attorney General. The position was held until 1967, after he was made State Plenipotentiary to United Arab Emirates and Arab Republic of Egypt. At the same time he also served as legal advisor to the then Finance Minister of Singapore, Dr. Goh Keng Swee.

In 1968 he announced his retirement from public service after serving for nearly 22 years. His path breaking career in legal education was subsequently developed in Malaysia as Professor of Law in the Faculty of Economy and Administration, University of Malaya. His appointment was announced by the then Vice Chancellor, Royal Professor Ungku Abdul Aziz on 15 August 1969. This appointment has brought many reforms in the studies of law and principal subjects offered in the Faculty. Ahmad Ibrahim has managed to introduced subject of Islamic law and highlighted Islamic elements in the legal curriculum.

While occupying the Chair of Law in University of Malaya, he propounded for the establishment of independent law faculty in Malaysia, as Malaysia at that time depending on other universities in England and Singapore. This proposal led to the establishment of the first Faculty of Law in the country on 21<sup>th</sup> April 1972. Ahmad Ibrahim was officially appointed as the first dean of the Faculty, serving in this capacity from 1972 to 30 Mac 1983. At the same time, he was also commissioned as Deputy Vice Chancellor of University of Malaya.

After the International Islamic University of Malaysia was formed in 1983, Ahmad Ibrahim was appointed as Syeikh al-Kulliyyah, at the Kulliyyah of Law. The title of Syeikh al-Kulliyyah was the first of its kind as honorary appointment of Dean of the Kulliyyah in Malaysia. He led the Kulliyyah administration until 1999 and has made significant contribution in the development and advancement of syariah law. Throughout his tenure with International Islamic University Malaysia he has been mandated to lead the administration of the University and hold a range of key portfolios, as Deputy Rector, Board of Governors and Members of Senate.

Throughout his career he has been conferred with many first and distinguished class of recognition. In 1960, he was awarded with Distinguished Medal Service by the

Government of Singapore, and in 1963 secured distinguished Order from Malaysian Government for his representative role in leading the delegation of "Singapore Working Party" which held negotiation to bring Singapore into the Malaysian federation. In 1975 he was conferred with Bintang Johan Mangku Negara (J.M.N.) by His Majesty in recognition of his service to University of Malaya.

In June 1987 he was conferred with the Distinguished Star of Knight Commander (Bintang Panglima Setia Mahkota (P.S.M.) by His Majesty which carried the title of Tan Sri. In 1979 he was conferred with Darjah Yang Mulia Pangkuan Negara (D.M.P.N.) by His Excellency Governor of Penang leading to the designation of Dato'. In 1979 he was conferred with Allama Muhammad Iqbal Medal by the Government of Pakistan in recognition of his contribution to the field of Islamic law and jurisprudence in the Muslim countries. Ahmad Ibrahim was greatly influenced by Muhammad Iqbal, having read *The Reconstruction of Religious Thought in Islam* firstly when he arrived at England as freshman.

In 1st July 1983 he was inaugurated as the first Professor of Law in International Islamic University of Malaysia. Later in 25<sup>th</sup> August 1984, he was conferred Emeritus Professor by University of Malaya. In 1988 he was pronounced Tokoh Maal Hijrah 1988 and awarded the Tun Abdul Razak gold medal in 1992. He was appointed to the Board of Directors of the Institute of Islamic Understanding (Institut Kefahaman Islam Malaysia) in 1992, leading the committee to conduct research on Islamic law and publishing works on Islamic legislation.

## 2.1. Works

Ahmad Ibrahim's prolific writing comprises the entire fields of legal works, especially specializing on the discipline of Islamic jurisprudence, family and labor law. His prolific works cover issues of legal education, legal system, criminal law, evidence, contracts, customary law, constitutional law, criminal procedure, civil, legal history, jurisprudence, legal reform, legal digest (an index to case law), legal profession, tax law, including official statements in courtroom, and development law. [19]

