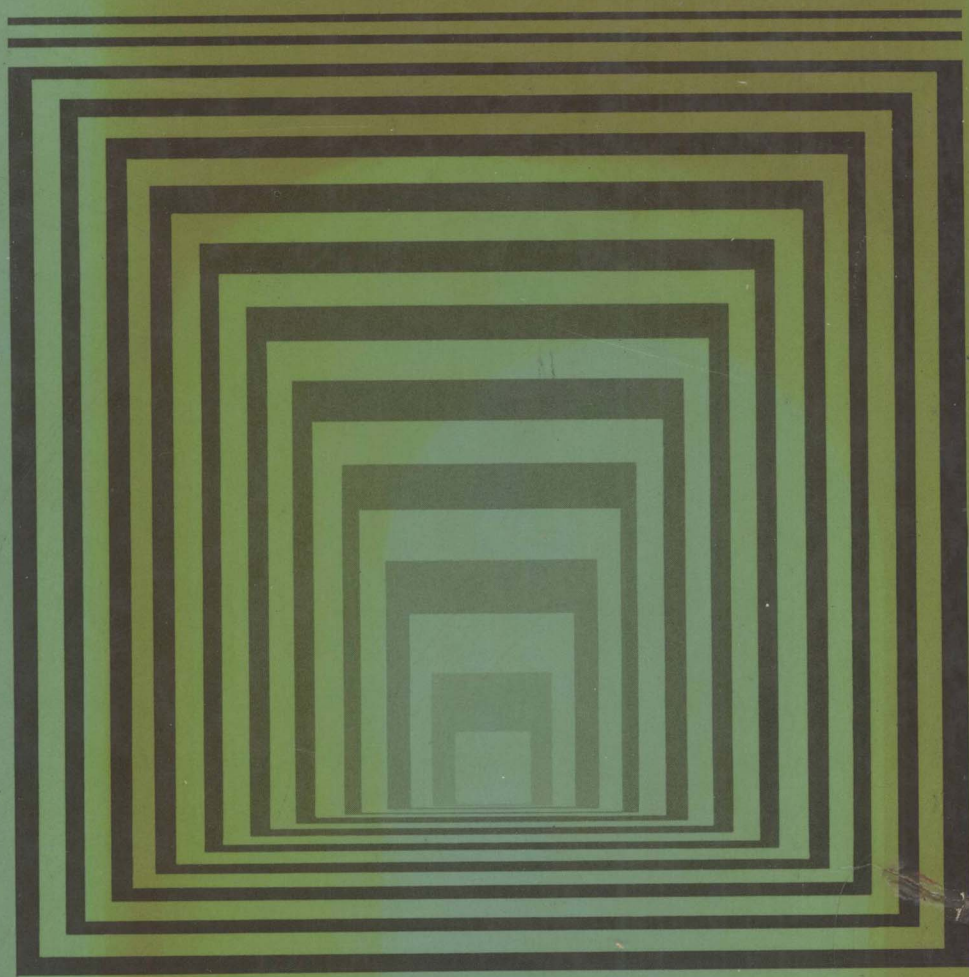


M. B. Hooker

Islamic Law
in South-East Asia



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ISLAMIC LAW IN SOUTH-EAST ASIA

M. B. HOOKER

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Preface

WHILE law is only one aspect of culture, it is the most formal, and it lies at the very heart of Islam. The intention of this book is to outline the main characteristics of Islamic law in South-East Asia. The latter is taken as including the States of Burma, Malaysia, Singapore, Brunei, Indonesia and the (southern) Philippines. There is also a brief note on south Thailand.

We may distinguish three main characteristics of Islamic law in South-East Asia. First, there is evidence for an historical accommodation between Shar'īa and locally formulated systems of prescription. This is best illustrated in the law texts ('Digests') of Malaya, Sumatra and Java which are described in the Introduction.

Second, under colonial domination, the Shar'īa was re-formulated in European terms. It became a 'Muslim' (or a 'Muhammadan') personal law restricted in scope and content to matters of family law. Contemporary States in South-East Asia are heirs to these re-formulations.

Third, in the post-war years there has been a consistent trend toward the 'Islamization' of law, *i.e.* toward introducing or reinforcing specifically classical modes of reasoning into the judicial process, and increasing the Islamic content of substantive law. This trend is most commonly seen in Malaysia and Indonesia; it is less apparent in Singapore and the southern Philippines, and it is wholly absent in Burma. However, Malaysia and Indonesia contain the bulk of South-East Asia's Muslim population (about 140 million) and 'Islamization' there proceeds apace. While this book does not deal with law later than December 1978, it is as well to emphasize the pace of change. At the time of writing, for example, considerable change in the structure of Islamic Courts and procedure is planned in some States of Malaysia. I should also mention the recent decision in *Viswalingam v. Viswalingam* [1980] 1 M.L.J. 10 which could not be considered in the time available. It should be read with the discussion on conflicts of laws at pp. 118 f.

This book attempts to cover a long historical period and a number of different States. I am obviously indebted to earlier generations of scholars whose works I have used and these include contributions in history, philology, philosophy, anthropology, and political science as well as law. Specific acknowledgement as to material and analysis is made in the appropriate place, but I would especially acknowledge here the work of Dr Y. F. Liaw (see Introduction), Professor Ahmad Ibrahim (see Chapters 2 and 3), Dr Thomas M. Kiefer and Professor C. A. Majul (see Chapter 6), and Dr Deliar Noer and Professor Daniel S. Lev (see Chapter 7).

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generous grants from the British Academy and the University of Kent at Canterbury, to the officers of which I express my gratitude.

I am considerably indebted to Mr F. N. Crofts who undertook the very specialized task of compiling the index.

My greatest debt is of course to my Muslim friends in South-East Asia, whose patience and kindness over the years I can never properly repay. I trust this book will go some way toward clearing the debt.

My wife, yet again, typed the manuscript and helped in ways too numerous to list.

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July 1981*

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A Note on Spelling

THERE are considerable difficulties in the spelling of Islamic legal terms in South-East Asia. We can distinguish at least six 'systems': the British-Indian, found mainly in Burma but also in the early Straits Settlements; the Straits and Malay States and British Borneo; the Netherlands East Indies; the southern Philippines; the modern Malaysian and Indonesian system; and the Romanizations adopted in the *Encyclopaedia Islam*. In addition, one has the amateur attempts at transliteration produced by individuals.

This *mélange* might obviously seem to require some degree of standardization for ease of comprehension. But there are three reasons why this option, attractive though it is, should not be taken. First, the data for this book are drawn from different areas or states, all with distinct traditions. Second, each of the chapters (and the introduction) is taken historically and the historical record must be preserved so far as possible, consonant with a reasonable degree of comprehension. Finally, and most important, this is a book about law, and actual legal usage has to be respected in the interest of accuracy. This is especially important where legislation and legal judgments are involved.

Representative examples include the following:

Bait-ul-Mal/Bayt-ul-Mal/Baital-Mal

edah/eddah/'idah/'idda/iddah/'iddah

fatwa/fatua/fetua

khola'/khul'/khulo'/khula

Mahomedan/Mahommedan/Mohamedan/Mohammedan/Muhammadan

Kadi/Kathi/Qadi

Qur'ān/Koran/Qur'anic/Qura'nic

Sharia/Shar'ia/Shari'a/Shāri'a/Sheraiah/Shariah

wakaf/wakf/waqf.

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