

THE CODE OF MUSLIM FAMILY LAW AND LAW OF INHERITANCE (1941) AS APPLICABLE IN THE PROVINCIAL COURTS OF SOUTHERN FOUR BORDER PROVINCES OF THAILAND: ISSUES AND PROSPECTS

*Sulaiman Dorloh**

ABSTRACT

This article aims at examining what place does the Code of Muslim Family Law and Law of Inheritance has in the minority Muslim of the Four Southern Border Provinces of Thailand. While many countries such as the Philippines, Sri Lanka where Muslims are minority has recognized officially Islamic Family law as a Law for Muslims. With regard to Thailand Islamic Family on marriage, divorce and wills could not be ignored. Unfortunately the place given to its application has so far been extended to those four border provinces only. While the Thai Civil and Commercial Law Code was applicable throughout the country including in the Four Southern Border Provinces of Thailand. Although there has been an attempt to extend the application of the Islamic Family to Muslims who are staying outside those four provinces, but no attempts have being made to investigate the contents of the Code of Muslim Family Law and Law of Inheritance which is currently applicable in the provincial courts in those four provinces. To a large extent the reforms of the contents of the code should be given priority than its application. This article intends to investigate the content

* Senior Lecturer at the College of Islamic Studies, Prince of Songkhla University Pattani Campus, Southern Thailand.

of the Code and the course of future direction by exploring the available alternative according to Thai Constitution to the continued pursuit of reforming several articles in the code towards the Codification of Islamic Family Law in the Four Southern Border Provinces of Thailand.

Keywords: *Family Law, Thai Constitution, inheritance, Patani, Dato' Yuthitham*

INTRODUCTION

Although Thailand is a Buddhist country, the Islamic family law and law of inheritance was introduced in 1941 as an exceptional to book V¹ of the Thai civil and commercial law code.² This is because in the four provinces Muslims population is majority. Nevertheless, the contents of the Muslim Family Law and law of Inheritance Code of 1941 (hereinafter referred to as the MFLALIC) for the Southern Four Border Provinces of Thailand, and its administration remains inconspicuous. M.B. Hooker has observed that:

*"Islamic Family Law survives as an exceptional to the Thai Civil code but its content and administration are unknown"*³

Despite of the fact that this law has not been brought to parliament for approval. This may involve controversial issues as to whether or not this law is really valid to be enforced. Nevertheless, this law is frequently used as a reference by the *Dato' Yuthithams*⁴ as

¹ Book V of the Thai civil and commercial law code includes articles 1435 to 1598, consists of 163 articles. In book V of the code contains three titles. Chapter one is about marriage, title two deals with parent and child and chapter three discusses about maintenance. See Chatri Bunnag and Varee Naskul (1975), "Family Law in Thailand", in *Law Asia*, v. 1. Family Law Series, p. 202.

² It has been enforced since 1st October, 1934 and was amended on 1st October, 1976. This Code is considered as final Thai Family Law applicable to the Thai-Buddhist people.

³ M. B. Hooker (1984), *Islamic Law in South-East Asia*. New York: Oxford University Press, p. 164.

well as the Thai civil judges in the Provincial Courts⁵ of Patani,⁶ Narathiwat,⁷ Yala and Satun in the Southern border of Thailand in deciding matrimonial disputes among the Muslims. This paper attempts to investigate the Code of Muslim Family Law and Law of Inheritance in predominated Muslim provinces of Thailand in order to explore the real issues faced by the *Dato' Yuthithams*.

⁴ It is to be noted that all Thai names are spelled in accordance with the pronunciation, rather than based on literary Thai spelling. According to the Rule of the Administration in the Seven Principalities of 1902 the title of the Muslim judge was called 'to'kali'. This title was first employed by the Thai government as it was stated in the letter issued by the Ministry of Justice No: 30 / 4353 dated on 24th, September 1917. In the same year the Ministry of Justice has changed the title of *to'kali* to 'to'kasi or *kazi*. It is a Thai version borrowed from Arabic word of *qādi*. The Malay Muslims in the south simply called the Muslim judge as *to'qodhi*. However, on the same year the Ministry of Justice has changed the title of *to'kasi* to *Dato' Yuthitham*. The term *Yuthitham* is a Thai version, it means justice whereas the word *Dato'* is the Malay word, it means venerable people. In this research the word *Dato' Yuthitham* will be employed instead of *Dato' Qadi*. See Dato' Aziz Benhawan, Paper Presented at 5th SEAS Conference, *The Education and Training of Shariah Judges and Lawyers*, Singapore, 26 -28 February, 1988, p. 2. See also Narong Siriphacana, *Kwam Pen Ma Khong Kot Mai Islam Lae Dato' Yuthitham* (1975), The Development of Islamic Law and Dato' Yuthitham, n. np., Bangkok, pp. 44 - 46. It is worthy to mention here that the *Dato' Yuthithams* are appointed by the government only in the four Muslim border provinces of southern Thailand. There are two *Dato' Yuthithams* in every province.

⁵ According to the structure of the court in Thailand these courts were called as the court of the first instance or the Provincial Courts. In this article the provincial court will be employed.

⁶ The word 'Patani' with one 't' is the Malay version indicated a Malay city-state whilst Pattani with the double 'tt' is transliterated from the Thai spelling. It is officially referred to southern border province of the Thai Kingdom. In this writing the word Patani is employed. See W. K. Che Man (1990), *Muslims Separatism: The Moros of Southern Philippines and the Malay of Southern Thailand*. New York: Oxford University Press, p. 45.

⁷ Also spelled Narathivat, previously it was popularly known by Muslims as *Bangnara* and was officially renamed on 10th June, 1942. However, in this article the word Narathiwat will be employed. See W. K. Che Man (1990), *ibid.*,p. 44.