His first work was *Islamic Law in Malaya* published by Malaysian Sociological Research Institute (MSRI) in 1965, and his last book was *Undang-Undang Keluarga Islam di Malaysia* (Islamic Family Law in Malaysia) issued by Malayan Law journal (MLJ) in 1999. Other influential works and publications includes *The Legal Status Of the Muslims in Singapore* (1965), *Sources and Development Of Muslim Law* (1965), *The Status Of Muslim Women in Family Law in Malaysia, Singapore and Brunei* (1965), *The Distribution of Estates According to Shafii Law* (1976), *Law and Population in Malaysia* (1977), *Family Law in Malaysia and Singapore* (1978), *Legal Education in Malaysia* (1980), *The Malaysian Legal System* (1987), *The Future of the Shariah and the Shariah Courts in Malaysia* (1993), *Legal Framework of Islamic Banking in Malaysia* (1997), *Pentadbiran Undang-Undang Islam di Malaysia* (The Administration of Islamic Law in Malaysia) (1997), *Perkembangan Undang-Undang Perlembagaan Persekutuan* (1999), and etc. He had

published nearly 20 books and 200 essays including a number of textbooks and articles that became the basic reference in legal studies and Syariah legal thought and judiciary.

## 2.2. Contribution in the Field of Islamic Law

In the development of law of Malaysia, Ahmad Ibrahim has played significant role in inculcating the fundamental spirit of Islamic elements in legal practice and driving reform in Islamic law and strategic Syariah discipline. His was an exceptional jurist with rare command in civil law and unparalleled mastery and expertise in Islamic law. His writings manifesting his insight and skillful leadership in legal knowledge and discipline with formidable skill in the resolution of legal dispute and conflict. It demonstrated his authority and underlying impact in the teaching and administration of legal school and institution. His consistent effort to establish coherent framework of ijtihad and striving to compromise various premises and disciplines of legal school, testify to his highly promising legal and religious ideal.

His struggle and involvement in the field of Islamic law in Singapore and Malaysia dated back since early 1960s. He undertook high level judicial task and was in charge of drafting the bill for Islamic family law in 1965 that helped to enhance the scope of jurisdiction of Syariah Court, that become the foundation for the establishment of Majlis Agama Islam Singapura (MUIS) (Islamic Religious Council of Singapore, a statutory body founded in 1968). He was also on the advisory panel to reform the enactment of administration of Islamic law in most states in Malaysia. He was involved as members of Syariah Judiciary Department of Malaysia in charge of reviewing the draft and streamlining Syariah provisions with the integrated development of national legal system. He was also engaged as activist and secretariat at state and national level that helped to formulate the integral plan to applying Islamic values in the administrative and judicial system in Malaysia, and chaired the Technical Committee of Syariah Law that was responsible to standardize and harmonize Islamic and civil law.

His legal ideas and engagement were highly significant in improving the standard of administration of Islamic family law in Malaysia. He was member of the Federal Territory Islamic Religious Council and Chairman of Legal Secretariat of Majlis Agama Islam Wilayah Persekutuan (JAWI) that was responsible to review Islamic family law, Islamic criminal procedure, Islamic evidence law and Islamic civil procedure. He was also part of secretariat to enact Wilayah Persekutuan family law and outline the provisions and rulings of the Court on Islamic family law and in charge of summarizing the framework of Islamic family law in Malaysia.

In the development of Islamic finance and banking system, he played key role as National Steering Committee Member on the formation of Islamic Banking and chaired legal subcommittee that counsel and drafted the Islamic Banking act, followed by its establishment in 1983. He also served as Chairman of Subcommittee for Takaful Law that was responsible for reporting to the government on the

establishment of Takaful as Islamic insurance, and was active members in Islamic Consultative Council, and presiding as Chairman of Shariah Advisory Committee of Bank Negara Malaysia (1997-1999). [4]

He also contributed in the formation and development of Islamic University, and was the founding members of the International Islamic University Malaysia. He was appointed as Shaykh al-Kulliyyah at the Kulliyyah of Law that was responsible in recruiting the faculty, setting up the curriculum, drafting the module for instruction and coordinating courses of civil and Syariah law for graduates. He delineates its far-reaching motivation by pointing out its short and long-term objectives, i.e., to recruit future Muslim lawyers in the legal profession and hoping that ultimately Islamic law might be adopted as basic legislation for Muslim. [14] He was also assigned as special panel commissioned to drafting the Islamic Law Enactment (Hudud and Qisas) of Kelantan in 1991 and chaired the Technical Committee of Civil and Syariah Law in 1980s until 18 April 1999 (1 Muharram 1420).

