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Judicial System in the Islamic Judicial Heritage in the Malay World (The Study of Tsamarat al-Muhimmah, Written by Raja Ali Haji)

Aris Bintania¹, Rendra Setyadiharja², Abd. Rahman³

^{1,3} STAIN Sultan Abdurrahman Kepulauan Riau, Indonesia (albintanyris@yahoo.co.id)

² Sultan Zainal Abidin University Terengganu, Malaysia

ABSTRACT

This article examines the study of qadha fiqh in the judicial system that was in the Malay world, especially in the kingdoms of Johor, Pahang, Terengganu, Riau-Lingga, by reviewing the book *Tsamarat al-Muhimmah* by Raji Ali Haji. This study is divided into two main discussions: the legal and judicial systems in the kingdom. It is known that royal law, its legal system applies, which refers to Islamic law (shari'a). Whereas the justice system refers to fiqh qadha as contained in the fiqh study, which contains the meaning of the court, the composition of the judicial officials' functions and duties, the source of applicable law is Islamic law based on the Qur'an and Hadith, etiquette and ethics of judicial officials, procedures for deliberating officials adjudication, procedures for settling differences of opinion among judges (qadi), decision making (law) is carried out after the examination is complete. All conditions are fulfilled, Qadi al-Qudat as the leader of the qadi, must appoint a judge who has the appropriate expertise in examining cases, prohibit the Qadi from accepting gifts (gratifications), the procedures for selecting judicial officials and the criteria, the oath of allegiance to the appointment of judicial officials. This indicates the need for a judicial institution that is legally valid, and its officials must have ethical values so they can make decisions in accordance with the Shari'ah and the laws that apply in the kingdom.

Keyword: *Judicial system, Fiqh Qadha, Tsamarat al-Muhimmah, Riau-Lingga*

Introduction

The Malay Empire, according to Suwardi, began with the Sultanate of Malacca (1400-1528), followed by the Sultanate of Johor (1528-1722), and then the Sultanate of Riau-Lingga. The Sultanate of Johor, before the power struggle between the descendants of Sultan Malacca and the descendants of Bendahara Tun Habib, was referred to as Johor, Pahang, and Riau. After the power struggle, it became known as Riau, Johor, and Pahang. In 1722, Sultan Sulaiman was appointed by the Bugis people, with his government centered in Riau, while Johor and Pahang became part of the government, administered by the Temenggung in Johor and the Bendahara in Pahang.

Since the War with the Netherlands (1782-4), the sovereignty of the Islamic kingdom declined with the signing of the agreement with the VOC on the warship "Utrecht", which stated that the Riau-Lingga Sultanate recognized the Netherlands as the highest ruler, the replacement of the Sultan and Vice Sultan must have the permission of the VOC. Then based on the agreement on the division of colonial territories between England and the Netherlands, the Treaty of London on March 17, 1824, the Malay Peninsula and Singapore became the property of England while Sumatra and Java became the property of the

Netherlands. As a result, the kingdom was divided into Johor in Malaysia and Riau-Lingga in Indonesia, which centered on Daik and Penyengat Islands. Finally, in 1913, the Riau-Lingga Sultanate was abolished by the Netherlands.¹

The system and legal rules applied in the Riau-Lingga Sultanate territory were taken from two sources. The first is the Islamic religion (law) within the scope of the Sultanate's power, and the second is the laws within the scope of the government. Furthermore, the implementing institutions also have a separation between the Sultanate's legal apparatus towards its people and the European legal institutions towards the residents living in the Dutch East Indies.²

As a kingdom rooted in Islamic law, the judicial system applied to the people of Johor, Pahang, and Riau differs from the European legal system. This also influences the judicial system in the kingdom, which applies justice based on the practices of Islamic courts in the Middle East. In this regard, the legal guidelines for justice (*fiqh qadha*) often refer to *fiqh* texts. One of the Malay scholarly works that serve as a reference in judicial practice is the book *Tsamarah al-Muhimmah* by Raja Ali Haji. This book discusses the structure of the court, the criteria and ethics of judges, procedural law, and so on, as will be the main focus of this writing.

The Sources of Laws and Decrees in Riau-Lingga Kingdom

The Riau-Lingga Sultanate adheres to an Islamic government system, including in law and justice, according to Achmad Syahid, based on the Quran, Surah al-Nisa (4) verse 59. This verse commands believers to obey Allah, the Prophet, and the *Ulil Amri* (leader) and to resolve all differences of opinion through Allah (the Quran) and *Sunnah*.³

At the time of the Sultanate of Melaka, there was one regulation, *Undang-Undang Melaka*, which was a combination of elements of customary law and *resam* with Islamic sharia law affiliated with *Syafii* ideas (*Mazhab*)⁴. This legal system began to be implemented when this kingdom was Islamized through Islamization in the archipelago in the 14th-15th centuries. This Islamization began and was initiated by the political elite in the Malay region when Riau-Lingga was ruled by Malacca under Sultan Alaudin Riayat Syah (1477-1488), who had the ambition to expand his influence and Islamize areas that had not been touched by religion and implement Islamic law in his territory.

