

ARTICLE SYMPOSIUM

THE POLITICAL ORIGINS OF ISLAMIC COURTS IN DIVIDED SOCIETIES: THE CASE OF MALAYSIA

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ABSTRACT

The way in which Islamic courts and laws are developed and how religious legal apparatuses shape the relations between—and within—religious communities has been a common source of debate among scholars. This article analyzes the growing institutional power and authority of Islamic courts and judges in Malaysia since the late 1980s to contribute to this theoretical debate. Specifically, it compares two critical phases of institutional development of Islamic courts in Malaysia's largely secular judicial system: the first under the premiership of Mahathir Mohamad before the dismissal of his deputy, Anwar Ibrahim (1980–1998), and the second under the post-*reformasi* (reform) period (1999–present). Original data gathered at the Jabatan Kehakiman Syariah Malaysia (Department of Syariah Judiciary Malaysia) and other government and legal agencies, fieldwork, and semistructured interviews with Islamic and civil court officials both at the federal and state levels document the institutional expansion and administrative independence that the Islamic courts and judges have successively gained in relation to their civil counterparts. It is argued that the gradual bureaucratization of Islamic courts can best be explained with reference to the interests—and strategic coalitions—of political *and* religious elites within the majority community to sustain a dominant regime and majoritarian rule based on communal identity.

KEYWORDS: bureaucratization, Islam, sharia courts, Malaysia, religion and politics

INTRODUCTION

The ways in which sharia (Islamic)¹ courts and laws are developed and how those religious legal apparatuses shape the well-being of Muslim and other religious communities have long been a source of debate among scholars. In the context of rising piety, religious fundamentalism, and Islamic activism in the Muslim community in recent decades, scholarly interest in the relations and interactions between largely secular states and ruling elites, on the one hand, and religious scholars, or ulama, and civil society, on the other, has grown. Will the state enforcement of Islamic laws and expansion of the religious legal apparatus as part of the secular judiciary give rise to further institutional power on the part of the ulama to enforce Islamic worldviews and values in the ways they envision? Will it lead to strengthened religious conservatism in state and civil society?

1 I use *sharia* to refer to Islamic law in a general sense of the term, and the Malaysian translation of the term, *syariah*, to refer specifically to the Islamic legal apparatus in the context of Malaysia.

In an effort to contribute to this debate, this article applies the concept of Max Weber's bureaucratic authority² to analyzing the process of bureaucratization of the Islamic court apparatus in Malaysia, locally known as Mahkamah Syariah.

Malaysia offers a fascinating case study to gain a better understanding of the bureaucratization of religion. Despite the country's nominally secular outlook, Malaysia's Islamic courts and laws have, since the 1980s, developed to such an extent—and in such a systematic manner—that religion has gained unprecedented prominence not only in the daily spiritual and private life of Muslims but also in a range of public and political affairs.³ Attempts by states to co-opt religious institutions and elites and grant the latter more power and authority are not a unique trend in the context of the rising tide of political Islam.⁴ However, the place of Islamic courts and laws in a modern state is generally a source of conflict among political and religious elites, as well as in civil society. The largely secular ruling elites are equipped with a range of options and instruments, leading to considerable variation among states regarding the ways in which ruling elites accommodate religious elites and institutions, including Islamic courts.⁵ Uniquely among Muslim-majority states, Malaysia's political elites have actively adopted a range of statutory and political means to recruit and train qualified personnel and to develop the tightly structured bureaucratic apparatus tasked with administering religious judicature and laws within the purview of the secular federal constitution. As a result, the power, authority, and legitimacy of the Islamic courts and judges have been dramatically upgraded to a level closer to the secular courts and judges, which historically had enjoyed more prestige. As far as Muslim religious matters are concerned, the Islamic courts and judges have now gained exclusive regulatory powers because of those institutional changes.

This article compares the two major phases of institutional change in the religious judiciary in Malaysia in order to account for the ways in which—and the degree to which—the apparatus of Islamic courts developed. A comparative historical analysis of the two major phases, the first under the premiership of Mahathir Mohamad before the dismissal of his deputy, Anwar Ibrahim (1980–1998), and the second under the post-*reformasi* (reform) period (1999–May 2018), shows that it is not the rising tide of Islamist activism in civil society, electoral incentives of secular Muslim politicians, or authoritarian power, that are primarily responsible for the increased integration of Islamic courts and law into the state justice system. These approaches tend to ignore the perspective, interests, and impacts of religious elites and their strategic coalition and competition with secular elites who seek to advance their religious authority and political powers. Instead, it is argued here that the interests—and strategic coalitions—of political *and* religious elites within the majority community to sustain a dominant regime and majoritarian rule based on communal

2 Max Weber, *Economy and Society*, vol. 2, ed. Guenther Roth and Claus Wittich (Berkeley and Los Angeles: University of California Press, 1978), 956–1005.

3 Kikue Hamayotsu, "Demobilizing Islam: Institutionalized Religion and the Politics of Co-Optation in Malaysia" (PhD diss., Australian National University, 2006); Joseph Chinyong Liow, *Piety and Politics: Islamism in Contemporary Malaysia* (New York: Oxford University Press, 2009); Tamir Moustafa, "Judging in God's Name: State Power, Secularism, and the Politics of Islamic Law in Malaysia," *Oxford Journal of Law and Religion* 3, no. 1 (2014): 152–67; Seyyed Vali Reza Nasr, *Islamic Leviathan: Islam and the Making of State Power* (New York: Oxford University Press, 2001); Michael G. Peletz, *Islamic Modern: Religious Courts and Cultural Politics in Malaysia* (Princeton: Princeton University Press, 2002); Patricia Sloane-White, *Corporate Islam* (Cambridge: Cambridge University Press, 2017).

4 For example, William R. Liddle, "The Islamic Turn in Indonesia: A Political Explanation," *Journal of Asian Studies* 55, no. 3 (1996): 613–34; Nasr, *Islamic Leviathan*.

5 Robert W. Hefner, ed. *Shari'a Politics: Islamic Law and Society in the Modern World* (Bloomington: Indiana University Press, 2011); Arskal Salim and Azyumardi Azra, *Shari'a and Politics in Modern Indonesia* (Singapore: Institute of Southeast Asian Studies, 2003).

identity are key to understand why the Malaysian Islamic court system was expanded and successively integrated into the nominally secular judiciary over time.

My empirical findings are based on fieldwork, archival and online research, and semi-structured interviews with Islamic and civil court officials that I conducted in Malaysia between 2000 and 2015. The primary data were collected at various government agencies and nongovernmental organizations, most importantly the Jabatan Kehakiman Syariah Malaysia (Department of Syariah Judiciary Malaysia), the Jabatan Kemajuan Islam Malaysia (Department of Islamic Development Malaysia), and the Makhkamah Syariah (Islamic courts) in the Federal Territory of Kuala Lumpur, Selangor, and Kelantan.

FROM PATRIMONIAL TO RATIONAL-LEGAL AUTHORITY

Scholars are generally interested in the codification, formation, and interpretation of Islamic laws and doctrinal precepts in the context of growing Islamism since the 1980s, resulting in a scholarly emphasis on theological and legal aspects of Islamic law. However, the concrete bureaucratic elements of what historian William Roff calls “institutional Islamization” are still largely understudied.⁶ One unfortunate consequence of this is the scholarly neglect of the development and administration of Islamic courts and judges, despite the important influence they exert in interpreting, adopting, and enforcing Islamic laws to determine the fate of Muslim as well as non-Muslim populations.⁷

Scholars of law and society have examined the development and effect of Islamic laws and norms in the Malaysian context to conclude that they have gained more institutional power to assert and impose religious norms and worldviews in the arbitration of disputes, consequently undermining the dominance of the (secular) constitution, civil courts, and constitutional rights of citizens. According to legal scholars such as Jaclyn Neo and Dian Abdul Hamed Shah, the infiltration of Islamic laws and norms in the civil-dominant legal system is especially alarming in a religiously divided society such as Malaysia because the trend has breached individual and communal rights of non-Muslims as well as Muslims.⁸ These studies generally tend to see the

6 William R. Roff, “Patterns of Islamization in Malaysia, 1890s–1990s: Exemplars, Institutions, and Vectors,” *Journal of Islamic Studies* 9, no. 2 (1998): 210–28, at 218.

7 There are some important exceptions, though these ethnographic studies tend to be focused on interpretation and adaptation of religious laws in routine business of religious courts. For example, John R. Bowen, “Legal Reasoning and Public Discourse in Indonesian Islam,” in *New Media in the Muslim World: The Emerging Public Sphere*, ed. Dale F. Eickelman and John W. Anderson (Bloomington: Indiana University Press, 1999), 80–105; John R. Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning* (Cambridge: Cambridge University Press, 2003); Michael G. Peletz, “Islam and the Cultural Politics of Legitimacy: Malaysia in the Aftermath of September 11,” in *Remaking Muslim Politics: Pluralism, Contestation, Democratization*, ed. Robert W. Hefner (Princeton: Princeton University Press, 2004), 140–72; Arskal Salim, *Contemporary Islamic Law in Indonesia: Shari’ah and Legal Pluralism* (Edinburgh: Edinburgh University Press, 2015).