In his effort to reforming the law, he strived to address the issue of legal development and strengthening the administration of Islamic law by reinforcing the powers and responsibility of the officials concerns for its implementation. He painstakingly works to enhance the standard and position of religious officer and administration of Syariah law which has been exponentially instrumental in improving the administration of Syariah Court and in empowering public servant and official with religious knowledge and dynamic understanding of the essence of syariah.

He was also instrumental in issuing and publishing serials of *Jurnal Hukum* in order that cases decided by Qadis (judges) can be openly reported and this has been gazette beginning in 1980, in addition to pioneering the publication of *Jurnal Syariah* published by the International Islamic University Malaysia in 1984 which provided forums for legal studies and was influential in inspiring intellectual debate of classical juristic methodology and tradition.

### 2.3. Contribution to the People and State of Singapore

Throughout his influential career in public sector for almost 22 years Ahmad Ibrahim has left indelible marked and lasting influence and legacy to the community and state of Singapore. He was members of the Muslim Advisory Board of Singapore and Councilors of the Judiciary whose role was to strengthen and enhance the administration of Islamic law of Singapore. During his tenure as State-Advocate General, he drafted an enactment of the administration of Islamic law, for the need of Muslim community in Singapore, and sought to review and redrafting the bill of law and seek to incorporate Islamic provisions and legislative regulation into the national constitution. He was part of Singapore delegation that arranged the negotiation to join Malaysian federation in 1963 and in her subsequent independence in 1965. He also represented Singapore in drafting the Water Agreement with Malaysia. His lifetime achievement was recognized widely leading to the recognition as Tokoh Melayu/Islam Singapura by Majlis Ugama Islam Singapura

(MUIS) and his photos and biography were displayed in Perkampungan Melayu (Malay village) in Geylang Serai and were also exhibited in MUIS office.

He represented Singapore Muslim Youth as the de facto leader in the early discussion prior to the establishment of Kolej Islam Malaya in 1949. [3] He was also commissioned to drafting the Women's Charter that was passed in 1961, and the Islamic Administrative Law Enactment of Singapore passed in 1966. In the Women's Charter, he redrafted old legislation on marriage, divorce, inheritance, sustenance, abuse against women and children. Many new provisions were introduced to resolve some domestic problems of polygamy, divorce cases outside Singapore, marriages under common law, questions of domicile, and issues pertaining to mixed marriage. He managed to strengthen the Islamic Administrative Law Enactment 1966 by including the provisions to establish Islamic Religious Council of Singapore, with the mandate to supervise and govern Islamic bodies in Singapore and referring directly to the President of the Republic of Singapore without any interference from the government. This provisions simultaneously guaranteed advocacy and protection of the Muslim community of Singapore which constituted a small minority to be represented by Islamic Religious Council without being affected by political pressured or foreign influence. [16]

### 2.4. Influence on Islamic Legal Institution and Religious Bodies in Malaysia

His phenomenal influence in the legal fraternity was exceptionally significant and instructive in Malaysia. Initiative to perpetuate his lasting imprint and outstanding legacy have been undertaken by several Islamic institution and academic bodies in Malaysia, that was instrumental in conceiving his vision and seminal ideas, apart from organizing series of memorial lectures and spearheading the publications of a tributary 'Festschrift' commemorating his intellectual life (in particular M.B. Hooker's *Malaysian Legal Essays* (MLJ, 1986), DBP's *Makalah Undang-Undang Menghormati Ahmad Ibrahim* (1988) and IKIM's *Ahmad Ibrahim: Sahsiah, Pemikiran & Sumbangan Ilmiah*, edited by Siti Shamsiah Binti Md Supi (2020) [Ahmad Ibrahim biographical and intellectual portrait]. On 18th June 1999 University of Malaya's Laws Library was named as Perpustakaan Undang-Undang Tan Sri Profesor Ahmad Ibrahim, honoring his contribution to the Faculty of Law and University of Malaya's Library of Law.

Following the suit, International Islamic University Malaysia renamed its Kuliyyah of Laws as Ahmad Ibrahim Kuliyyah of Laws in 2000, in appreciation of his contribution par excellence in founding and leading the Kuliyyah and in advancing Islamic law and administration. The Law Collection in the Main Library of the International Islamic University Malaysia also holding a collection of books, manuscripts, and papers belonging to Ahmad Ibrahim, from materials donated to the Library, specially kept in Ahmad Ibrahim Special Collection, dedicated to his memory.