THE PROJECT OF INTERPRETATION AND CODIFICATION OF THE MFLALIC

As history recorded the Islamic family law has been recognized and applied as a law at the Right Harbor Department during the Dynasty *Krung Sri Ayutthaya* (1350-1782), and it was subsequently reintroduced later in 1946 after it had been abolished by P. Songkram.⁸

Before that, there was not even a single set of comprehensive codification of rules on Islamic law available for the Muslim arbitrators or the *Dato' Yuthithams* in making decision when they were asked by the Thai civil judges to give an advise on certain cases or issues relating to Islamic family law and law of inheritance.⁹ The usual practice is that the *Dato' Yuthithams* will simply refer to various Malay and Arabic classical texts which are available in their collections. As a result, their decisions are varied from one case to another. Because of this reason, the Thai authorities with the advise of the Ministry of justice felt that the project of

⁸ The Thai ultra-Nationalist Prime Minister

⁹ See Report of Nitikarnprasom, *ibid.*, p. 207; see The Principle of Muslim Family Law And Inheritance, Wonsagheim Press, n.pp., pp.171-178. The Act Promulgating the Application of Islamic Law in Patani, Narathiwat, Yala, and Satul B.E. 2489 (1946), section 4. It is significant to note here that after the act come to enforce on 3rd April, 1947, there were seven petitions proposed by Haji Sulong Abdul Kadir to Thai Government among them was to give authority to Muslim judges to be able to decide the Islamic family case independently. However, his petitions were turned down by Thai government. He and his friends later were charged of treason. On 13th August, 1954 Haji Sulong was disappeared mysteriously. For more discussion on this issue see Chalerm-Kiat Khun-Phich (1986), *The Confrontation towards Thai Government Policy in the Four Border Provinces of Thailand under the Leadership of Haji Sulong Abdul Qadir Between B.E.2482-2497*. Bangkok: Silapakorn University, p. 70; M. Ladd Thomas (1989), "Thai Muslim Separatism in South Thailand", in Andrew Forbes and Sachchidan and Sahai (eds.), *The Muslims of Thailand*, v. 2 (Gaya: Center for Southeast Asian Studies), p. 21; Daily Maticon, *ibid.*, p. 3.

interpretation or the so called a systematic codification or *fadween* on the Islamic family law in Thailand would be restarted.¹⁰

The objective of the interpretation of the MFLALIC is to become only a handbook or a guideline for the *Dato' Yuthithams* as well as the Thai civil judges in deciding the marital disputes and inheritance involving the Muslims in the provincial courts in the four border provinces of Thailand.¹¹ On this juncture, the Ministry of justice has rightly observed:

*“The significant of translation of the code shall undoubtedly be beneficial to the Thai Civil Judges, the Dato' Yuthithams as well as practicing lawyers.”*¹²

Looking at the urgent needs of a codified code, a committee was set by the Ministry of Justice in 1929 to interpret and codify the Islamic law into the code. The committee consists of a chairman,¹³ a secretary,¹⁴ the *Dato' Yuthitham* of the four Provincial Courts of Patani, Yala, Narathiwat and Satul,¹⁵ a court interpreter,¹⁶ an expert in Islamic Religion, Malay and Thai language.¹⁷

Since the overall contents of the MFLALIC are mostly discussed the rules of marriage, divorce and inheritance, the committee of the project unanimously proposed and agreed to name the code

¹⁰ In fact, this project was started in 1929 and it was completed in 1941. Surin Pitsuwan, *Islam and Malay Nationalism*, *ibid.*, pp. 136-140. It is interesting to mention here that the task of interpreting and codifying Islamic Family law and Law of Inheritance into a codified code took almost 12 years. The delay in interpreting and codifying the law was mainly due to the misconceptions of Thai legal experts as to the details on the Islamic law itself.

¹¹ See Report of Nitikarnprasom, *ibid.*, p. 207; The Principle of Muslim Family Law and Inheritance, *ibid.*, pp. 171-178.

¹² See Sri Thammathibet, Ministry of Justice, 9th February B. E. 2480.

¹³ Luang Chamrun Nitisak was appointed as a chairman of the committee. See *ibid.*

¹⁴ Luang Sutthi Mont Naronak, the magistrate of the Songkhla Provincial court was appointed as a secretary. See *ibid.*

as *Lak Kodmai Islam Wa Duai krob Krua Lae Moroduk*¹⁸ (The Principle of Islamic Law on Family and Inheritance). However, Dr. Isma-ae Alee, (the current Director of Islamic College of Prince of Songkhla University, Patani campus) disagrees to call the code as it was proposed by the committee because several articles in the MFLALIC are vague and contrary with the spirit of Islamic law.¹⁹ He therefore, suggested that the proper name of the code shall be named as Muslim Family Law and Law of Inheritance Code (MFLALIC).²⁰

It is also observed that the interpretation and codification the MFLALIC has its positive and negative implications. The positive is in the sense that it may be easier for the Thai Civil Judges and

¹⁵ Khun Sri Tulakarn @ Haji Wan Harun and Haji Wan Ismail Sa'ti Yamu, both of them were appointed as a *Dato' Yuthitham* of the Patani Provincial Court, Haji Ha'ma' Ma'tha for the Yala Provincial Court, Haji Abdul Rahman Che Isma'il for Narathiwat Provincial Court and Che Abdulla Lang Puteh for the Satul Provincial Court. See *ibid*.

¹⁶ Tuan Chik Den Udom, Assistant Registrar of the Patani Provincial Court was appointed as interpreter to the committee. It is interesting to mention here that the court interpreter plays an important role in interpreting and codifying the law, because there were some of the committee members are not really understand Thai language very well and some of them are not conversant in Malay language. These problems have been identified during the reign of Chulalongkorn V until today. The problems are still unsettled because the Malay Muslim in the south are so proud of being able to communicate in Malay language. However, in the eyes of the government they are not paying much loyalty to the government. See *Daily News, ibid.*, p. 14.

¹⁸ Phraya Samantra Burint was appointed as an expert in Islamic Religion, Malay and Thai Language. See *ibid*.

¹⁸ It is to be noted that this Code was previously called "Kham Plae Kot May Latthi Sasena Islam-The translation of Law of Islam" but this name was objected by the committee and it was changed to "The Principle of Islamic Law on Family and Inheritance". See Narong Siripachana, *Kwam Pen Ma, ibid.*, p. 7; Report of Nitikarn Phrasom, *ibid.*, p. 205.

¹⁹ Isma-ae Alee, *Family Law, ibid.*, p. ii. In this article the researcher intends to call the code as Muslim Family Law and Law of Inheritance Code, 1941 in the Southern four Border Provinces of Thailand instead of the Principle of Islamic Law on Family and Inheritance, 1941.

²⁰ *Ibid*.

the Thai Judicial Officers to understand and implement the Islamic Family Law while deciding cases in the court. On the other hand, the codification may create negative implications in the sense that it may leave some important aspects of the Islamic Family Law. Because of these problems, the contents of the MFLALIC are subjected to several criticisms especially from the Muslim academicians and the *Dato' Yuthithams* in the south.