8 Jaclyn Ling-Chien Neo, “Competing Imperatives: Conflicts and Convergences in State and Islam in Pluralist Malaysia,” *Oxford Journal of Law and Religion* 4, no. 1 (2015): 1–25; Jaclyn Ling-Chien Neo, “Malay Nationalism, Islamic Supremacy and the Constitutional Bargain in the Multi-Ethnic Composition of Malaysia,” *International Journal on Minority and Group Rights* 13, no. 1 (2006): 95–118; Dian Abdul Hamed Shah, “Constitutional Arrangements on Religion and Religious Freedom in Malaysia and Indonesia: Furthering or Inhibiting Rights,” *Indonesian Journal of International and Comparative Law* 1, no. 1 (2014): 260–99; Dian Abdul Hamed Shah and Mohd Azizuddin Mohd Sani, “Freedom of Religion in Malaysia: A Tangled Web of Legal, Political, and Social Issues,” *North Carolina Journal of International Law and Commercial Regulation* 36, no. 3 (2010): 647–88.

question of Islamic courts and laws primarily from a constitutional and legal perspective. While they tend to analyze the *effects* of the legal changes on constitutional and human rights, this article asks about the *origins*, taking account of the historical, societal, and political contexts in which the phenomenon emerged and unfolded.⁹

My study draws on the political sociology of bureaucracy and bureaucratization to examine the process from a political perspective to complement extant studies. It places greater emphasis on the *political* factors, especially interests, contestation, and coordination between and among political and religious elites, and their relation with civil society in order to account for the increased accommodation of Islamic courts and laws in the Malaysian state. The analysis below demonstrates that the particular ways in which the Islamic court apparatus has developed are primarily the result of coalition building and contestation between political and religious elites within the state in order to sustain a political-religious regime based on the primacy of the majority communal identity. The case study suggests that the bureaucratization of religious legal institutions is not merely about an expansion of the organization and functions that the organization is tasked with according to the needs of its “clients.” But, as proposed by the political sociology of bureaucracy, it should be understood as a process designed to accommodate and resolve various personal and group interests contesting for power, authority, legitimacy, and resources for their institutional survival.¹⁰

The analytical concept of bureaucratization offers a useful analytical tool for us to evaluate the trend of institutional Islamization, especially the way in which religious courts and the administration of Islamic laws are developed and institutionalized.¹¹ Max Weber’s ideal type of bureaucratic authority is of particular use here to conceptually distinguish the mode of state institutionalization of religion from state-sponsored Islamization.¹² The process of bureaucratization is defined according to the extent to which the state’s apparatus acquires rational-legal meritocratic characteristics and principles and adheres to rules and regularities to regulate religious affairs. Additionally, this method directs attention to how religious elites and authorities are recruited and promoted in the bureaucratic structures and how they gain authority and legitimacy in the administration and regulation of religious matters. Weber contrasts the meritocratic, rule-based precepts (that are associated with his ideal type of rational-legal bureaucracy, organizations and procedures) with ascriptive and arbitrary precepts that characterize “patrimonial authority.”¹³ “Patrimonial” is of course how religious authority could be characterized. With the process of bureaucratization, the implementation of Islamic law therefore could be seen as moving in theory from the patrimonial to the rational-legal sphere of authority. As suggested by Eisenstadt, bureaucratization is the *process* of organizational development accommodating various group and personal interests competing for resources, power, authority, and legitimacy within the organization as well as in society.¹⁴

9 Tamir Moustafa, “Islamic Law, Women’s Rights, and Popular Legal Consciousness in Malaysia,” *Law and Social Inquiry* 38, no. 1 (2013): 168–88; Neo, “Competing Imperatives”; Neo, “Malay Nationalism, Islamic Supremacy and the Constitutional Bargain”; Shah, “Constitutional Arrangements on Religion and Religious Freedom in Malaysia and Indonesia”; Shah and Sani, “Freedom of Religion in Malaysia.”

10 S. N. Eisenstadt, “Bureaucracy and Bureaucratization,” *Current Sociology* 7, no. 2 (1958): 99–124.

11 Richard T. Antoun, “Fundamentalism, Bureaucratization, and the State’s Co-optation of Religion: A Jordanian Case Study,” *International Journal of Middle East Studies* 38, no. 3 (2006): 369–93; Yüksel Sezgin and Mirjam Künkler, “Regulation of ‘Religion’ and the ‘Religious’”: The Politics of Judicialization and Bureaucratization in India and Indonesia,” *Comparative Studies in Society and History* 56, no. 2 (2014): 448–78; Antoun, “Fundamentalism, Bureaucratization, and the State’s Co-optation of Religion.”

12 Weber, *Economy and Society*, 956–1005.

13 Weber, 1006–69.

14 Eisenstadt, “Bureaucracy and Bureaucratization.”

The process is consequently political, and the outcome of bureaucratization depends on political competition and negotiation, as astutely acknowledged by Daniel Lev who studied the Indonesian Islamic courts.¹⁵ One likely consequence of this is that an organization entails both bureaucratic and patrimonial characteristics depending on the *degree* of particularistic patrimonial and personal interests permeating the process of bureaucratization.

The Malaysian Court System

The Malaysian judiciary and legal system is comprised of dual structures wherein secular (civil) and sharia (Islamic) courts reside side by side, though it is largely secular dominant. The federal constitution of 1957 provides that Islam is the official religion of the federation (Article 3), but Islamic matters including Islamic courts and laws are placed under the purview of each federal state. Malay rulers, or sultans, are the head of the religion of Islam in each state.¹⁶ The so-called “Ninth Schedule” in the federal constitution provides the lists and jurisdictions of federal and state legislatures. Jurisdiction of Islamic laws and courts is under the state list (List 2) and is defined as follows:

- Islamic law and personal and family law of Muslims, including the Islamic law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, partitions, and non-charitable trusts;
- wakfs and the definition and regulation of charitable and religious trusts, the appointment of trustees and the incorporation of persons in respect of Islamic religious and charitable endowments, institutions, trusts, charities, and charitable institutions operating wholly within the State;
- Malay customs, zakat, fitnah and baitulmal or similar Islamic religious revenue;
- mosques or any Islamic public places of worship, creation and punishment of offences by Muslims against precepts of that religion, except in regard to matters included in the Federal List;
- the constitution, organization, and procedure of syariah courts which shall have jurisdiction only over Muslims and in respect only of any of the matters included in this paragraph, but shall not have jurisdiction in respect of offences except in so far as conferred by federal law, the control of propagating doctrines and beliefs among Muslims;
- the determination of matters of Islamic law and doctrines and Malay custom.¹⁷

The remainder of civil and criminal law and procedure and the administration of justice including the constitution and all the courts (except sharia courts) are under the Federal List (List 1) and managed at the federal level. In contrast to the prestigious and powerful civil (federal) courts, the sharia courts and judges have very limited jurisdiction on paper.¹⁸ Sharia courts were organized in two tiers

15 Daniel S. Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions* (Berkeley: University of California Press, 1972).

16 The federation of Malaysia comprises thirteen states, including the eastern states of Sabah and Sarawak, which joined the federation in 1963. In nine of these states, the monarch (sultan or Malay ruler) resides as the ceremonial head of state and guardian of the Malay culture and faith: Islam.

17 Federal Constitution of Malaysia (as of January 20, 2015).

18 The jurisdiction of sharia courts is especially limited in the field of criminal law. It has jurisdiction in respect of offenses as is conferred by federal law as suggested above. Until 1984, the Muslim Courts (Criminal Jurisdiction) Act 1965, had provided that such jurisdiction should not be exercised in respect of any offense punishable with imprisonment for a term not exceeding six months or any fine exceeding 1,000 Malaysian ringgit (approximately USD 240), or with both. In 1984, the Act was amended and the jurisdiction of the Syariah Court was expanded to deal with cases punishable with imprisonment up to three years, or fines up to RM

at the state level until 1993, when they were reorganized into three tiers (subordinate, high, and appeal courts) in each federal unit. The federal government largely ignored the sharia courts and interests of sharia court officials prior to the state-sponsored Islamization initiatives promulgated by Mahathir. As a result, they functioned largely independently from the federal authorities. The courts were poorly equipped and the judges were poorly qualified and commonly seen as backward and incompetent by other state officials and secular elites.¹⁹ The discrepancies between the civil and sharia courts in terms of power, authority, and material conditions were a primary source of grievances among sharia court officials and the ulama. The federal initiatives to reform Islamic court administration discussed below initially were intended to address such grievances to make the sharia courts and judges more qualified, competent, and authoritative *without* an intention to alter the secular foundation of the state and legal structure including the jurisdiction of the civil and secular courts.

Two Phases of Law Reform

The first major phase of institutional development in sharia courts took place in the 1980s, under the premiership of Mahathir Mohamad, who came to power in 1980. Mahathir co-opted Anwar Ibrahim, the charismatic leader of the most prominent Islamist movement, Angkatan Belia Islam Malaysia (Malaysian Islamic Youth Movement), into the country's nationalist party, United Malays National Organization, known as the UMNO, to launch an Islamization policy. The federal government adopted a number of statutory, administrative, and policy measures to centralize and upgrade the Islamic court apparatus as an independent—and authoritative—body in the country's essentially secular-dominant state structure.

The second phase of institutional development of sharia court administration took place in the 2000s, in the context of the rising pro-democracy movement. During this period, the reform initiatives were taken by sharia court officials in the Department of Syariah Judiciary Malaysia (Jabatan Kehakiman Syariah Malaysia, known as the JKSM), the federal agency established under the prime minister's office in 1998. Greater emphasis was given to expansion and improvement of sharia court services and personnel within the constitutional and jurisdictional constraints to further strengthen the power and authority of the Islamic court apparatus. Success of the sharia court reforms during this period appears modest on paper in contrast to the first phase. However, the Department of Syariah Judiciary managed to attain political experiences and bureaucratic competence within the federal government to adopt various measures in order to expand a more systematic, effective, and better trained Islamic court apparatus, even after the “pro-Islam” reign of Mahathir and his former deputy, Anwar Ibrahim, ended in 1998.²⁰

5,000, or whipping up to six strokes, or the combination of all these. Ahmad Mohamed Ibrahim, *The Administration of Islamic Law in Malaysia* (Kuala Lumpur: Institute of Islamic Understanding Malaysia, 2000), 135–36. This amendment to increase punishable offenses was seen as a “small victory” for sharia courts, though the criminal jurisdiction of the sharia courts is still more limited than that of the First Class Magistrate in the civil system.