A monograph in honour of Ahmad Ibrahim was published

by the Faculty of Law, University of Malaya in 1988 recognizing his role in leading legal studies in University Malaya. Other similar tribute was presented by M.B. Hooker in his notable work *Malaysian Legal Essays: A Collection of Essays in honour of Professor Emeritus Datuk Ahmad Ibrahim* that assembled important writings and notes on Ahmad Ibrahim analyzing his legal and intellectual outputs in various branches of legal disciplines, including Islamic family law, Islamic law, and history of law. Expressing this momentous influence, he recollected: "While most men are content with a career in one sphere only, Professor Ahmad has, over the past thirty-odd years, had no less than three careers in each of which his contribution has been outstanding...the fact that one man can combine public office, teaching and administration, and original and pioneering research and publication, all to the very highest standard, is highly unusual." [17]

The Institute of Islamic Understanding Malaysia (Institut Kefahaman Islam Malaysia (IKIM) had also published his monumental work *Pentadbiran Undang-Undang Islam di Malaysia* (1997) in 711 pages and its English version *The Administration of Islamic Law in Malaysia* (2000) in 734 pages that constitute two authoritative historical work compiling his major writings since 1940. Since 2000, the Institute had taken initiative to organize series of Memorial Lectures with International Islamic University Malaysia to commemorate his contribution and legacy in legal studies and espoused his ideal and aspiration on the legal development and the future of syariah.

### 3. The Planning of Islamic Law

To carry out the strategic motif toward implementing Islamic law in Malaysia, he has delineated three main task to be realized:

1. Improving and enhancing the administration of Islamic law in Syariah Court.
2. Reviewing any written law, at the state and federal level, and amended any existing provisions which were contrary and inconsistency with Islamic law.
3. Establish ways and legislation to restore Islamic law as fundamental law in Malaysia. [8]

He has outlined and proposed strategic measures to implement Islamic law in Malaysia. He stressed on the need for the conscious appreciation of the whole Islamic tradition and to take more effective and productive approaches to espouse the syariah in line with the current context and need so that the syariah code and system can be developed and recognized as source of legislation for all Muslims and legal harmony was preserved. He emphasize the ummah's responsibility to increase effort to spread Islam (Islamic proselytization) and defending justice and consensus and to realize its underlying moral vision as crucial foundation of civil society in Malaysia.

His career and thought consciously focused on the important of building new generation and defending their legitimate right and struggle, and to protect and safeguard the

position and rights of Muslim society at large. He support the effort to make compatible the spirit of the law with the article 152 of federal constitution. It fundamentally aspired to bring higher dignity for Muslim in the context of newfound independence for the sake of strengthening the dimension of Islam and promote its legislative values.

His approach was principally based on the proofs the Qur'an and hadith and cases derived from classical and traditional works and modern legal discourse. In his writings, many arguments were essentially presented on the Muslim cause critically espoused for the strengthening of the position of Islamic law in Malaysia, as shown in his article issued in *Jurnal Hukum*, "Kesesuaian Hukum Islam dalam Pentadbiran di Malaysia" [9] (The Relevancy of Islamic Law in the Administration of Malaysia) which looks into factors for the marginalization of Islamic law, contending that "before the coming of the Colonial powers, the law which was applied in the Malay states was the Islamic law, which had absorbed to some extent the rules of the Malay custom." [6] The gradual process of dismantling Islamic law started with the British invasion of Malaya with the enactment of various codes and agreement which was undertaken and signed by the colonial masters and Malay rulers and used as a pretext for the recognition of British law. He argued that many authorities have call for the dismantling of that archaic and draconian law, and even the legitimacy of the agreement, which has been highhandedly enforced in spite of native people already had their functional system of law. He maintained that Muslims must adopted the same formulas to restore Islamic law and reinforce it in the legislative system, by outlining strategies: (1) to provide the legal framework that facilitates the implementation of Islamic law (2) to have an independent court that placing judges who uphold Islamic law. [9]

His writings were principally developed to present the case for the superiority of Islamic law and the understanding of maqasid (higher objective of Syariah). For him Islamic administration was justly fair and reassuring and that was the main principle beyond dispute. In fact Islamic law were evidently far more effective and comprehensive and highly superior than the civil law.