THE SOURCES OF THE MFLALIC

It is worthy to mention that not all of the committee members in making translation and codification the MFLALIC especially the *Dato' Yuthithams* of the Four Provincial Courts are conversant and able to understand Arabic classical books on Islamic family law. As a result, in making translation the MFLALIC, the *Dato' Yuthithams* used to rely on different books depending on their capabilities in mastering and understanding the content of Islamic law text books.

As for the *Dato' Yuthithams* from the Patani Provincial Court, they refer mainly to various Arabic books namely *Fath al-Mu'in*²¹ *Mughnī al-Muhtāj*²² *al-Bājūrī 'alā al-Shamsuri*; *Ghāyat al-Maqṣūd*; *Hal al-Muskilat* and *al-Sharḥ al-'Arabiah*.²³ With regard to the *Dato' Yuthitham* from the Satul Provincial court, he has referred mainly to the Malay classical textbooks which is mostly written in *jawi* script such as *Mir'atul al-Ṭullāb*,²⁴ *Kashf al-Lithām*;

²¹ The book was written in Arabic by Shaykh Zainuddin 'Abd al-'Azīz al-Mālibārī. The latest edition is printed by Matba'ah Muḥammad al-Nahdī of Bangkok, Thailand.

²² This is well-known book on Islamic law written in accordance with Shafi'is school of law by Muḥammad al-Sharbīnī al-Khaṭīb.

²³ See Report of Luang Prapai Pitayacoon, the Satul Provincial Court, 15th February, B. E. 2484, p. 212. However, this book can not be traced.

²⁴ The Full name of this book is *Mir'ah al-Ṭullāb Fī Sharḥ Ma'rifat Aḥkām al-Shari'ah* written by 'Abd al-Rauf.

²⁵ *Furū' al-Masā'il*;²⁶ *Muta'alim; Matla' al-Badrain*,²⁷ *Īdāh al-Bāb*;²⁸ *Fatāwa al-Qaḍā'i Fi Iḥkam al-Nikāh*.²⁹ However, there are some Malay classical books which are no longer available in the book shop, i.e. *Hallul al-Muskitah*, *al-Sharh al-Arabi'ah* and *Fatāwa al-Qaḍāh*³⁰ *fi Aḥkām al-Nikāh*.³¹ Thus, it would cause some difficulties in justifying from which books certain articles in the MFLALIC, are taken from. On this particular point, Mr. Jeran Pakditanakul, an appeal court judge has observed:

“...our (MFLALIC) is rather conservative in approach. This is because our jurists are all conservatism especially on the issue of husband prerogative right in talaq. Therefore, amendment to the MFLALIC is deemed necessary in order to meet with the present condition.”³²

²⁵ The full name of this book is *Kashf al-Lithām ‘an al-As’ilah al-Anām* written by Shaykh Zayn al-Ābidīn bin Muḥammad al-Faṭānī.

²⁶ The name of this book is *Furū‘ al-Masā’il wa Uṣūl al-Masā’il*. This book is written by Shaykh Dāwūd al-Faṭānī. It was completed in Makkah in 1257 A.H. (1841 C.E.). It contains a major work on law and theology. The latest edition is printed by Matba’ah Muhammad Nahdi, Bangkok, Thailand.

²⁷ The full name of this book is *Maṭla’ al-Badrayn wa Majma‘ al-Baḥrayn* written by Muḥammad bin Ismail Dawud al-Faṭānī. It discusses the science of jurisprudence, it was completed in Makkah in 1303 A.H. (1885/6 A.D.). This edition was printed by Dar Marif, Penang, Malaysia.

²⁸ The full name of this book is *Īdāh al-Albāb Li Murīd al-Nikāh bī al-Ṣawāb*. This book is written by Shaykh Dāwūd al-Fatani. It was completed in Makkah in 1224 A.H. (1809 C. E.). It is a treatise on the Shafi’is Law of marriage. This book is based on the *Minhāj al-Ṭālibīn of Muhyī al-Dīn al-Nawawī* and its commentaries. The latest edition is printed by Matba’at Muhammad Nahdi, Bangkok, Thailand.

²⁹ See a report of Luang Prapai Pitayacoon, *ibid.*, pp. 212-213.

³⁰ The rulings of the Kedah State government concerning to law of marriage.

³¹ All these books could not be traced. Interview with Br. Qayyum, the owner of the bookshop Muhammad al-Afghani, Patani on 19th October, 2000.

³² Jerald Pakditanakul, “The Application of Islamic Law in Southern Four Border Provinces of Thailand”, Paper presented at Seminar on the title the Judge Assistant, Songkhla Provincial Court, 1989, p. 11.

After the MFLALIC has been approved by the project's committee, there was no any attempt made by the government to reform and review the contents of the MFLALIC.³³ It is observed that several criticisms are made by the *Dato' Yuthithams*³⁴ as well as local academicians³⁵ as to the contents of the MFLALIC. They come to the conclusion that the contents of the MFLALIC are not comprehensive and not in conformity with the reforms in some Muslim countries.³⁶

There are several articles in the MFLALIC which are still ambiguous and irrelevant to the present circumstances,³⁷ certain legal terms are borrowed directly from the Arabic words without any attempt to make an elaboration, many articles adopted literal meaning of the Islamic Family Law in defining certain terms without looking at its applicability to the present circumstances. Some articles are translated into Thai language³⁸ whilst the others

³³ Garvin W. Jones, *Marriage and Divorce in Islamic South-East Asia, ibid.*, p. 55; Arong Suthasasna, *Shari'ah and Codification, ibid.*, pp. 142-143.

³⁴ Interview with Mr. Apirat Mad Sa-id, the *Dato' Yuthitham* of the Patani Provincial Court on 18th July, 1999. He criticized that the grounds of divorce by *faskh* under the MFLALIC, 1941 are insufficient. He proposed that more grounds on divorce by *faskh* should be included in order to meet with the present circumstances.

³⁵ A discussion for the preparation of the research proposal on the title of the application of Islamic law in Thailand, conducted by the head of Islamic Program in 1999, the College of Islamic Studies, Prince of Songkhla University, Patani, Thailand.

³⁶ For example the issue of triple divorce either by one word or by three words it shall consider irrevocable divorce under the MFLALIC, article 87 (2) (b).

³⁷ The MFLALIC recognizes *wali penghulu* who was a master of the slave woman, though this system was not applicable to our society. See the MFLALIC, article 34.