19 Ibrahim, 131–36.

20 Anwar Ibrahim was the key architect of the government's Islamization initiatives under Mahathir. In 1998, he was abruptly dismissed from the government and the UMNO and subsequently detained and charged for corruption and sodomy charges, setting off the political crisis and anti-regime movement. However, Mahathir (as well as the party regime) survived the crisis and resigned as the prime minister in 2003 in a peaceful succession process in the UMNO.

The Malaysian sharia courts and religious legal administration now look considerably different from what they were before 1980. Since the 1990s the sharia courts and judges (newly called *hakim*, to follow the civil court tradition) have been well funded, better staffed, more qualified, and more powerful legally, administratively, physically, and politically. Islamic laws were amended via state legislation to provide a clear set of rules, regulations, duties, and procedures to strengthen regulatory powers of sharia courts.²¹ Their rulings on matters of Muslim private and social life, especially in the areas of marriage/divorce, inheritance, and on religious observances and offenses are final, and are implemented according to the administrative laws and official procedures of the country, despite the relatively small jurisdiction granted to them constitutionally over the spheres of family and religious matters concerning Muslims.²² This is a remarkable institutional outcome that is worthy of explanation in order to gain a better understanding of the process and effect of bureaucratization of religion in the religiously divided society.²³

Laying out the Argument

As my empirical findings demonstrate, the ways in which the Malaysian Islamic court apparatus was developed over time cannot be fully explained by conventional propositions that emphasize increasing support for Islamism in civil society, political interests of secular politicians, or autocratic powers. The first approach, the so-called civil society approach, emphasizes the expansion of the pious Muslim middle-class and religious civil society to suggest that the state's policy of expanding Islamic institutions is a reaction by the secular elites to gain legitimacy in increasingly pious Muslim communities. This approach is popular in the analysis of authoritarian rule such as Pakistan and Malaysia, since authoritarian rulers are tempted to shore up the legitimacy that they inherently lack.²⁴

Yet, state-sponsored Islamization takes place under different regimes, authoritarian or democratic, and in a different manner.²⁵ Moreover, state-sponsored Islamization will take various forms, leading to various levels of bureaucratization of Islamic courts and laws, achieving what Weber conceptualized as "bureaucratic legal authority" in some cases, as I outlined above. Secular ruling elites could simply co-opt Islamist and religious elites and grant them access to some state patronage and

21 All the states passed the Administration of Islamic Law Act following the Federal Territories' model, Administration of Islamic Law (Federal Territories) Act of 1993, in order to provide standard administrative procedures that the sharia courts and officials must comply with. The law was intended to ensure administrative and procedural uniformity across the states, and clarity among the sharia and religious officials. Law of Malaysia Act 505, 1993, http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_act_lib.nsf/858a0729306dc24748257651000e16c5/50898866b7936120c82568a200176eb1?OpenDocument.

22 As mentioned earlier, criminal offenses are federal and hence a civil matter, while sharia courts have jurisdiction over minor religious and sexual offenses such as consumption of alcohol, *zina* (extramarital and premarital sex), and *khalwat* (close proximity of opposite sexes). This jurisdictional separation between secular and Islamic courts prevents the state governments from implementing *hudud* (Islamic criminal punishments), Islamic laws that the opposition Islamic party, Parti Islam Se-Malaysia, is adamant to introduce to expand the sharia jurisdiction.

23 Comparison with the institutional development of Islamic courts in its neighboring country, Indonesia, is instructive. For the case of Indonesia, see for example, Mark E. Cammack, "Islamic Law in Indonesia's New Order," *International and Comparative Law Quarterly* 38, no. 1 (1989): 53–73; Mark E. Cammack and R. Michael Feener, "The Islamic Legal System in Indonesia," *Pacific Rim Law and Policy Journal* 21, no. 1 (2012): 13–42; Lev, *Islamic Courts in Indonesia*.

24 Nasr, *Islamic Leviathan*.

25 See, for example, the essays in Greg Fealy and Sally White, eds., *Expressing Islam: Religious Life and Politics in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2008).

resources and/or symbolic power without the ability to successfully build a bureaucratic legal apparatus regulating Islamic affairs.²⁶ It should be emphasized that *bureaucratization* of religion is not exactly the same process as is Islamization of the state apparatuses, conceptually and empirically.

The second approach is grounded in a rational-choice tradition and sees the state's Islamization policy primarily as a policy instrument of secular elites to win electoral support. According to this electoral incentive approach, secular elites, whether they rule by undemocratic or democratic means, seek to increase their chances of political survival. It is also predicted that pious Muslim populations want to have the state expand Islamic laws or will support an Islamist party to fight for greater enforcement of sharia.²⁷

Both approaches commonly take an instrumentalist position on religion to consider religious institutions and agendas as a policy tool to reward secular rulers with legitimacy and/or support to stay in power. Moreover, their religious rulings tend to be extremely conservative and rigid, and do not necessarily reflect the interests of Muslim populations, especially women and religious minorities.²⁸ What is lacking in those approaches are the perspectives and interests of religious elites and officials *within the state*, whose very authority and power have considerably increased as a result of the state-sponsored Islamization and expansion of the Islamic court apparatus. Unquestionably, secular Muslim elites, especially ruling politicians from the UMNO, react politically to growing Islamism and Islamist opposition in civil society, as amply shown by other studies and the sections below. However, the secular political interests to win elections and legitimacy alone are not satisfactory in understanding the particular ways in which the Islamic courts, laws, and official apparatus are developed in Malaysia (and elsewhere) over and across time. Studies often neglect coalitions, negotiations, and contestation between political and religious organizations and elites within the state structure seeking to advance their shared and respective interests and visions on Islam. These elites are confronted with a range of constraints such as organizational resources, leadership, cultural and social capital, and political opportunities. It is such constraints that shape the preferences and strategies of these religious elites, as also shown in case studies elsewhere in the Muslim world.²⁹ Despite the abundant authoritarian powers at their disposal, Muslim autocrats do not always get their way when it comes to religion and courts, and need to choose a particular strategy among limited options in order to advance their interests and visions, a general point Daniel Lev suggests in his studies of Islamic courts in Indonesia.³⁰ It is particularly important to realize that the strategy chosen by the ruling elites (and

26 For this proposition in the context of Indonesia, see Donald K. Emmerson, "Islam and Regime in Indonesia: Who's Coopting Whom?" (Paper presented at the American Political Science Association Annual Meeting, Atlanta, GA, September 1, 1989), photocopy provided to the author. This proposition is in line with the expansion of "patrimonial authority" characterized as particularistic personal and group interests permeating an organization, as mentioned above.

27 Joseph Chinyong Liow, "Deconstructing Political Islam in Malaysia: UMNO's Response to PAS' Religio-Political Dialectic," *Institute of Defence and Strategic Studies* (Working Papers Series, 2003), 45; Joseph Chinyong Liow, "Exigency or Expediency? Contextualising Political Islam and the PAS challenge in Malaysian Politics," *Third World Quarterly* 25, no. 2 (2004) 359–72; Liow, *Piety and Politics*.

28 Maznah Mohamad, "Making Majority, Undoing Family: Law, Religion and the Islamization of the State in Malaysia," *Economy and Society* 39, no. 3 (2010), 360–84; Moustafa, "Islamic Law, Women's Rights, and Popular Legal Consciousness in Malaysia"; Tamir Moustafa, "Liberal Rights Versus Islamic Law? The Construction of a Binary in Malaysian Politics," *Law and Society Review* 47, no. 4 (2013), 771–802; Moustafa "Judging in God's Name"; see also Yüksel Sezgin, *Human Rights under State-Enforced Religious Family Laws in Israel, Egypt and India* (Cambridge: Cambridge University Press, 2013).

29 Hefner, *Shari'a Politics*.

30 Lev, *Islamic Courts in Indonesia*; Daniel S. Lev, "Colonial Law and the Genesis of the Indonesian State," *Indonesia*, no. 40 (1985): 57–74.

its success and cost) is likely conditioned by the existing religious institutions and the elites' relations with the state, which differ from one case to another and across time. It is the nexus between state and religious elites that must be closely investigated to adequately answer the questions of institutional development of Islamic courts and apparatus.

BRITISH COLONIAL LEGACIES AND BUREAUCRATIZATION OF ISLAM

The institutional foundations of Islamic affairs in Malaysia, and Islamic courts in particular, were first laid under colonial rule. Therefore, without serious examination of colonial policies and legacies, it would be inadequate to appraise the ways in which Islamic court administration is developed and why Muslim politicians have to negotiate their religious-related policies with other sources of institutional powers—that is, Malay sultans and religious officials in respective states.³¹ As historical accounts demonstrate, it was the British colonial regime that introduced bureaucracies and statutes to sponsor Islamic and Malay customary affairs and institutions in a broader scheme of regime formation and consolidation of state authority based on the informal coalition between the British and Malay ruling elites.³² The regime's tolerance to Islam and pro-Islam policy in many policy areas, including the realm of religion and law, contributed, among other things, to elevated institutional and ideological power by Malay rulers in the respective nine states (excluding Penang, Malacca, Sabah, and Sarawak) as the supreme heads of Islam and Malay customs than before the expansion of colonial rule and state beginning in mid-1800s onwards. Deprived of their real political powers, the sultans and aristocratic Malay elites were very keen on expanding regulation and administration of Islamic affairs so as to prove their authority and consolidate their hereditary rule in the eyes of their Malay-Muslim subjects. Thus, the institutional merging of ethnic and religious communal identities was originally a political construction by the British regime to forge alliances with Malay ruling elites and consolidate colonial rule in the indigenous Malay community.³³

Many of the Islamic bureaucratic structures that exist today, including sharia courts, are the result of those British-sponsored, pro-Malay, and pro-Islam projects in the context of expanding colonial rule. In the judicial sphere, the British created the three systems of law: English, Islamic, and customary (*adat*). The supremacy of secular English law and courts restricted the scale and scope of the application of the Islamic and customary laws primarily to matrimonial and family matters and religious rituals and observances. Moreover, the British replaced much of the sharia with modern ordinances, limiting the jurisdiction of sharia to family laws mainly concerned with marriage, divorce, and alimony.³⁴ Despite the jurisdictional diminution of the Islamic laws in the

31 Iza Hussin, "The Making of Islamic Law: Local Elites and Colonial Authority in British Malaya," in *Casting Faiths: Imperialism and the Transformation of Religion in East and Southeast Asia*, ed. Thomas David DuBois (New York: Palgrave Macmillan, 2009), 155–74.