He stressed that the ummah's perception of the Qur'an must be deeper, permeating to its maqasid (higher ideal) and interpretative meaning and connotation (ta'wil). Muslims must honour and realized Islamic law in its entirety. The Syariah code was based on higher revelation which suited man's need and disposition, and fit to be implemented at all time and for all mankind. [8] He contended that the Islamic criminal law such as *qisas* (retaliation), *hudud* (God's boundaries) dan *diyat* (fair retribution) that was applied in countries which consistently implemented it, evidently shown marked success, either in maintaining peace or in safeguarding the wealth from the dangerously ignorant hand and violators and law breakers; and all these are provisions that reflect the highly sublime nature of Islamic teaching and its precepts. [8]

According to Ahmad Ibrahim, the enforcement of Islamic criminal law is an obligation imposed by higher revelation

and was the God-bound duties implicated upon Muslim rulers. Adherence to such obligation does not necessarily depended on the existence of secular law to enforce it. Since these provisions already alluded in the divine-writ and has not and cannot be abrogated by anyone. Muslims must be informed of this provision and must consciously submit to the ruling so that they might gain success in this world and the hereafter. [8]

He contended that the penalty of *hudud* (God's boundaries) and *qisas* (retaliation) ultimately aim to prevent such violations. Since in previous experience of countries which has passed the Islamic criminal law, the penalty of *hudud* and *qisas* were rarely implemented - instead the *ta'zir* (discretionary punishment) were commonly applied for the offenses. Thus the focus must be concentrated on the legislation of *ta'zir* in Malaysia and how such rules can be harmonize with Islamic law. [8]

In an effort to restore the heritage of Islamic law in Malaya he advocated for reform of the archaic law inherited from the colonial master, and was determined that the tradition and practice of Islamic criminal law that once was recorded and applied in Malaya could be restored and strengthened in the enactment of federal administration. He contended that the civil law that was enforced in the colonial times was not implemented out of consent or conviction but because it was instituted completely. In Malaysia, Muslim community were forced or made to accept the English Law. The entire colonial machinery was expediently mobilized to support the administration of British law, effectively neglecting effort to form Syariah court and its independence jurisdiction and create infrastructure for the wholesome application of Islamic law.

For him what is necessary is to restore Islamic law as the dominant and principal law for Muslim community in Malaysia and to upgrade the status and position of Syariah Court and to liberate it from any intervention and interference of Civil Court. He recommended that the English Common Law system and equity method be applied as long as it is allowed by the circumstances since Malaysia is an independent state that pronounced Islam as the official religion, and the circumstances and need of its Muslim population to follow the Syariah laws. [11]

He maintained that the conflict and tension between the High Court and Syariah Court required for constructive measures to standardize that allow appreciation of both system and for reasonable divide of jurisdiction for each institution. With the advent of British, it has introduced the penal code in the Straits settlements according to the England and Indian codified Law, while Islamic law was ignored, and no longer followed. Muslim people themselves were ignorant and no longer understand the wisdom and virtue of Islamic punishment so much so that it creates prejudice and misconception about it. To this day the Syariah Court were considered inferior and in many cases its decision can be interfered and nullified and set aside by Civil Court. Ahmad Ibrahim saw this conflict as an attempt to take over the power and jurisdiction of Syariah Court and led to the erosion of

trust and undermining public confidence in Syariah institution.

One of the effective measures taken was the amendment of the article 121 of Federal Constitution Act, 1984 (Act A 704) which provides that the High Court and its subordinate Courts shall not have any jurisdiction with respect to any matter within the jurisdiction of Syariah Court. With such amendment to the 121 article the confrontation between the High Court and Syariah Court will no longer arise, since matters pertaining to cases brought forth under the jurisdiction of Syariah Court can only be forwarded to the Syariah Court and the High Court no longer have any jurisdiction in those matters.