³⁸ For example the word divorce by *khul'* was translated into Thai language as *tola doi sin chang wibat*, *sami phit than bon tola* stands for divorce by *ta'liq* and *phiti sabarn* stands for divorce by *li'an*. See the MFLALIC, articles 97, 92 (4), 118.

are translated into Malay language.³⁹ There is also a number of spelling errors appeared in the MFLALIC.⁴⁰

THE CONTENTS OF THE MFLALIC

The contents of the MFLALIC are generally divided into two broad parts. The first part is concerning with the Islamic Law of marriage and the second part is about the Islamic Law of Inheritance.⁴¹ Nevertheless, prior to these two parts, the MFLALIC provides an introductory part. This part generally discusses about definition of some important terms to mention a few; for example incompetent persons,⁴² quasi-incompetent persons,⁴³ minors⁴⁴ and puberty⁴⁵ and so on. All these definitions are included in article 2 of the MFLALIC, starting from clause one to clause thirty-eight. In this part, it appears that the articles of faith⁴⁶ and the pillars of Islam⁴⁷ are briefly defined though the Modern code in the Muslim Country for example, Malaysia is silent. The MFLALIC seems to avoid putting it in the MFLALIC. However, the most important article in this part is article 1 of the MFLALIC which provides:

³⁹ Just to mention a few, for example the words *tard fasakh*, *isikahwin*, *wali hakim*, and *wali penghulu*. See the MFLALIC, articles 122, 129, 35, 34.

⁴⁰ To mention a few, for example the word *tola*, *roya*, *ee-yap*, *kobul*. See the MFLALIC, articles 82, 164, 54, 55.

⁴¹ Comparing to the family laws of some other Minority countries for example Philippines and other Muslim countries, the MFLALIC is more bulky for it contains 230 articles, while the Code of Muslim Personal Law of Philippines contains 190 articles, the family law of Algeria contains 224 articles, Jordan 187 articles, Kuwait 165 articles, Syria 127 articles, and Yemen 156 articles. See Hamid Aminuddin Barra, *A Study of Islamic Law in Philippines*, Philippines, Padilla Press, 1988, p.60; Dawoud El Alami and Doreen Hinchcliff, *Islamic Marriage and Divorce Laws of the Arab World*, London, Kluwer Law International 1996, pp. 50, 114, 145, 237 and 272.

⁴² MFLALIC, article 2 (1).

⁴³ *Ibid.*, article 2 (2).

⁴⁴ *Ibid.*, article 2 (3).

⁴⁵ *Ibid.*, article 2 (4).

⁴⁶ *Ibid.*, article 2 clause 14 (a).

⁴⁷ *Ibid.*, article 2 clause 14 (b).

“...in case where the MFLALIC is silent the Thai Civil and Commercial Law Code, 1935 shall apply as long as it does not contrary to the MFLALIC.”⁴⁸

From legal point of view, there is no doubt that the effect of this article somehow will obstruct the application of the Islamic Law in the future. The question may arise as to which law shall be applied when the MFLALIC is silent. By virtue of article one as stated in the preamble of the MFLALIC, the preference of course, will be given to the Thai Civil and Commercial Law Code, 1935 as well as the Thai Civil Procedure Law Code with the condition that in applying these two laws it will not contrary with the contents of the MFLALIC.⁴⁹

From the discussion, it shows that the primary sources of the MFLALIC will still have to be referred to the Thai Civil and Commercial Law Code, 1935. With regards to the contents the MFLALIC are described as follows:

⁴⁸ See Report of Luang Prapai Pittayacoon, *ibid.*, p. 210; the MFLALIC, article 1. It is worthy to mention here that when there is a conflict of laws between the Muslim Family Law Code, 1941 and Thai Civil and Commercial law Code, 1935 the later shall prevail. An example can be seen in case of polygamous marriage, since Thai law did not recognize as it was stated in article 1452 of Thai code that a marriage cannot take place if a man or woman is already the spouse of another person. As a result when a Muslim entered into polygamous marriage Thai law did not allow registering the second marriage. See a decided case on this issue in *Mariam Haji Mayo V Wasant Haji Mayo*, Patani Provincial Court Case, Civil Suit No: 452/B.E. 2540 (1997).

⁴⁹ It is to note that this situation is also applicable in Sri Lanka, non-Muslim country but there is a considerable majority Muslims in this country. A code of Muslim law- Special laws concerning Maurs or Mohammedans was enacted in 1806. This code was enacted in the light of Qur'an and Sunnah. However, Roman-Dutch law is applied in two circumstances; firstly, where the code is silent and secondly where there is no special custom on any point. Therefore, the Muslim Code of 1806 has been superseded by subsequent legislation such as the Muslim Marriage and Divorce Ordinance, no. 27 of 1929. See *Firasat Ali, Divorce in Mohammedan Law*, Deep & Deep Publication, New Delhi, 1983, p. 94.

Section 1. Rules governing family law. It is further divided into five sub-sections and every sub-section is further divided into various parts. There are:-

Sub-section 1. Rules governing the nature of marriage. In this sub-section, it is further divided into six parts. These are matters dealing with;

- Part 1. Deals with general rules;
- Part 2. Deals with *wali*; ⁵⁰
- Part 3. Deals with prerequisite of marriage;
- Part 4. Deals with *ee yap* ⁵¹ and *kobu*; ⁵²
- Part 5. Deals with marriage witnesses.

Sub-section 2. Rules pertaining to rights and obligations between husband and wife. In this sub-section, it is further divided into two parts:

- Part 1 Deals with maintenance of wife;
- Part 2 Deals with polygamy, its right and duty.

Sub-section 3. Rules relating to dissolution of marriage, it is further divided into five parts. These cover issues dealing with:

- Part 1 Deals with general rules;
- Part 2 Deals with *phiti tola*; ⁵³
- Part 3 Deals with *phiti pasakh*; ⁵⁴

⁵⁰ It is an Arabic word, it means a guardian for marriage.

⁵¹ The correct spelling is *ijāb*, it is an Arabic word which means an offer.

⁵² The correct spelling is *qabūl*, it is an Arabic word which means an acceptance.

⁵³ The *phiti* is a Thai version which means the ceremony whereas *tola* is an Arabic word which means dissolution of marriage by husband pronouncing a divorce. The correct spelling of the word *tola* is *talaq*. See the MFLALIC, article 82.