32 Cheah Boon Kheng, "The Erosion of Ideological Hegemony and Royal Power and the Rise of Postwar Malay Nationalism, 1945–46," *Journal of Southeast Asian Studies* 19, no. 1 (1988): 1–26; Roff, "Patterns of Islamization in Malaysia, 1890s–1990s"; William R. Roff, *The Origins of Malay Nationalism*, 2nd ed. (Kuala Lumpur: Oxford University Press, 1994); Moshe Yegar, *Islam and Islamic Institutions in British Malaya: Policies and Implementation* (Jerusalem: Magnes Press, 1979).

33 William R. Roff, "The Origin and Early Years of the *Majlis Ugama*," in *Kelantan: Religion, Society and Politics in a Malay State*, ed. William R. Roff (Kuala Lumpur: Oxford University Press, 1974), 101–52; Yegar, *Islam and Islamic Institutions in British Malaya*; Anthony C. Milner, *The Invention of Politics in Colonial Malaya: Contesting Nationalism and the Expansion of the Public Sphere* (Cambridge: Cambridge University Press, 1994).

34 Anthony C. Milner, "Islam and Malay Kingship," *Journal of the Royal Asiatic Society of Great Britain and Ireland*, no. 1 (1981): 46–70, at 60; Yegar, *Islam and Islamic Institutions in British Malaya*, 126, 40–41.

secular colonial state, however, the British policy facilitated the bureaucratization of sharia administration in a number of ways. For example, sharia courts (known then as Courts of Kathi) were separated from the rest of the legal structure to gain physical and administrative autonomy from the secular civil courts, but were placed under the State Religious Council (Majelis Agama Islam), an administrative organ assisting sultans regarding Islamic affairs. Moreover, alongside the written constitutions promulgated at the state level, Islamic laws in the form of modern legislation were codified, whereas what the British saw as primitive forms of punishment were abrogated. After the adoption of the Muhammadan Laws Enactment in 1904, all the states, to varying degrees, introduced a series of Islamic laws. As a result of the expanded bureaucracies regulating religious matters, the colonial state under the auspices of Malay sultans gained institutional powers and bureaucratic authority to enforce sharia to regulate the religious life of the Malay population.³⁵

In order to assist sultans in administering these Islamic affairs and laws, all the Malay states established central bureaucracies, the so-called religious councils (Majelis Agama Islam) between the two world wars. The tasks of the councils included almost anything related to Islamic matters: the nomination of *kathi* (syariah judges) and religious teachers, consideration of points of Islamic law and practices or appeals from lower religious courts, supervision of religious publications, and dealing with legislation of Islamic laws. The collection and management of *zakat* (Islamic tax) and *wakf* (Islamic endowment) were also entrusted to the councils, providing some financial resources to the otherwise poorly funded religious councils.³⁶ In short, the modern administrative reforms sponsored by the British colonial power created a whole new state-sponsored hierarchical religious apparatus, a modern-day “state-church regime,” comprising a corps of religious officialdom, a concept alien to the Muslim community prior to the advent of colonial rule. The concept of Islam as the official state religion came into being for the first time, with a considerable amount of religious authority and power bestowed onto the state and state-sponsored religious officials in particular.

Despite these dramatic changes, the qualifications and quality of the sharia courts and judges were rather questionable. The *kathi* courts were merely a section of the state religious councils, which commonly comprised a majority of non-theologically or legally trained members drawn primarily from the royal household and traditional Malay aristocratic class. Appointment to the principal religious offices, such as the state mufti (supreme Islamic jurist), the chief *kathi*, *kathi*, and assistant *kathi*, was a prerogative of the sultan, as conventionally done also in the Ottoman empire and elsewhere in many Muslim countries until today.³⁷ There was no standard system of recruitment and training in law or public administration. After all, according to historian Anthony Milner, the members of the religious councils, including sharia officials, were mainly people loyal to the sultans,³⁸ exhibiting patrimonial characteristics of state religious authority.

The qualification and competence of religious officials unsurprisingly was a source of concern among secular state officials. A high-ranking British official in Kelantan, for example, expressed concern about “difficulties the [*shariah* court] had recently had in appointing and retaining . . . *kathi* of ability” and even regarded the sharia court as “the last stronghold of the corruption and dishonesty formerly characteristic of the whole administration [prior to the advent of the colonial state].”³⁹ According to another account, sharia judges displayed a tendency to ignore the new Islamic laws introduced by the colonial regime, preferring traditional customs and personal

35 Yegar, *Islam and Islamic Institutions in British Malaya*, 140–42, 152–53, 193–93.

36 Roff, “The Origin and Early Years of the *Majlis Ugama*”; Roff, *The Origins of Malay Nationalism*, 73–74.

37 Roff, *The Origins of Malay Nationalism*, 74.

38 Milner, *The Invention of Politics in Colonial Malaya*, 216–18.

39 Roff, “The Origins and Early Years of the *Majlis Ugama*,” 113.

interests.⁴⁰ Nevertheless, the political consequence of the bureaucratization of Islam under the British regime was profound and far-reaching. Now, the coalition of traditional Malay rulers and aristocratic elites on the one hand, and religious officials loyal to the traditional Malay rulers on the other, was seen as the ultimate political and religious authority in the Muslim community in the respective states, making religious and state powers—as well as Malay and Muslim identities—inextricably intertwined.

At independence in 1957, the institutional powers and authority of sultans and Islam were constitutionally formalized and consolidated. The Federal Constitution of 1957 provides that Islam is the official religion of the federation, but matters of religion (Islam), including sharia courts and laws, remained, as mentioned above, under the jurisdiction of sultans in each state. Article 11 of the Federal Constitution guarantees religious freedom for all religious communities, but with a condition that proselytization by adherents of non-Islamic religions among Muslims is strictly prohibited.⁴¹ The constitutional arrangements promulgated at independence were overall the result of negotiations and political deals among three pillars of power: departing British officials, traditional Malay rulers, and newly emerging Malay political elites who formed the UMNO in preparation for inaugural parliamentary elections.⁴² The political and institutional supremacy of the Malay (and thus Muslim) community in the context of an ethnically divided plural society with economically superior non-Malay (especially Chinese) populations was a foremost and shared concern for the Malay politicians, in spite of some differences and conflicts of interest.⁴³

It is due to this consideration of regime formation and consolidation of political powers among the Malay elites that the supreme position of institutions of Islam, including sharia courts and personnel inherited from the British regime, was safeguarded constitutionally, despite the fact that largely secular and Westernized UMNO elites did not intend to make the newly independent state Islamic. On the contrary, the UMNO elites, especially the first prime minister, Tunku Abdul Rahman, were convinced that religion had no place in modern state matters and politics and that an independent Malaysia would be a secular state.⁴⁴ It is also important to point out that Islamist pressures fighting to build a new Malaysian state based on Islam were relatively very small in contrast to those in Indonesia. In the end, however, Islam, as the faith of the majority, was instituted as the official religion of the federation primarily to consolidate majoritarian rule and Malay dominance in state- and nation-building; it would provide constitutional guarantee of the superior position of the majority community in the multiethnic society and superior powers, ceremonial and formal, to the Malay ruling elites. In sum, formalization of the official religion at the time of independence should be understood as a result of identity politics and regime formation based on majoritarian communal interests, rather than the intent and aspiration of building a state based on syariah to superordinate, and grant privileges, to Islamic institutions and elites.

40 Yegar, *Islam and Islamic Institutions in British Malaya*, 159–60.

41 For a discussion of the erosion of constitutional rights of religious freedom in recent years, see for example, Neo, “Competing Imperatives”; Shah and Sani, “Freedom of Religion in Malaysia.”

42 Joseph M. Fernando, “The Position of Islam in the Constitution of Malaysia,” *Journal of Southeast Asian Studies* 37, no. 2 (2006): 249–66; Gordon P. Means, “‘Special Rights’ as a Strategy for Development,” *Comparative Politics* 5, no. 1 (1972): 29–61.

43 Cheah, “The Erosion of Ideological Hegemony and Royal Power and the Rise of Postwar Malay Nationalism, 1945–46.”

44 N. J. Funston, *Malay Politics in Malaysia: A Study of the United Malays National Organization and Party Islam* (Kuala Lumpur: Heinemann, 1980), 145–47; Anthony C. Milner, “The Impact of the Turkish Revolution on Malaya,” *Archipel* 31, no. 1 (1986): 117–30, at 122–25.