Ahmad Ibrahim sees this move as a beginning. Much more needs to be done to improve the standard of administration of Islamic law in Malaysia and to enable the Syariah Court to function and carry out its portfolios without disruption and interference of Civil Court. There are a number of written laws that need to be amended to effectively facilitate the amendment of the constitution. Among these were Court of Judicature Act, 1964 (Act 91) which provides that should there exist conflict or contradiction between the act with any other written law except the constitution in force on the effective date of the act, the provisions of the act shall overcome that other law. This section must be repealed. He also suggested that a special legislation be enacted for Muslims on subsistence and shared acquired property (*harta sepencarian*) governed by the Syariah Court and that this matter no longer be heard in the Civil Court. The issue of conversion to Islam and apostasy should also be decided by the Syariah Court. [8]

He also proposed that the Syariah Court be made a Federal Court so that those Courts could be given full recognition as Civil Court. He contended that many issues concerning Syariah Court regarding their status and jurisdiction and the appointment and conditions of service of judicial and officer in Syariah judiciary service can be resolved should Syariah Court established as a Federal Court, at par with Civil Court.

In his effort to improve and reform the underlying provision of Islamic Family Law, its initiative geared toward the emergent a functioning and sustainable system of Court. He submits that the foremost jurisdiction of the Syariah Court nowadays was pertaining to legislation of family law of Muslims. Previously each state has its own legislation concerning family law, which generally included in the Islamic administration enactment. These provisions were incomplete and lacking and no effort were made to rectify its flawed and to improve the quality of legislation and judgment.

He proposed that a uniform Islamic family law be established in each state and that legislation to be restructured in a careful and thoughtful manner to ensured justice is committed to all. He urged for measures to revise the implementation of Islamic family law since there was certain deficiency and hollowness in the provision and its declining influence in the Muslim society. Islamic family law must assertively aspire to safeguard the right and interest of

all by guaranteeing protection for women so that they may feel comfortable with the provision stipulated and ensuring welfare to their children in accordance with Islamic law and the effective governing of inheritance and endowments. [14]

In the implementation of Islamic law, Ahmad Ibrahim has outlined a properly systematic and judicious approach. He contended that measures cannot be taken in drastic and radical way to apply the canon of Syariah. Muslims themselves must firstly learn and assured of the superiority and highly standing and beauty of Islamic law. They must adapt and strengthen their faith so much so to accept the implementation of Islamic law and consequently to carry the burden of preaching and trying to persuade their neighbors to adopt the law.

Given the position of the constitution and law in Malaysia, he proposed that a compilation of the prescribed rule of *hudud*, *qisas*, *diyah* and *ta'zir* be held to inform and illuminate the public on those legislation. The compilation can be prepared by Islamic Religious Council with the consent of His Highness Yang Di Pertuan Agong or Rulers of the Malay states. He recommended that the proposed compilation be codified as an act or enactment, and that it be approved and passed by Parliament or state legislative bodies. Nonetheless its enforcement must be postponed for a while until all requirement needed for the enforcement are ready. [11]

He categorically defended the principle of freedom of religion as underlie in the fundamental ideal of *maqasid al-syariah* (the higher objective of Islamic law). He emphasized on the need to advocate and defend the principle of freedom since this was the *raison d'être* and underlying spirit of religious life, which uphold the spirit of toleration and openness toward other faith and culture, in accordance with the fundamental spirit of constitution and the principle of rule of law. Muslims must uphold and recognized the right of freedom of religion and realized that the ultimate aim of Syariah was to safeguard and ensured well-being and justice and fairness to all. [11]

He argued that Islamic law affirm and honor the legal and religious precepts followed by adherents of other faiths. In the Malaysian constitution, as well as in the previous constitution of Terengganu and Johor, it was proclaimed that although Islam was the official religion of federation or state, other religions can be practiced peacefully. [8] Non-Muslims were allowed to adhered to their religious or customary law and likewise Muslims must be allowed to adhered to Islamic law. Muslims must continue to hold on to the consensus reached through the constitution to defend freedom and ensure religious harmony, and to maintain security and common interest in the spirit of social contract.

### 3.1. The Harmonization of Civil and Syariah Law

Due to his persistent and untiring advocacy of Islamic law, a Committee for the Harmonization of Syariah and Civil Law was established to structurally coordinate and amalgamated civil and Syariah law in Malaysia. This Committee was responsible to elevate and strengthen the administration of

Islamic Law in Syariah Court, and revised any written law in the federal and state level that was inconsistent with Islamic Law to be harmonize in a way that is acceptable to entire people of Malaysia.