⁵⁴ It is an Arabic version, it means a judicial decree at the instance of wife. However, under the MFLALIC *faskh* can be instituted by either wife or husband. See *ibid.*, article 110 of the code.

Part 4 Deals with *phiti sabarn*;⁵⁵

Part 5. Deals with *tard- pasakh*.⁵⁶

Sub-section 4. Regarding rules governing the effect of marriage on the legal status of man and woman and ancillary claims. In this sub-section, it is further divided into five parts. These parts deal with:

Part 1 Deals with *eesi-kahwin*;⁵⁷

Part 2 Deals with *mut'ah*; ⁵⁸

Part 3 Deals with *ee-dah*; ⁵⁹

Part 4 Deals with maintenance of a divorce wife during *ee-dah*;

Part 5 Deals with *royo'*.⁶⁰

Sub-section 6. Pertaining to rules governing Islamic law of inheritance. It is further divided into four parts which deal with:

Part 1 Deals with child;

Part 2 Deals with remuneration of suckling;

⁵⁵ The word *sabarn* is a Thai version which means taking an oath. In this context it refers to *li'an* or dissolution of marriage by imprecation. Where a husband accuses his wife of being unchaste without witnesses. He then for four times solemnly swear to the fact and invokes upon himself the curse of God. The wife likewise may rebut the accusation also four times. In either case the marriage is dissolved. See *ibid.*, article 118 of the MFLALIC.

⁵⁶ The word *Tard-pasakh* is a Malay version, the correct spelling is *terfasakh*. In this context it means a dissolution of marriage by operation of law. See *ibid.*, article 122 of the MFLALIC.

⁵⁷ The word *eesi-kahwin* is a Malay version, the correct spelling is *isikahwin*. In this context, it means a dowry to be paid by husband during marriage contract. It is a gift given by husband in form of money or in kinds. See *ibid.*, article 129 of the MFLALIC.

⁵⁸ It is an Arabic word, it means a consolatory gift to be paid by husband after the divorce has taken place. See article 142 of the MFLALIC.

⁵⁹ The correct spelling is '*iddah*', it is an Arabic word which means a waiting period of women to be observed after divorce or after the death of the husband. See article 145 of the MFLALIC.

⁶⁰ The correct spelling is *raj'ah*, it is an Arabic version which means a revocation of marriage during *iddah*. See article 164 of the MFLALIC.

Part 3 Deals with remuneration of fosterage.

Section 2. Rules governing Islamic law of inheritance, It is further divided into six sub-sections covering;

Sub-section 1 Deals with general rules;

Sub-section 2 Deals with classes of heirs;

Sub-section 3 Deals with *fardu*; ⁶¹

Sub-section 4 Deals with *aasabah*⁶² residuary;

Sub-section 5 Deals with *sawil al-Arham* ⁶³ distant kindred;

Sub-section 6 Deals with wills.

It is observed that these provisions are generally based on the Shafi'is school of law, the main reference to the Shafi'is text books is *Minhāj al-Ṭālibīn* by Imam al-Nawawī.⁶⁴ This is because the majority of the Malay Muslims in the south adhere to the Shafi'is.⁶⁵ There are also many provisions in the MFLALIC that describes the rules of evidence and procedures, for example the procedures of dissolution of marriage by *li'an*. The MFLALIC states to the effect that:

“Where the husband excuses that unborn child or a child notwithstanding the child was young or has died was not belong to him. He must allege before the Dato' Yuthitham, he must file a suit immediately after he comes to know the facts”

This article describes about procedures to be followed by a husband when he has made the allegation toward his wife that she

⁶¹ It is an Arabic term, in this context it means beneficiaries.

⁶² The correct spelling is *aṣabah*, it is an Arabic word which means residuary.

⁶³ The correct spelling is *zawī al-Arḥām*, it is an Arabic word which means residuary.

⁶⁴ See Al-Nawawī, *Minhāj al-Ṭālibīn wa 'Umdah al -Muftīn fī Fiqh Madhhab al-Imām al-Shāfi'ī*.

⁶⁵ See Report of Luang Prapaipittayacoorn, *ibid.*, p. 213; Raymond Scupian, *Popular in Thailand*, edited by Andrew D.W. Forbes Center for South East Asia Studies, India, n. d., p. 32; Arong Suthasat, *Shari'ah and Codification*, *ibid.*, p. 142.

has committed adultery. However, it is observed that this article is silent if a husband alleges without legal proofs. Then the wife would be entitled to file a suite against her husband accordingly.

A MUTUAL AGREEMENT AMONG THE DATO' YUTHITHAMS TO APPLY THE MFLALIC

The MFLALIC has been approved by the said committee with a special remark which reads:

*“ ...this law (MFLALIC) was compiled in accordance with the holy Qur'an and the Islamic law text books, therefore when family and inheritance disputes Dato' Yuthithams must refer to the Thai Civil and Commercial Law Code 1835, book V as well as Thai Civil Procedure Code. This is because both laws were supreme laws of this country. ”*⁶⁶

This remark has been made between by the committee consisting of the *Dato' Yuthithams* and the chairman after the draft is completed. Hence, it shows that the *Dato' Yuthithams* have to apply the codified code in deciding the family and inheritance disputes among the Muslims in the Provincial Courts of Southern Four Border Provinces of Thailand.⁶⁷ But in some cases the *Dato' Yuthitham* was reluctant to apply the provisions in the MFLALIC. The case in point can be seen from a decided case of *Mariyea Tayi' @ Manea V Hama' Tayi'*.⁶⁸ The applicant in this case, Mrs. Mariyea has filed a suit against her husband by alleging that her husband has deserted her and her children for more than two

⁶⁶ This remark is included in the preamble of the MFLALIC, it corresponds with the article 1 of the MFLALIC.

⁶⁷ This agreement is extended to newly appointed the *Dato' Yuthithams*. The ordinary practice is that newly appointed the *Dato' Yuthithams* must follow the provisions in the MFLALIC in deciding the Islamic cases but not any other religious books. See Somburn Puttachak, *The Application of Islamic Law in Patani, Narathiwat, Yala and Satul*, Master Thesis, Chulalongkorn University, Bangkok, 1986, pp. 131-171; Jeran Pakditanakul, *The Application of Islamic Law, ibid.*, p. 15.