AUTOCRATIC ISLAMIZATION: MAHATHIR AND STRUGGLES FOR MODERNIZATION AND PROGRESSIVE ISLAM

As a result of state- and nation-building dominated by largely Western-educated and secular Malay elites in the formative years, scant resources were invested in the sharia courts, keeping the latter largely inferior and poor in the secular-dominant state and legal structures. Prior to the constitutional amendment of 1988, sharia courts and judges were poorly funded and managed under the religious councils in each state with their jurisdictions and duties poorly defined. The majority of sharia judges were trained in general fields of Islamic jurisprudence and laws or Islamic studies and theologies in the Middle East, especially al-Azhar University in Cairo, and lacked adequate training in the fields of civil law and public administration.⁴⁵ They retained some traditional authority within the Malay community but lacked institutional power and prestige, especially in comparison with their secular counterparts, the powerful and prestigious civil courts and judges.⁴⁶

Without a doubt, what played a role in prompting the UMNO in the 1980s to embark on greater accommodation of Islam were increasingly pious Muslim constituencies and the rising influence of religious leadership in the Islamist opposition party, Parti Islam Se-Malaysia, known as the PAS, or the Malaysian Islamic Party.⁴⁷ However, it is important to realize that the aggressive Islamist opposition in civil society and electoral incentives of secular Muslim politicians alone did not shape the ways in which the state Islamization policy was implemented and the Islamic court administration was developed. Mahathir was adamant to build a modern nation and promote a moderate and progressive Islam, strictly rejecting the ultra-conservative type of Islamic rule and laws advocated by the party's ulama, most prominently the latter's determination to implement *hudud* punishments (Islamic criminal punishments, including caning, cutting off a thief's hand, stoning of adulterers). In order to stop penetration of conservative Islamism in the state bureaucracy and courts, Mahathir and his government needed religious apparatuses and legal expertise that could help enforce moderate interpretations of Islamic laws. It was precisely to prevent the conservative and harsh Islamic laws that conservative political ulama were determined to enforce in the country that Mahathir and his government invested lavish resources to develop a tightly structured and disciplined Islamic court and legal apparatus under the powerful prime minister's office and to strengthen federal control over religion. Furthermore, as discussed above, the Malaysian state and ruling elites were already armed with the constitutional provision officially privileging Islam, along with relatively centralized legal and bureaucratic apparatuses regulating religious affairs and laws at the state level.

In order to centralize and standardize the Islamic courts at the federal level, however, the UMNO politicians needed to gain consent from all nine Malay sultans, who were particularly protective about their final source of authority and constitutional power—Islam and Malay culture—against the backdrop of truncated royal powers under Mahathir.⁴⁸ Moreover, the state religious councils and officials were not ready to let go of their control over the Islamic courts and laws, although they were readily tempted by the abundant financial and technical assistance offered by the federal government in return for compliance. In addition, some of the state religious officials were not always comfortable with the

45 Sheikh Ghazali Abdul Rahman (former director-general of the JKSM), interview by the author, Kuala Lumpur, July 17, 2000.

46 Ibrahim, *The Administration of Islamic Law in Malaysia*, 131–36.

47 Liow, "Deconstructing Political Islam in Malaysia," 1–24; Liow, "Exigency or Expediency?," 359–69.

48 The constitutional amendments of 1983 and 1993 stripped Malay sultans of some of their royal prerogatives including legal immunity. The amendments were made in the context of deteriorating relations between the monarchies and government. See, for example, H. F. Rawlings, "The Malaysian Constitutional Crisis of 1983," *International and Comparative Law Quarterly* 35, no. 2 (1986): 237–54.

progressive visions of Islam that Mahathir and his deputy, Anwar, wanted to promote in order to achieve their vision of modern Malaysia, Vision 2020.⁴⁹ Mahathir was known to be particularly supportive of women's rights and strongly opposed to state religious officials who tend to aggressively target young Muslim women to limit the latter's freedom in certain areas, such as participation in beauty contests and sport competition.⁵⁰ Mahathir's wife, Siti Hasmah Mohamad Ali, and daughter, Marinah Mahathir, are known patrons of the Sisters in Islam, a progressive feminist group that many of the traditional ulama in the country consider "deviant."⁵¹ This tension within the Malay elites, both political and religious, was consistently a potential source of conflict, and the UMNO elites' ability to handle it was the key to the outcome of Islamic court and legal reform.

It is a conventional assumption that Mahathir's personalistic authoritarian powers were so abundant that the UMNO could easily get its way, even in the areas of religion.⁵² However, Mahathir's authoritarian powers were not adequate to achieve the centralization of Islamic institutions as he intended. For example, the federal government, especially the then deputy prime minister and finance minister Anwar Ibrahim, confronted the greatest resistance from state religious officials and sultans in the former's attempt (and ultimate failure) to centralize the administration of *zakat* and *waqf* since these are major sources of patronage and financial resources as well as religious authority for sultans and state religious officials.⁵³ Thus, the UMNO politicians needed to invest additional political, financial, and intellectual and cultural capital to generate much needed cooperation and coordination between political and religious elites at the federal and state levels. Moreover, the shared interests among Malay elites, including UMNO politicians, religious officials, and Malay sultans to upgrade the position of Islam within the state to consolidate their institutional power have in turn contributed to the bureaucratization of Islamic courts and personnel as discussed in more detail below.

Islamic Court Reforms under Mahathir

Prior to the establishment of the Department of Syariah Judiciary in 1998, the Department of Islamic Development (Jabatan Kemajuan Islam Malaysia, known as JAKIM), a federal Islamic

49 Kikue Hamayotsu, "Islam and Nation Building in Southeast Asia: Malaysia and Indonesia in Comparative Perspective," *Pacific Affairs* 75, no. 3 (2002): 353–75.

50 In 2015, a Muslim gymnast, Farah Ann Abdul Hadi, was criticized by Malaysian religious officials and Muslim organizations for wearing a "revealing" leotard and breaching Islamic dress codes at the Southeast Asia Games, where she won a total of six medals. See, for example, *Telegraph*, June 18, 2015, <https://www.telegraph.co.uk/women/womens-life/11683079/Muslim-gymnast-criticised-for-revealing-leotard-as-she-wins-gold.html>.

51 The Selangor Religious Department issued a fatwa against the group in 2014 though the Sisters in Islam continue to be active today. The fatwa titled "Pemikiran Liberalisme dan Pluralisme Agama" [Liberalism and religious pluralism] declared the Sisters in Islam as subscribing to liberalism and religious pluralism, and therefore deviating from the teachings of Islam. An original copy of the fatwa is in the author's personal possession, obtained at the group's office. About the controversy related to the fatwa against the group, see, for example, Rashvinjeet S. Bedi, "Sisters in Islam File for Judicial Review on Fatwa," *Star*, October 31, 2014 (<https://www.thestar.com.my/news/nation/2014/10/31/sisters-in-islam-files-for-judicial-review-on-fatwa/>).

52 In-Won Hwang, *Personalized Politics: The Malaysian State under Mahathir* (Singapore: Institute of Southeast Asian Studies, 2003); Dan Slater, "Iron Cage in an Iron Fist: Authoritarian Institutionalization and the Personalization of Power in Malaysia," *Comparative Politics* 36, no. 1 (2003): 81–101.

53 Kikue Hamayotsu, "Islamization, Patronage and Political Ascendancy: The Politics and Business of Islam in Malaysia," in *The State of Malaysia: Ethnicity, Equity and Reform*, ed. Edmund Terence Gomez (London: Routledge-Curzon, 2004), 229–52. On the other hand, the Islamic Banking Act and Takaful (Islamic insurance) Act were passed at the federal level in 1983 and 1994 respectively to facilitate the infrastructure of Islamic banking and financial markets, resulting in the successful expansion of vibrant Islamic corporate finance in the private sector for which Malaysia became internationally renowned. See Sloane-White, *Corporate Islam*.

agency directly under the prime minister's office, played a leading role in promoting and coordinating sharia reforms nationwide. Committees for sharia and civil law coordination were convened in the department, appointing both civil and sharia law scholars and judges, as well as officials from the attorney general's chambers to carry out administrative reform, including the standardization of Islamic law and courts. The committees were led by prominent Muslim civil law experts who were generally sympathetic to Islamic courts and laws in order to upgrade the position and quality of Islamic courts to match the level of their civil counterparts. In general, their emphasis was on the standardized application of Islamic laws and the training of qualified Islamic court officials who were more autonomous and sensitive to the social and cultural needs of Muslims nationwide.⁵⁴ For example, all the Islamic court judges and officers including those who had already been in the service were required to complete the Diploma in Administration of Islamic Judiciary to gain qualification and competence in public administration and civil laws, a newly introduced degree requirement for admission to the sharia legal service. Moreover, the law faculty of the prestigious International Islamic University of Malaysia⁵⁵ offered new programs: the "LLB (Syariah)," a five-year, first-degree program combining training in both civil and Islamic law, and a one-year diploma program in sharia legal practices. These programs and curricula were introduced not only to train competent Islamic judges and lawyers but also to offer civil lawyers an opportunity to gain expertise in Islamic laws and procedures, so that they could better represent the interests of Muslim clients.⁵⁶ In the past, representation of lawyers in sharia courts was rare, but they have become more common since the 1990s, especially in cities, making those new law programs timely and attractive for Muslim lawyers.⁵⁷

A broad coalition forged among Malay politicians, bureaucrats, and sharia as well as civil judges, largely driven by growing religious identity and nationalism within the Muslim-Malay elites, was crucial for a successful sharia legal reform. From the perspective of civil court judges and legal experts who are predominantly Muslim, raising the quality of Islamic courts and legal services was considered a religious—and national—duty to do justice to Islam and the Muslim community, the faith that was generally underrated as "backward-oriented." A federal court judge who contributed to the Islamic court reform in the 1990s reiterated to me on several occasions that "it is of course my duty and service to the God and *umma* [Muslim community] as Muslim to help my Malay colleagues [in the sharia courts] to properly implement sharia and develop the judicial system in the Malaysian context . . . We can't just leave them behind to damage our national reputation." He was frequently invited to major law schools both at home and abroad, visiting such institutions as Harvard University and National University of Singapore to present and share Malaysia's experiences regarding the development of Islamic courts and Islamic laws

54 Sheikh Ghazali, interview; Abdul Aziz Abdul Rahim (legal advisor of the JAKIM), interview by the author, Kuala Lumpur, March 24, 2001; Mahamad Arifin (lecturer, Faculty of Law, International Islamic University of Malaysia), interviews by the author, Kuala Lumpur, July 21, 2000, and January 13, 2001.