Ahmad Ibrahim proposed that special provisions be included in the Federal Constitution and the State Constitution for Syariah jurisdiction as there are for the civil judiciary. He also propounded for the incorporation of provisions of Syariah Legislative and Judiciary Service as provided in the Section 9 of Federal Constitution. As the position and status of Syariah Courts and their officers had been improved and raised, he recommended that provisions be made on their membership, powers, appointments, and tenure of office and mentioned in the constitution. This will be easier and more effective should the Syariah Court and Syariah Legislative and Judiciary Service were formed under Federal Constitution.

He submits that in spite of Syariah Court could be said to have been cleared from conflict with Civil Court, nevertheless should there arise legal contradiction in a case involving Muslims and non-Muslims, the Civil Court always preferred to allude to the civil law in offering sentence and verdict, that is the legislation for the non-Muslim party. He argued the importance for Civil Court to also referred to Islamic law, i.e. the legislation of the other party, and decided the case according to the established principles should there occurred contradiction in law, that is to choose any legislation that is reasonable and lead to justice. [5]

He also sought to expand the understanding of various tradition of Islamic school of thought and their legal interpretation by celebrating and appreciating the difference viewpoint and fatwa (juristic opinion). Concerning the legal opinion and ruling decided by Jabatan Mufti (Islamic jurisconsult), Ahmad Ibrahim contended that the fatwa (legal opinion) issued must not bound to the classical framework that confined the ruling to the legal doctrine of the Shafi'ite school. The Syariah Committee should consider to accommodate the *qaul* (fatwas) decided by other three dominant legal schools, namely Maliki, Hanafi and Hanbali in forming the judgment, which it presumably deem reasonable should it feel that following the *qaul* of the Shafi'ite will be contrary to the public interest.

### 3.2. Implementation of Islamic Values

According to Ahmad Ibrahim, the Malaysian government has strived to inculcate Islamic values in all areas of life in Malaysia. Proactive measures had been taken to apply Islamic system in economic and business sector and introducing transactional regulation (*muamalah*) according to Islamic teaching. Unfortunately, Islamic values has yet to be fully executed in the realm of judiciary and legislation. This has to be addressed thoroughly and effort must be multiplied to give maximum exposure through the application of more substantive and comprehensive Islamic values that are inspired by the Malay cultural tradition and its universal principle so that it can be extensively highlighted and disseminated.

### 3.3. *Dismantling Civil Law Enactment*

Ahmad Ibrahim urged the government to dismantle civil laws that were inconsistent and incompatible with the principle of justice and to replace them with Islamic law. He argued that the Civil Law Act 1956 need to be amended so that the Civil Court will no longer required to refer to England Common Law and the equity rules administered in England. Instead the Civil Court should be empowered to establish and follow Malaysian Common Law, which can be modified with reference to Syariah law, when the parties involved were Muslims. He proposed that the existing law on retaliation be amended should the guardian or heirs gave pardon.[8] Likewise Section 27 of the Civil Law Act concerning the guardianship of children that required reference be made to England Law should be repealed as Malaysia already has a written law on that matters for Muslims and non-Muslims. [5]

He rigorously defended the conclusive right of Muslims to practice Islamic teachings, contending that if followers of other religions were allowed to practice their religion in peace and harmony in any part of the federation, then even more so that Muslims were rightful to practice the teaching of Islam. Especially since Muslims were bound to follow and practice Islamic law that has been revealed and brought down by God in the Qur'an and clarified by the Prophet (peace be upon him).

### 3.4. *The Uniformity of Islamic Law*

In his struggle to espoused legal reform, and to facilitate the process toward Islamizing the legal system in Malaysia, Ahmad Ibrahim maintained an organic and non-confrontational approach [15], by emphasizing on the multifaceted and harmonious context of law and the need to coordinate and standardize Islamic law in the whole states of Malaysia. He welcomed the initiative of the Attorney General's Office to establish a uniform Islamic family law that can be adopted by all states in Malaysia. He contended that such efforts and desires to have a coherent and uniform Islamic family law for all states in Malaysia has not been achieved due to archaic and conservative attitude of religious administrators who were trapped in obscurantism and dated framework that were traditionally confined to the Shafiite legal school that was dominant in Malaysia. He called for the drafting of new legislation to synchronize and make consistent the administration of Islamic law in Malaysia.