⁶⁸ Yala Provincial Court Case, Civil Suit No: 215/B.E. 2544 (2001). See also a decided case of *Miyea V Asi Masamea*, Patani Provincial Court Case, Civil Suit No: 185/B.E. 2537 (1994).

years. The learned *Dato' Yuthitham* of the Yala Provincial Court has held that the applicant has a right to dissolve her marriage in accordance with article 1516 (4) of the Thai Civil and Commercial Law Code 1935, book V which states *inter alia* that:

“...if one spouse has deserted the other for more than one year or has failed to give proper maintenance and support, the latter may file a claim for divorce.”

The above judgment indicates that the learned *Dato' Yuthitham* has applied the Thai Civil Law in lieu of the MFLALIC though the MFLALIC recognizes a dissolution of marriage by *ta'liq* as provided in the MFLALIC.⁶⁹ Thus, from this case it shows that a mutual agreement that has been made by the *Dato' Yuthithams* before holding the position has become no value because the *Dato' Yuthithams* do not implement it and it is not binding upon every the *Dato' Yuthitham*. Therefore, it is suggested the Ministry of Justice and Ministry of Interior should work together to propose to the parliament to recognize the MFLALIC likes the Thai Civil and Commercial law Code, 1935 so that the Islamic Family Law in Thailand can be implemented smoothly.

JURISDICTION OF THE PROVINCIAL COURTS

The jurisdiction⁷⁰ of the provincial courts in the southern four border provinces of Thailand with respect to the application of the Islamic Family Law and Law of Inheritance is stated in the Act of Promulgating the Application of the Islamic Law in Patani, Narathiwat, Yala and Satul B.E. 2489 (1946) provides to the effect that:

“Islamic Law on Family and Inheritance shall apply to the cases in the court of first instance ⁷¹ in Patani, Narathiwat, Yala and Satul where Muslims are both

⁶⁹ The MFLALIC, article 92 (2) states to the effect that besides the husband may pronounce *Talaq* of the marriage by himself, *Talaq* may be effected by when the husband has breached the terms of contract agreement (usually called *Ta'liq*) that has been given by him to his wife after the conclusion of the marriage contract.

plaintiffs and defendants filing the request in non-contentious case."⁷²

From the above quoted provisions, it is clear that the Court of First Instance in the Southern Four Border Provinces of Thailand has limited jurisdiction to hear and try all actions and proceedings concerning marriage, divorce and inheritance in which the parties are Muslims living in those four border provinces.

Thus, the Muslims who live out side those four Southern Border Provinces are exempted. This practice somehow may cause injustice towards the Muslims who lives in other provinces of Thailand⁷³ since the Muslims in Thailand by virtue of article 38 of Constitution of the Kingdom of Thailand, 1997, may live and

⁷⁰ It is to be noted that the word Jurisdiction in legal context means the power and authority of a court to hear, try and decide a case as contrary to the location, which is the place where the action must be instituted and tried. Generally, it is conferred by law and cannot be conferred by the consent of the parties or by their failure to object to the lack of it. However, according to Thai Civil Procedure Code, article 2 (2) states to the effect that the action is not allowed to be instituted unless it is proven that the action was under the jurisdiction of that court. See Constitution of Justice Court Act, article 14 (2) provides the Provincial Courts have its jurisdiction according to the Act on establishing the Provincial Courts. Generally speaking, the Provincial Courts have the authority to hear and try cases throughout the province.

⁷¹ It is significant to be noted here that according to the hierarchy of the Thai Courts of Justice they are classified into 3 levels; a) Sarn Chan Tun (the Court of First Instance), b) Sarn Uthon (the Court of Appeal) and c) Sarn Dika (the Supreme Court). With respect to the Court of First instance, it is categorized as a provincial court. In every province it has one Provincial Court.

⁷² Act Promulgating the Application of the Islamic law in Patani, Narathiwat, Yala and Satul B.E. 2489 (1946), section 3. Hereinafter cited as the act, 1946.

⁷³ Virada Somswasdi, *Family Law*, Kobfai Publishing Work, Bangkok, 1997, p. 20; Arong Suthasat, *Shari'ah and Codification*, *ibid.*, p. 144; the decision of the Thai Supreme Court No: 102/B.E. 2517 (1974). In this decision the court held that though the parties were Muslims and they were disputed over inheritance but the case was occurred outside the four border provinces. Thus, Islamic Law can not be applied because it was contrary to the article 3 of the act.

stay throughout the Kingdom. In other words, this Act tends to limit or restrict the place for the Muslims to live in the Kingdom.⁷⁴ Therefore, it is recommended that the act should be extended to allow Islamic law applicable throughout the Kingdom⁷⁵ rather than to restrict its application to certain provinces only.

As far as the *Dato' Yuthitham's* decision is concerned, his decision is final⁷⁶ and no appeals are allowed. Most of the local academicians consider this act as an unusual act where its provision gives an absolute power in the hand of the *Dato' Yuthithams*. This means that the disputed parties are deprived of their fundamental rights under the Thai constitution to make an appeal to the higher court.

This act has caused many Muslims in the south expressed their dissatisfaction since before this act came into effect, they were given the right to make an appeal if they are unsatisfied with the *Dato' Yuthitham's* decision.⁷⁷ However, after the act, 1946 is implemented a few appeal cases are allowed to be heard on the procedural law and not on the substantive law namely the Islamic Law.⁷⁸ This is because according to the act, 1946 the *Dato' Yuthitham* has an absolute power to apply the Islamic Law only.⁷⁹

⁷⁴ *Ibid.*

⁷⁵ Dr. Hj. Mohamed A. Kadir, *The Role of Judiciary, ibid.*, p. 10; Vinai Sa-Ma-Aun, *The New Constitution and the Cultural Preservation*, Paper Presented in the Seminar on Analyzing Public Hearing of Muslims in the Southern Border Provinces in Drafting the New Constitution, 23-24 April, 1997, the College of Islamic Studies, Prince of Songkhla University, Patani Campus, Thailand.

⁷⁶ See Section 4 clause 3 of the Act. It is interesting to note here that under this Act the *Dato' Yuthitham* is not in position to give judgment but his real function is to advise and assist Thai judge in deciding Islamic Law. In practice in order to honour the position of the *Dato' Yuthitham*, he will be sitting together with the Thai civil judge and the decision would be delivered by the Thai civil Judge based on the *Dato' Yuthithams'* advice.

⁷⁷ Narong Siriphacana, *Kwam Pen Ma, ibid.*, pp. 84-85.