55 The International Islamic University of Malaysia was established in 1983 and is fully sponsored by the federal government. Professor Ahmad Ibrahim, chief architect of the sharia judicial reform, was appointed as the inaugural head of the university's Faculty of Law, introducing programs, training, and forums to elevate the quality and prestige of Islamic court and legal services. The university's programs and instruction are conducted in English, with faculty and students recruited from other Muslim countries, such as Pakistan.

56 Later, other law faculties of other national universities, such as the National University of Malaysia and the Science University of Malaysia, also introduced similar programs.

57 Kamariah (lawyer in private practice), interview by the author, Kuala Lumpur, April 10, 2002; Sa'adiyah Din (lawyer in private practice), interview by the author, Kuala Lumpur, June 16, 2001; Salbiah Ahmad (lawyer in private practice), Petaling Jaya, Selangor, interview by the author, December 18, 2000.

throughout his career and even after retirement. For him, the successful Islamic court system was also a source of a national pride. He reiterated that he took pride in showing to the Western world that “Malaysia could make sharia work” and “Islam works.”⁵⁸

Coordination between Islamic and civil officials brought about significant results in centralizing the system of Islamic court administration. In 1988, the federal constitution was amended to give more jurisdictional leverage and autonomy to the Islamic courts in relation to the civil courts and judges who until then had enjoyed exclusive prerogatives to overturn decisions made by the Islamic courts. Article 121 (1A) was added to ensure that decisions made within the jurisdiction of the Islamic courts could no longer be overturned by the civil courts.⁵⁹ Moreover, the Department of Islamic Development led state governments to pass legislation related to Islamic administration to create a clear division of jurisdiction among three principal religious offices, namely the religious council, the mufti,⁶⁰ and the syariah courts. Although there are some differences from one state to another, the religious council serves sultans as advisors on Islamic affairs and typically manages *zakat*, *waqf*, charity, and religious schools. The mufti is the supreme authority in respect of all matters concerning sharia laws. His only and exclusive power to issue fatwas was legally defined with the passage of the Islamic administration laws.⁶¹ The separation of sharia courts and judges from the state religious councils was an especially important outcome, guaranteeing administrative separation between the two functions, judicial and executive, and granting greater independence to the former. Following the passage of the Administration of Islamic Law (Federal Territories) Act in 1993, the sharia courts were reorganized into a three-tier hierarchy in each state: the syariah subordinate court (Mahkamah Rendah Syariah), the syariah high court (Mahkamah Tinggi Syariah), and the syariah court of appeals (Mahkamah Rayuan Syariah).⁶²

In order to strengthen and centralize the sharia courts even further, the federal government established the Department of Syariah Judiciary directly under the prime minister’s office in 1998.⁶³ This was a remarkable administrative innovation to centralize and standardize the otherwise inconsistent administration of syariah courts, judges, and laws, since the Islamic and syariah matters still constitutionally fell under the jurisdiction in each state of sultans, who tend to be extremely protective of their small turf of interest and power, Malay culture and religion. Under the auspices of this new well-funded federal agency, the federal government took steps to centralize the recruitment and training of qualified sharia judges and officials tasked with administering and arbitrating religious (Islamic) cases in a more systematic manner in line with federal policies and directives.

One of the most important schemes the federal government introduced was the Skim Guna Sama Perkhidmantan Pegawai Syariah (Syariah Official Common-Use Scheme), which allows sharia

58 Interviews with members of the civil judiciary. The interviews with the author were conducted in confidentiality, and the name of the interviewee is withheld by mutual consent, and dates and locations have also been withheld to maintain confidentiality.

59 Ahmad Ibrahim, “The Amendment to Article 121 of the Federal Constitution: Its Effect on Administration of Islamic Law,” *Malayan Law Journal* 2 (1989): xvii–xxii.

60 Ibrahim, xvii–xxii. The mufti’s exclusive power to issue fatwas was also legally defined.

61 As is usually the case with fatwas elsewhere, the rulings issued by muftis are not legally binding and serve as recommendations only.

62 See, for example, the provisions of Section 52 (1) and Section 52 (2) of the Administration of Islamic Law (Federal Territories) Act 1993 Act 505, for the power conferred on the Syariah Court of Appeal. Ibrahim, *The Administration of Islamic Law in Malaysia*, 140; Min Aun Wu, *The Malaysian Legal System*, 2nd ed. (Selangor: Longman, 1999), 164.

63 E-Syariah Official Portal, “JKSM Profile,” accessed July 4, 2018, <http://www.esyariah.gov.my/portal/page/portal/Portal%20E-Syariah%20BI/Portal%20E-Syariah%20Profil%20JKSM> (in English; provides an overview of the JKSM profile).

court judges and legal officials to be certified, employed, and trained under the federal service.⁶⁴ Providing access to greater career opportunities for training and promotion and various other benefits, this service scheme worked as a crucial material incentive for a number of sharia court officials to join the federal structure. Although several states such as Johor and Kelantan decided not to officially join the program, the Department of Syariah Judiciary still provided all the sharia courts financial assistance and new services, technologies, and benefits to encourage state compliance with federal supervision and standard application of Islamic laws and procedures.⁶⁵ For example, the federal government provided funding to build a new lavish syariah court complex in Kota Bharu, Kelantan, a state ruled by the PAS, the Islamist opposition party. The multistory complex, built next to the equally new building housing the Kelantan State Religious Council, accommodates not only syariah court chambers and officials employed by the Kelantan state, but also federal units and services sponsored by the Department of Syariah Judiciary.⁶⁶

As a result of these bureaucratic reforms, inconsistencies in the administration of Islamic courts and laws have diminished considerably though of course some discrepancies remain. Furthermore, Islamic courts and judges gained considerable power, authority, prestige, and self-esteem. The Department of Syariah Judiciary has steadily grown since its inception in 1998, with increased services, programs, and positions. Its number of officials, including sharia judges, has increased two-fold, from approximately five hundred to the current one thousand.⁶⁷ This outcome has less to do with electoral competition between the UMNO and the PAS, as conventionally believed, and more to do with internal pressures emanating from Islamic officials within the state structure. In Kelantan, for example, which has been ruled by the PAS since 1990, Islamic courts and judges have been willing to cooperate and coordinate with the federal government and have thus achieved considerable administrative development. They offer new services, such as mediation and counseling for couples and family support schemes for divorced mothers and children, sponsored by the Department of Syariah Judiciary, as they do in all other states.⁶⁸ On the other hand, some Malay rulers in the states where the UMNO is historically dominant, such as Johor, did not join the federal sharia service, while other states, such as Perlis and Selangor, did. If the electoral competition between the UMNO and the PAS had been the primary cause, the institutional development of Malaysia's Islamic courts and laws could have been different.

POST-REFORMASI ISLAMIC COURTS: BUREAUCRATIZATION, YES, RADICALIZATION, NO

It is largely thanks to the systematic ways in which the administration of Islamic courts and officials were institutionalized that they have not only gained but thrived as a legitimate authoritative body, even after Mahathir's resignation as prime minister in 2003 at the advent of the pro-democracy

64 *Berita Minggu*, May 28, 2000; *Utusan Malaysia*, December 28, 1998.

65 Yusoff Ghazali (Public Service Department), interview by the author, Kuala Lumpur, September 5, 2000; Mohd Naim Mokhtar (JKSM), interview by the author, Putrajaya, June 13, 2013.

66 Interviews with Kelantan Syariah Court officials; interviews with JKSM officials. The interviews with the author were conducted in confidentiality, and the names of the interviewees are withheld by mutual consent, and dates and location have also been withheld to maintain confidentiality.

67 JKSM officials, interview.

68 JKSM officials, interview. Interview with staff of the Kelantan Syariah Court. The interviews with the author were conducted in confidentiality, and the names of the interviewees are withheld by mutual consent, and dates and location have also been withheld to maintain confidentiality.

reformasi (reform) movement. During the post-*reformasi* period, the Department of Syariah Judiciary became the driving force in advancing sharia agendas to update and strengthen the Islamic court services and personnel. However, its officials and sharia experts consider the jurisdiction, power, and reputation of the Islamic courts still modest compared with their civil counterparts and intended to expand them further.

Moreover, sharia judges have achieved a generational change and institutional makeover to gain more qualifications and competence in religious and legal matters and more administrative and political experiences in policy making. In Selangor, the largest state, the number of sharia judges has increased from only one in a district court (covering the largest Petaling and Shah Alam districts) in 1998 to six judges covering the same districts in 2015 with the increased number of district courts. As of 2015, there are twelve district courts and thirty-five judges. All the sharia judges are under forty years old, excluding the chief justice, who is currently in his mid-40s, holds a law degree and a PhD in combined laws from the International Islamic University of Malaysia, and was once a fellow at Harvard Law School.⁶⁹ In Kelantan, there are a total of ten district courts. The majority of sharia court officials have majored in general fields of Islamic studies and jurisprudence at prestigious local universities such as the International Islamic University of Malaysia, National University of Malaysia, Science University of Malaysia, or Cairo's Al-Azhar. Despite that Ketantan Syariah Court officially has not joined the federal service, all the sharia judges and officials there have completed the diploma in administration of Islamic judiciary and continue in-service training sponsored by the Department of Syariah Judiciary in order to fulfill the same requirements and standards with their counterparts in other states.⁷⁰

Unlike the PAS's political ulama, whose sharia agendas, especially their proposal to integrate the *hudud* into state law, are largely political and ideological, these state bureaucrats have learned constitutional, institutional, and political constraints in advancing their visions and agendas in practice. They are more interested in making Islamic courts and laws seem modern, efficient, cosmopolitan, and women- and family-friendly. The then chief justice of the Malaysian syariah court and director-general of the Department of Syariah Judiciary insists that the department is first and foremost responsible for, and interested in, protecting the well-being of the Muslim community and at the same time wishes to be seen as "forward-looking," "competent," and "family-friendly," as part of the government. For example, he stresses the ambitions to increase the number of female judges and officers in the department following a fatwa issued in 2007 permitting appointment of female judges in Islamic courts, as the then prime minister, Najib Razak, was supportive of the ruling.⁷¹

In order to offer more "family-friendly" and "gender-sensitive" services, the Department of Syariah Judiciary introduced marriage counseling and mediation programs in 2002. A young group of mediators, usually under age 40, were trained and employed by the department, which hired consultants from Sydney, Australia, in designing the program, because the Australian family courts had advanced knowledge and experiences. In 2008, the Department of Family Development was created to strengthen enforcement of sharia court orders (such as custody and maintenance) so

69 Mohd Naim Mokhtar (chief justice of the Selangor Syariah Court), interview by the author, Shah Alam, June 30, 2015.

70 Interviews with members and staff of the Kelantan Syariah Court. The interviews with the author were conducted in confidentiality, and the names of the interviewees are withheld by mutual consent, and dates and location have also been withheld to maintain confidentiality.