He suggested that provisions be made for the pronouncement and enforcement of summons, warrants and orders of Syariah Court in one state to other states. He submits that, this matter can be accomplished with reciprocal provisions between states and possibly better should federal legislative was made that provided and allowed the pronouncement and enforcement of summons, warrants and orders of a Syariah Court in one state made throughout Malaysia, and also expanded outside Malaysia, for example in Singapore, Indonesia and Brunei. [5]

According to Ahmad Ibrahim, the enactments in the states of Malaysia can be said to follow the same form and in general

it can be said that their provisions are the same but sometimes there are also slightly few complicated differences. Each state has its own enactment and different system of Qadis Court in administering Syariah law. Measures have been taken to review all acts and enactments of Islamic family law and he proposed slight amendment so that the law were nearer to each other. Apart from trying to bring the legislation closer to each other, he also proposed several amendments deemed necessary to streamline the administration of law and introduced new policies to ensure that the Civil Court cannot interfere especially in matters of breach of engagement and child custody. This requires a strategic and competitive alliance between Ulama (Muslim theologians) to collectively reformed such condition and strived to uniform the administration of Islamic law in Malaysia.

### 3.5. *Modernizing the Syariah Court System*

Ahmad Ibrahim maintained that to ensure that the administration of Islamic law in Syariah Court is carried out efficiently and effectively, it is necessary to have not only skilled and efficient judges and judicial and syariah legal officer, but also Syariah lawyer who can ably facilitate and assist the Court and parties involved with the suit. Cases note and record also need to be prepared and gazette in Jurnal Hukum (legal journal). Systemic cases reporting was necessary so that judge, advocate, and scholars in all Muslim countries can see how Islamic law is evolving.

He contended that before Islamic law can be accepted as law and guideline in Malaysia as a whole, constructive effort must be made to improve the administration of family law in Syariah Courts. The administrative system of Syariah Court should also be revised, the status and qualification of Qadis need to be standardized thoroughly, training for staff in the syarie legal profession also need to be intensified, and suitable and comfortable buildings and structures be developed for trial in the chamber. He concluded that the progress in the administration of Syariah Court can be enhanced if equal facilities and infrastructure were provided as in the case of the Magistrate Court. The muftis (juristconsult) and judges of Syariah Court must also diligently carry out their duties so that the administration of Islamic law achieves the quality and trust which has been enjoyed by Civil Courts in Malaysia.

In elevating the status and standard of law in Malaysia, he also emphasized on the importance of using the national language. He stressed on the recent advance and progress in the writing of law in Malay language and put his confidence in its ability to be used as instrument for legal teaching and tools for legal enforcement in Court. [2] While serving as Chairman of Technical Committee for Syariah and Civil Law he has forwarded recommendation to the committee to drafting the laws in the national language. When the draft was completed, it was sent to the Attorney General's Office to be translated into English.

He was also the leading proponent for the teaching and learning of law in Malay language, demonstrated in his strong advocacy to develop the usage of Malay language in



the legal practice in the country. He has sought to revise Section 6 of National Language Act 1963-67 which provided that the text of the bill of law and the law must be prepared in both National and English Language. He proposed that should the law concerned about Islamic law administered by the Syariah Court, then the text can be prepared in National Language only. Unfortunately, the official text of the Federal Constitution still not been made in National Language. [5]

## 4. Conclusion

Ahmad Ibrahim has played significant role in improving and strengthening the position of Islamic law in this country. His struggle in rallying idea and forces for the implementation of Islamic law continued to inspired his students and colleagues that become the catalyse for the movement of Islamization. His idea was to improve and strengthen the influence of Islam on Malaysian law and to realize its spirit and drawing the consciousness of people to the beauty of Islamic law and its practically in the modern context. The paper has briefly outlined his efforts in formulating the philosophy and legal framework of Islamic law. His constructive ideas has been effectively implemented and highly acclaimed especially in the Hudud bill of Kelantan. His persistent struggle has manifested strong influence in Islamic legal tradition and process and has brought profound impact in the modern development of legal system especially in the introduction of syariah law, modernization of Syariah Court, harmonization of Syariah and Civil law and the implementation of Islamic values in all areas of life in Malaysia. It has brought forth effective change in the practice and understanding of Islamic law, and the administration of Islamic law, and in restoring confidence of the syariah and the future of Syariah and Syariah court in Malaysia.

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