⁷⁸ The Ministry of Justice Order No : 30 / 4353 dated on 24 September, 1917; see also Phong-Rat Khrua-Klin, *Yoo Lak Kot May Phra Thammanoon Sanl Yuthitham* (The concise on the Principle of Constitutional law of Justice Court), Nithitam Press, Bangkok, B.E. 2538 (1995) p. 31.

As for the procedural law, it is under the discretion of the Thai Civil Judge. In case the appeals are allowed, the normal practice is that the Court of Appeal will reaffirm the *Dato' Yuthitham's* decision or order the *Dato' Yuthitham* to review his decision. The rationale behind this practice was to maintain and to preserve the harmony among Muslim society in the south.⁸⁰ Secondly, most of the Islamic Law cases involved very small claims;⁸¹ as a result the appeals are not entertained. Thus, it is observed that the issue of appeal involving Islamic family cases depends on the political consideration rather than the interest of the parties.

Regarding the jurisdiction of the provincial courts in those four border provinces of Thailand to make an order or confirmation for divorce under the MFLALIC, the provincial courts will generally consider the following factors: firstly the marriage has to be registered according to the Thai Civil and Commercial Law Code, book V. Secondly, the disputed parties must both be Muslims and thirdly, the disputed parties must be domiciled in the Southern Four Border Provinces of Thailand at the time of filing the suits.⁸²

⁷⁹ The Act Promulgating the Application of the Islamic Law in Patani, Narathiwat, Yala, and Satul B.E. 2489 (1946) Section 3 and 4; see also appeal cases and the decision of the Thai Supreme Court No: 1442/B.E. 2541 (1998) of Mr. Haji Makta bin Haji Che Wuo V Mr. Che Sama-ae Che Mama' and the decision of the Thai Supreme Court No: 4807 / B.E. 2540 (1997) of Mdm. Haji Chewo Masuka @ Hamasuka V Mdm. Che Song Beraheng's case.

⁸⁰ See decided cases of Ha'ma' Molo V Pish Molo, Patani Provincial Court case, Civil Suit No: 510 / B.E.2536 (1993); Prida@Yutha-Karn@Yee Phitakbancha @ Semarnwong @ Abdullah V Yuadee, Provincial Court case, Civil Suit No: 544/B.E. 2540 (1997) and the decision of Thai Supreme Court No: 4807/B.E. 2540 (1997) in case of Mdm Haji Che Wo Ma'suka @ Hama' Suka V Mdm. Che Song Beraheng and the decision of the Thai Supreme Court No: 1442/B.E. 2541 (1998) in case of Mr. Haji Makta bin Haji Che Wuo V Mr. Che Sama-ae Che Mama.

⁸¹ Interview with the Honourable Chief Judge of the Patani Provincial Court, Mr. Anusorn Sri-Meandt on 24th September, 2001 at the Patani Provincial Court.

⁸² Narong Siriphacana, *Kwam Pen Ma*, *ibid.*, pp. 110-111; Phongrat Khruaklin, *The Concise*, *ibid.*, p. 31.

As it has been stated earlier that, the Act, 1946 is only applicable to the Muslims in those four border provinces of Thailand,⁸³ the Muslims who reside outside the Southern Four Border Provinces of Thailand are deprived of these privileges. An example can be seen in the Narathiwat Provincial court case of *Santiphap Sing Haad V Jamilah Sing Haad*.⁸⁴ The applicant was born in Songkhla Province. He was a police officer at klong-nghi Police Station in Sadao District, Songkhla Province. After serving several years at klong-nghi Police Station, he was transferred to Narathiwat Police Station. In Narathiwat, the applicant had married to Miss. Jamilah according to Islamic Law and registered his marriage according to the Thai Civil and Commercial law Code, 1935 at the office of registrar in the Narathiwat District Officer Office (NDOO). The parties later decided to live together as a husband and wife in the District of Tanjongmas, Ra'ghe, Narathiwat province.

On 1st November, 1992, they had a baby. In 1996 the husband had pronounced a divorce against her wife and registered his divorce at the Office of Registrar in the NDOO.⁸⁵ In 1999, the applicant had filed a suit against her wife and claimed custody over his daughter.

During the trial the question of court's jurisdiction was raised, whether the NPC had jurisdiction to hear and try the applicant's case. Knowing the fact that the applicant was living outside the Southern Four Border Provinces of Thailand. The learned *Dato' Yuthitham*, Dato' Ni Wea Ali bin Ni Loh of the Narathiwat Provincial Court was of the opinion that since the applicant was born in Songkhla province. Therefore the *Dato' Yuthitham* can not hear the case. Therefore, the Thai Civil and Commercial Law Code, 1935 shall apply. *Dato' Yuthitham* relied on section 3 and 4 of the Act Promulgating the Application of Islamic Law in Patani,

⁸³ *Ibid.*, Section 3 of the Act.

⁸⁴ Narathiwat Provincial Court, Civil Suit No: 5/B.E. 2539 (1996). There are some applicants whose permanent residence in the four border provinces of southern Thailand but they are reluctant to be abiding by Islamic law. They simply ask the court to apply Thai Civil and Commercial Law Code in stead of Islamic Law; see a decided case of *Masare Waemada V Prasit Waemada*, Patani Provincial Court, Civil Suit No: 390/B.E. 2534 (2000).

⁸⁵ See a divorce certificate registration No: 307.4 / B.E. 2539 (1996).

Narathiwat, Yala and Satul B.E. 2489 (1946) which states the Islamic Personal law shall be applied in the court of first instance in the four provinces where the parties are Muslims or a Muslim files the request in non-contentious cases. In addition to that *Dato' Yuthitham* relied on section 4 of the Act, 1946 that provides in deciding the marital disputes as stated in section 3, the *Dato' Yuthitham* shall sit on the bench to form a quorum with the Thai Civil judge.

Thus, from the court's judgement it is observed that the Provincial courts in the Southern Four Border Provinces of Thailand is very concerned with domicile of the parties before deciding cases on Islamic family for Muslims in those four provinces. Moreover, the parties shall be a permanent resident in the four border provinces. If the parties cease to be a Muslim or becomes apostate or *murtad*, they shall also be deprived of their rights to apply Islamic law under the Act, 1946.

To illustrate the point above, let us see the judgement of the Yala Provincial court case of *Abd. Hamid Chema V Saibua @ Khobusoh khamklai*.⁸⁶ The plaintiff had married in 1978, before marrying the plaintiff had asked the defendant to embrace Islam. The defendant later decided to convert to Islam in front of *imam* in the village. After getting married the parties opened hair saloon in Yala.