71 Ibrahim Lembang (chief justice, Federal Syariah Court of Malaysia, and director-general, JKSM), interview by the author, Putrajaya, June 13, 2013. Despite the government's policy and their good academic standing, very few female students are keen on becoming sharia judges, a concern of JKSM officials who would like to hire more female judges.

that the courts could help divorced mothers and their children. By 2010, both the family support and mediation services were fully in operation in all the states, including Selangor and Kelantan, which were controlled by the opposition party.⁷² The inaugurate head of the department insists, “our philosophy is that sharia courts should not only issue judgements and orders, but also be responsible for execution of those orders so that husbands would comply with our orders and not run away from their religious duties.”⁷³ Moving forward with the policies and directives set by the federal government, especially the prime minister and his cabinet, sharia court officials could more effectively advance their career goals within the largely secular state and powerful federal government, rather than insisting on radical projects, such as enforcing harsh Islamic criminal codes and punishments, which may jeopardize their career prospects. Equally important, they could still serve the broad interests of the Muslim-Malay community, who are not only more religious and socioculturally conservative but also more urbanized in their outlook and lifestyle.⁷⁴

This does not mean that these religious bureaucrats are apolitical. They have interests and ideas that are not necessarily the same as those of the UMNO elites, but their close access to the prime minister and his cabinet is an indispensable political advantage to expand and upgrade the sharia courts further. They would use the resource to achieve their religious goals. Moreover, the Department of Syariah Judiciary officials need the political skills to achieve their institutional and policy goals, and they need resources in a competitive bureaucratic environment, especially the prime minister’s department, where other agencies, most notably the Department of Islamic Development, is competing to expand their jurisdiction over, and budgets for, Islamic activities, as illustrated by the 2010 proposal of the Department of Syariah Judiciary, discussed below, to expand the three-tiered court system.⁷⁵

I do not also mean to suggest that sharia judges have ideas and theological positions completely different from those of the political ulama in the PAS. Some in fact share similar beliefs and attitudes when it comes to expansion of Islamic rule and interpretation of Islamic laws, including the enforcement of *hudud*. The chief justice of the Kelantan Syariah Court insisted to me that he would of course be keen in implementing *hudud*, whether the state government is controlled by the PAS or the UMNO, because “the majority of Muslims support it.” In fact, he suggested, “it would be easy for Muslims, if PAS and UMNO combine forces to form a ‘united government’ to achieve the implementation of *hudud* because both parties after all share the same concern about the welfare of Muslims.” He also emphasized that implementation of *hudud* is “our religious duty to fulfill the requirements of Muslims” and “it is the politics and institution [federal constitution] that have been a major obstacle to fulfilling the religious obligation. The issue of sharia therefore should be left to the sharia courts, not to the politicians.”⁷⁶ Another member of the Kelantan Syariah Court also made it clear that he could not mix his political position and his official duties as an Islamic court official even if he personally supports a particular party (that is, the PAS).⁷⁷ The key distinction that needs to be taken seriously is that Islamic court officials are already deeply embedded in—and dependent on—the largely secular and powerful state apparatus for their religious authority and survival, while other political ulama are not. As state bureaucrats, they are

72 The ruling coalition led by the UMNO, Barisan Nasional (National Front), lost the Selangor state government in 2008.

73 Mokhtar, interview, June 13, 2013.

74 Lembut, interview; JKSM officials, interviews.

75 JKSM officials, interviews.

76 Daud Muhammad (chief justice, Kelantan Syariah Court), interview by the author, Kota Bharu, August 14, 2013.

77 Interview with member, Kelantan Syariah Court. The interview with the author was conducted in confidentiality, and the names of the interviewee is withheld by mutual consent, and date and location have also been withheld to maintain confidentiality.

constrained by the institutional and political context wherein they are located. Their strategies are adjusted—and institutional developments are shaped—per such political constraints.

One prominent episode illuminating such political dynamics among Muslim elites is the Department of Syariah Judiciary proposal in 2010 to establish an additional superior tier to the current three-tier structure (appeal, high, and subordinate courts), which would be functionally equivalent to the federal (formerly supreme) court in the civil side of the judiciary. According to high-ranking department officials who were involved in initiating the proposal, it was originally a technical concept, intended to provide Muslim clients with an additional legal avenue to have their high court cases heard three times after their initial submission in the high court, in the same way that civil cases are treated in the federal legal system. It is easy to predict, however, that this concept is not purely technical but is also political since it would certainly have given the sharia courts and the Department of Syariah Judiciary more prerogatives, positions, budgets, prestige, and power. Their political intension seems even more evident if we take it into account that it is common worldwide to have only two tiers in religious courts when it comes to family matters, whereas Malaysia's Islamic courts already have three. Department officials were ambitious but at the same time pragmatic; they were aware that the concept was politically sensitive because it could possibly be seen as federal—and thus the UMNO's political—attempt to override the jurisdiction of sultans and state officials. They predicted that the proposal would not be successful in obtaining the consent of the Council of Rulers, as is constitutionally required. So they carefully proposed a compromise: adding another superior tier to the current system in *all* the states, rather than creating a central federal sharia court in Putrajaya, the federal capital, to match the civil federal court.

The concept of creating a supreme court in all thirteen states seems rather unrealistic from the perspective of bureaucratic efficacy. Under the current three-tier system, the highest tier of syariah court, the syariah appeal court is in fact a panel of four sharia judges employed by the Department of Syariah Judiciary at the federal level in Putrajaya to consider appeal cases in both the states and federal territories. Given the relatively small jurisdiction allocated to the sharia courts, largely private and family matters such as inheritance, marriage and divorce, and other minor religious offenses and the correspondingly small number of cases reaching the highest level, thirteen supreme courts staffed by full-time professional judges would be not only costly but also likely unnecessary.

However, this original concept was not only approved by the then Prime Minister Razak and his cabinet but also informally endorsed by the Council of Rulers. It was endorsed, in part, because the Department of Syariah Judiciary presented its case skillfully and sensitively, but more importantly, because the idea was politically very attractive for both Malay politicians as well as Malay rulers. Against the backdrop of an unprecedentedly vocal multicultural pro-democracy movement, called Bersih (clean), in political and civil societies since the mid-2000s, the Malay elites felt that their sources of power—and the supremacy of Islam and the Malay community in particular—were under threat, since multiculturalism and democracy were meant not only to reduce the UMNO's dominance and authoritarian powers but also to advance equality and communal rights for all citizens. A former member of the Malaysian federal (supreme) court became publicly active as a strong advocate of Malay rights after his retirement from the legal service, emphasizing that the Malay community now had to fight together to protect their special rights—Malay sovereignty—because their ethnic unity and dominance is undermined and threatened as a result of multiethnic pro-democracy movement and weakened Malay parties, both the UMNO and the PAS.⁷⁸ Such nationalistic

⁷⁸ Interview with former member of the federal judiciary. The interview with the author was conducted in confidentiality, and the name of the interviewee is withheld by mutual consent, and date and location have also been withheld to maintain confidentiality.

sentiment seems widespread among the Malay elites who hold important positions in government and civil society.⁷⁹ So it is not surprising that they were easily attracted to the idea of *strengthening* the Islamic court in order to project a supreme position and authority of Islam without considering whether they are financially and practically viable. Radical Islamists and Malay Right groups such as Ikatan Muslimin Malaysia and Persatuan Pribumi Perkasa, as well as state religious officials and mainstream Muslim organizations, including the Angkatan Belia Islam Malaysia and the Muslim Lawyers Association of Malaysia, certainly appreciated and supported the proposal.⁸⁰

To date, however, no supreme sharia court has been established yet, due to a counter proposal made by other federal authorities, especially the Attorney General's Chambers and the Department of Islamic Development, headed then by a UMNO senior politician and former military officer, Jamil Khir Baharom before May 2018.⁸¹ The proposal was to establish the federal syariah court in Putrajaya, the very concept avoided by Department of Syariah Judiciary officials due to their fear that doing so would make the sultans and state religious officials suspicious of federal political interference. The Council of Rulers has consequently retracted its earlier consent and rejected the final proposal made by the federal government. According to a Department of Syariah Judiciary official, as expected, sultans became nervous about the federal government's (that is, UMNO politicians') intending to reduce the already small powers left to them. The proposal was perceived as a trick to limit their power and assert federal power over the state and religious matters. It was dismissed altogether as a result.⁸²

A former member of the civil court official who supported the development of sharia judiciary indicated that it would probably be best to keep the sharia courts as they are now. He argued that it would be a nightmare if thirteen supreme sharia courts were indeed created, since they would not be under federal supervision either constitutionally or legislatively.⁸³ It appears that high-ranking civil court and secular officials still do not have full faith in the competence and judgment of sharia courts and judges, who tend to make controversial judgments in politically sensitive communal matters, such as apostasy and conversion. For the same reason, secular Muslim politicians are consistently concerned about the behaviors and views of the judges in sharia courts and are keen to tighten their grip over Islamic matters and judges. It is also important to note that there is a growing concern among state bureaucrats and legal officials that excessive politicization of religion and ethnocentric Malay nationalism to assert the majority interests and majoritarian rule are diminishing administrative the competence, efficacy, and reputation of the state apparatuses because of infiltration of particular political interests and competition for power and authority in the name of Islam.