In December, 1994 the plaintiff had found that the defendant having a secret relationship with a man. Knowing the facts, the plaintiff advised the defendant to stop the affairs but the defendant had ignored the plaintiff's advice. On the contrary, the defendant asked the plaintiff to divide jointly acquired property according to the Thai Civil and Commercial Law Code, 1935 by claiming that she was no longer faithful to Islam. The defendant had insisted in front of the plaintiff that she had made an oath before the Buddha's statute. The issue in this case was whether the defendant still remained a Muslim when it was proved that she had made an oath before the Buddha's statute. She made an admission to the court that '*if I am a liar, may my lord Buddha curse upon me within three or seven days.*'

⁸⁶ Yala Provincial Court, Civil Suit No: 302/B.E. 2529 (1986).

Upon hearing the defendant's admission, the learned *Dato' Yuthitham*, Dato' Abdullah Sama-ae of the Yala Provincial Court was of the opinion that the applicant's action demonstrated that she is no longer a Muslim therefore, the parties were not allowed to apply Islamic Law. The same principle has been applied in the case of *Chavivan*

To'Dir V Abdullateh To'Dir.⁸⁷ The parties had married according to the Islamic law. The marriage took place in front of two witnesses, Niyada Samaya and Deurashi Sama-ae. The parties had registered the marriage according to the Thai Civil and Commercial Law Code, 1935 on 18 August, 1989 at the office of the registrar in the YDOO. In December, 1989 the defendant pronounced a triple divorce on the same sitting against his wife and leave her wife at home alone. The wife later filed a suit against her husband claiming that her husband has deserted her more than one year without giving any maintenance.

At the trial, the wife told to the court that she has taken an oath before the Buddha's statute by admitting that she is no longer became a Muslim. After hearing the defendant's admission, the court had ruled that this case was no longer fall under the ambit of the Islamic family law. As a result, the *Dato' Yuthitham* shall not sit on the bench to form a quorum in order to hear and try the case with the Thai civil judge. Looking at the court's judgement in both cases, it may be concluded that the court will strictly interpret and apply the Act, 1946 without looking at the effects of the judgement towards the interest of the disputed parties. It might be noted that since the MFLALIC recognizes the dissolution of

⁸⁷ The Yala Provincial Court, Civil Suit No: 271/B.E. 2540 (1997). It is interesting to mention here that the numbers of *murtad* case in the four Southern border provinces is increasing day by day compared with other provinces of Thailand. This is due to the fact that the new converts were not well prepared to embrace Islam. Some of them embraced Islam because they just want to get marriage and when conflicts occurred in the family, some of them declared in the public that he or she did not become a Muslim anymore. After that they will ask the civil court to divide his or her joint acquired property. Friday Talk delivered by Ahmad Abdullah, on 13th December, 2002 at al-Masjid al-Jami' Li al-Salah, Cherang Nibung, District of Ru Samelae, Patani Province, Thailand.

marriage by the operation of law on the ground of apostasy as the MFLALIC stipulates *inter alia*, that:

“...where either parties, husband or wife becomes apostate, the marriage shall be dissolved immediately.”⁸⁸

The effect of dissolution on the ground of apostasy is irrevocable and the parties can not remarry forever.⁸⁹ Thus for the purpose of improvement the application of Islamic Law in Thailand, it is recommended that the *Dato' Yuthitham* should hear and try the case and order the marriage to be dissolved by the order of the court rather than to dismiss the applicant's case without resorting to the provisions in the MFLALIC, as it was practiced by various states in our neighbor Country, Malaysia.⁹⁰

CONCLUSION

From the discussion it can be concluded that during the reigns of Sukhothai and Krung Sri Ayutthaya dynasties the position of Islamic law and the attitude of the Siamese King towards the Islamic law was flexible in the sense that the Siamese king will not interfere with all matters concerning religious affairs of the Muslims in the south. In this two dynasties, it was witnessed that Islamic law was fully been administered throughout the Patani kingdom, not only Islamic family law but also Islamic criminal law as well as Islamic law of transaction. However, the application of the Islamic law in the Kingdom of Patani has been interfered when the Siamese administration penetrated into the Patani Kingdom in 1902. Consequently, the Muslims kingdom of Patani was governed by the Thai state. This can be seen from the implication of the Royal proclamation of the Bangkok's government administration in the southern states.

By these administrative regulations, it started the imposition of the Bangkok's rules over the Muslims' kingdom. It also provided

⁸⁸ MFLALIC, article 126.

⁸⁹ *Ibid.*

⁹⁰ See Islamic Family Law, Malaysia (Federal Territories) Act 1984, section 46 (1) (2), Islamic Law Enactment, 1990 (Johor), section 4 (1), Islamic Family Law Enactment, 1979 (Kedah), section 3 (1).

for the appointment of a Siamese governor from Bangkok to the Muslims' area in place of Sultan power. This may result the old and traditional Islamic society as well as Islamic laws and Muslim's customary laws were replaced by the Thai civil law through this administrative regulation. At the same time, the Bangkok administration seemed to be obstructed the implementation of Islamic law in the Muslim's areas by trying to narrow down the scope of the Islamic law and its application that has been accepted and recognized as a law for the Muslims majority in those four regions.

This reception is eventually started with the promulgating the act on the Application of the Islamic law in Patani, Narathiwat, Yala and Satul, 1946. By virtue of this act, the *Dato' Yuthitham* was appointed as an advisor to the Thai civil judge in the Provincial courts in those four regions. The unseal features of this act rest on the power of the *Dato' Yuthithams* viz, their decisions became absolute, no appeal is allowed. To give an advice to the Thai civil judge, the *Dato' Yuthithams* consult classical Islamic law textbooks. This practice is not practical since other minority countries have its own code. With this reason the project of interpretation and compilation of Muslim family law and law of inheritance for the Muslims in the south was started.

After the compilation of the MFLALIC is completed in 1941. It is observed that the MFLALIC does not really receive well attraction from the Muslims in Thailand, as well as Muslims in the southern four border provinces. This is due to several reasons, partly because the contents and the provisions of the MFLALIC are out-of-dated, difficult to understand and more importantly it has not yet being passed by parliament. Thus, it is not a valid law to be implemented in the Provincial courts as they were dissatisfied with the roles played by the *Dato' Yuthitham* in the Provincial court as an adviser to the Thai civil judge but not a full-fledged judge as required by Islam.