BUREAUCRATIZATION OF ISLAMIC COURTS AND RELIGIOUS FREEDOM

The strengthened Islamic courts in a religiously divided society such as Malaysia, however, have serious consequences for interreligious relations and religious freedom. Because the Islamic

79 Interviews with former staff for the deputy prime minister; interview with legal advisor for federal government; interviews with Sisters in Islam. The interviews with the author were conducted in confidentiality, and the names of the interviewees are withheld by mutual consent, and dates and locations have also been withheld to maintain confidentiality.

80 *Malay Mail Online*, November 19, 2014.

81 Pakistan has a federal sharia court. For the development of the Islamic legal system in Pakistan, see for example Rubya Mehdi, *The Islamization of the Law in Pakistan* (London: Routledge, 2013).

82 Interviews, JKSM officials and sharia judges.

83 Former member of the federal judiciary, interview.

institutions are meant to ensure the superiority and interests of the Malay community, the interests of non-Muslims, Chinese, and Hindu Indians tend to be neglected in the process of Islamic court and law reform. As argued by Jaclyn Neo, the issues of religious freedom (interpreted as a right to choose and practice one's own faith) and apostasy (renouncing Islam) have highlighted legal complications concerning not only Muslims but also non-Muslims in Islamic courts, especially in cases of conflict of jurisdiction between the two systems of law, civil and sharia.⁸⁴ For various reasons, apostasy and conversion cases often involve non-Malay couples, usually Hindu Indian men who decide to convert to Islam without the consent of their wife and family, leading to a divorce plea by a non-Muslim spouse.⁸⁵ In some cases, custody of children and their religious conversion (by a Muslim-convert parent) aggravates a legal battle.⁸⁶ Since the state religious departments and sharia courts do not make public the official number of apostasy and conversion cases, it is hard to gauge the actual trend of religious conversion unless it is reported in local media. It is widely known, however, that cases involving Malays are minimal or likely kept secret within the Malay community.⁸⁷ The issue is extremely sensitive, especially after the famous case of Lina Joy, who not only failed to legally attain permission to convert but also fled the country to marry her Christian partner. Moreover, the state religious departments are tasked and ready to "rehabilitate" Muslims who attempt to convert or are seen as deviating from their faith (the right teaching of Islam) to prevent such acts.⁸⁸ The issue of apostasy has become even more explosive and easily politicized in the context of a rising tide of religious nationalism asserting Malay supremacy since the mid-2000s.

Because of the constitutional amendment and strengthened sharia courts, civil courts no longer have jurisdiction over sharia cases either in theory or, increasingly, in practice. Even if the spouse of a Muslim convert prefers to take her case to civil court to obtain a divorce or custody, the case tends to be returned to sharia court due to the considerable pressures from the Muslim community, which asserts that the interests of Muslims (and Islamic courts) should be privileged. To make the situation worse, the issue of conversion and apostasy is highly politicized by Malay Right and radical Islamist groups in the context of deteriorating relations between Malay and non-Malay communities. As mentioned earlier, the Malay elites are consistently concerned with their supreme position in the state. Radical Islamists and Malay nationalists are more assertive and provocative than ever before against the backdrop of an unprecedentedly assertive pro-democracy movement, locally known as Bersih, advocating equality for all communities, majority and minority alike. The bureaucratization of Islamic courts and laws over the past few decades has accommodated "pro-sharia" elements into the state and strengthened the official position and authority of the majority religion, and sharia officials in particular. It is questionable, however, if the expansion of a modern bureaucratic apparatus regulating religion has helped to contribute to peaceful and pluralistic interreligious relations and the well-being of a multireligious society. It is equally

84 Neo, "Competing Imperatives."

85 "Hindu Groups Claim 7,000 People Wrongly Documented as Muslims," *Malaysian Insider*, February 23, 2016.

86 A most recent prominent case illuminating this dynamic involves a Hindu woman, Indira Gandhi, in Ipoh, Perak. Indira challenged the conversion of her children and has taken her case to the federal court, after the court of appeal ruled on December 30, 2015, that the validity of conversion of the three children by their Muslim father could only be determined by the Syariah Court (*Malay Mail Online*, January 5, 2016).

87 Interview with official, Angkatan Belia Islam Malaysia. The interview with the author was conducted in confidentiality, and the name of the interviewee is withheld by mutual consent, and date and location have also been withheld to maintain confidentiality.

88 Kikue Hamayotsu, "Once a Muslim, Always a Muslim: The Politics of State Enforcement of Syariah in Contemporary Malaysia," *South East Asia Research* 20, no. 3 (2012): 399–421.

questionable if the expansion and upgrading of the Islamic courts has actually advanced the rights of Muslims—especially those who do not agree with the conservative interpretations of the courts—in the context of heightened ethno-nationalism, politicized religion, and communal pressures to be compliant with majoritarian rule in the name of Islam.

CONCLUSIONS

The bureaucratization of the Islamic court apparatus in Malaysia is primarily the result of identity politics and the particular dynamics of regime formation, specifically the coalitions and negotiations among Malay political and religious elites to sustain an ethnocentric political-religious regime. The sharia court administrative reform was carried out in multiple ways to protect the supremacy of Islam, sultans, religious institutions, and, most importantly, the Malay identity within the largely secular state structure. In my interviews with them, Malay judges and officials in both civil and Islamic courts commonly expressed their nationalistic—and religious—aspirations, insisting, in terms I heard consistently during my interviews, that upgrading the sharia courts was their “religious duty as Muslims” to “show to the Western world that Islam—and sharia—works in Malaysia.” Unlike other Muslim-majority states where Islamic courts are either abolished (such as Egypt) or subjugated to the secular supreme court (such as Indonesia), Malaysia’s Islamic courts run in parallel with—and independently from—the civil court system. After a 1988 constitutional amendment, they gained exclusive jurisdictional autonomy from the latter, although they are still not on a par with the civil courts in terms of jurisdictions and organizational resources. Consequently sharia judges continue to complain about their lower status, salary, and reputation, leading to the demand for the creation of a sharia supreme court, equivalent of the federal court on the civil side of judiciary. The Islamic courts and judges now look considerably different from their predecessors before 1980 in terms of physical presence, administrative autonomy, competence, qualifications, and financial and political resources and authority. The administrative reforms of the 1990s have given the courts the “teeth” to enforce the standardization and centralization of Islamic law according to rules and procedures set by the government via legislation.

In this article I have also shed light on the political foundations of the process of bureaucratization of religion along the lines of the political sociology of bureaucracy advanced by such scholars as S. N. Eisenstadt so as to contribute to the debates in the field of institutionalization of religion and religious laws. The bureaucratization of Islamic courts and laws is not merely the result of societal demands—demands for more Islamic rules or sharia—but, more importantly, competition over power, authority, and legitimacy *within* the corridors of state power, among Muslim elites, both secular and religious. The competition among those Muslim elites in the state has grown as religion—not only individual faith, but also a collective identity of the majority community—provides access to political and symbolic power and state resources in the context of growing piety and Islamic activism.

In Malaysia, the state incorporation of Islamic courts and laws and the expansion of their jurisdiction and authority over time were, after all, meant to consolidate and expand the superiority of the majority Malay community in the multiethnic society and the party regime dominated by secular Muslim elites. It was thanks to the regime’s preoccupation with sustaining majoritarian rule based on the majority Malay identity that the secular civil courts (dominated by Malay judges) were generally hospitable to the strengthened Islamic courts and laws. Now Islamic courts and judges are more competent and assertive in enforcing Islamic laws that have a great impact on the private and social life of Muslims (as well as non-Muslims in some areas, such as interreligious

marriage and conversion). It is important to emphasize, however, that secular Muslim elites who supported the Islamic judicial reform did not intend to make religious elites more powerful or to privilege religious fundamentalism and threaten the secular foundation of the state and legal structures. Quite to the contrary, the institutional reform of Islamic courts was meant to expand federal (secular) control over Islamic courts and judges, who are constitutionally under the purview of Malay rulers or sultans at the state level, while taming religious fundamentalism to promote a modern and moderate Islam. Thus, competition between the federal and state Malay authorities has also shaped the process and outcome of bureaucratization.

An unexpected—and unfortunate—consequence of the strengthened Islamic courts in the context of multireligious Malaysia is the diminishing religious freedom and pluralism of society despite the federal constitution's guarantee of religious freedom. Although more comprehensive research is needed on this trend, the issues of apostasy and conversion seem to be especially alarming due to more aggressive enforcement of Islamic laws regulating conversion, marriage, divorce, custody of children, and inheritance involving non-Malay converts. The issue is even more complex and delicate because of the 1988 constitutional amendment that granted jurisdictional autonomy to the Islamic courts to resolve jurisdictional competition between the two systems of justice, Islamic and secular, in the context of growing Islamism, Malay nationalism, and politicized religious identity. Disappointing the legal and religious experts who expected that the sharia reform would improve the rule of law and bring justice for many, it has instead brought injustice and hardship for those Malaysian citizens who seek basic rights of religious freedom.

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