Previously, these regions were influenced by the Hindu kingdoms of Sriwijaya and Majapahit. These regions were often called the "basis de los Chineses", where Chinese people would stop over. There are also opinions that Islam was spread by the ruling elite through conquest, such as the Kingdom of Melaka expanding its territory. There are also opinions that traders spread Islam through trade routes.⁵

It should be remembered that along with the glory of the Melaka kingdom, other Islamic kingdoms in the surrounding area applied the same principles and beliefs and tended to become competitors for the Malacca kingdom, including the Sultanate of Aceh, Siak Sri Indrapura, and the Sultanate of Johor. The Sultanate of Johor and Malacca both

¹ Suwardi, *Kerajaan Melayu Riau, Bagian dari Sejarah Indonesia atau Malaysia?*, artikel 23 Februari 2010.

² Harto Juwono, *Antara Cambuk dan Penjara: Sistem Hukum di Kesultanan Riau Lingga*, 1-2.

³ Achmad Syahid, *Pemikiran Politik dan Tendensi Kuasa Raja Ali Haji*, Jakarta, Departemen Agama, 2009, 184.

⁴ Muhammad Yusoff Hashim, *Kesultanan Melayu Melaka*, Kuala Lumpur, Dewan Pustaka dan Bahasa, 2015, 8

⁵ Lihat Brian Harrison, *South-East Asia: A Short History*, London Macmillan & Co. Ltd., 1954, 53 tentang Islamisasi melalui perdagangan dan B. Schrieke, *Indonesian, Sociological Studies, part one*, Bandung, The Hague, 1955. Halaman 65 tentang Islamisasi melalui penaklukan.

competed for influence in the South China Sea region, including Lingga, which Johor controlled after Malacca's decline until the 17th century.⁶

In addition to Islamic law, the Malay tradition system also applies in the Riau Lingga islands, originating from customary norms regulating individual life in social interactions. When the Islamic legal system was implemented in the Sultanate of Riau-Lingga, the majority of legal matters handled by customs were transferred using rules from the Quran, including issues related to demands for spousal support, divorce by the wife, adoption of children, inheritance, and claims in the division of inheritance.⁷

After separating from the Malacca and Johor power, the Riau-Lingga Sultanate adopted an Islamic legal system. In the 19th century, Raja Djafar embodied Islamic life in everyday appearance, with the Quran as the main reference in the judicial process. Judges and court officials were also dressed in Islamic attire. Often, scholars were present in the court, especially when making important decisions on legal cases. Some scholars from the Middle East were also consulted for advice in handling legal disputes. Each school of thought (mazhab) had expert muftis who provided their views on a particular law.⁸

Since Sultan Mahmud Muzaffar Syah (1842-1858) took power in Riau-Lingga, replacing Sultan Muhammad Syah (1832-1842), Raja Ali Haji ibn Raja Ahmad ibn Raja Haji (in the way of Allah), became the advisor to the Raja Muda in Penyengat. He wrote the book *Tsamarat al-Muhimmah* as a guide for governance, stating that a prosperous country will be achieved if the people demonstrate religious behavior and the ruler can fulfil their role as a guide and protector by implementing religious laws.⁹ *Tsamarat al-Muhimmah* was completed in 1857 but first published in Lingga in 1886. The manuscript of *Tsamarat al-Muhimmah* was printed in Lingga with a stone stamp or lithography in 1884 in the month of Muharram¹⁰.

After the division of colonial territories between England and the Netherlands through the Treaty of London 1824, and with the signing of a new contract between the Sultanate of Riau-Lingga and the Dutch on October 29, 1830, several aspects of government administration became the object of Dutch intervention, including the judicial system, where several provisions such as Article 10 stated:"

"Penegakan hukum dalam semua perkara perdata dan hukuman fisik atas penduduk kerajaan Riau dan Lingga dengan perkecualian yang disebutkan sepenuhnya kepada Paduka Sultan dan atas namanya raja muda, tetapi sejauh mengenai hukuman fisik, Paduka terikat untuk selalu menghapuskan semua hukuman siksa dan potong tubuh dan tidak akan melaksanakannya kembali, dan hanya bisa melakukan hukuman mati dengan penusukan keris terhadap terdakwa atau dengan sarana lain yang mengakibatkan kematian segera. Dalam semua perkara penting, selanjutnya yang termasuk administrasi, Paduka akan meminta pandangan dan nasebat dari residen."

⁶ Armando Cortesão, *The Suma Oriental of Tome Pires*, London, The Hakluyt Society, 1944, 264.

⁷ "Wijziging de Inheemsche Rechtspraak in Riouw", dalam *Adatrecht Bundel*, Jilid XXVIII, 1927, 339. Juga adanya Adat Tumenggung sebelum masuknya Islam sebagai hukum adat Melayu.

⁸ Virginia Matheson and Barbara W. Andaya, *The Precious Gift – Ali al-Haj (Riau)*, Kuala Lumpur, 1993, Oxford Univ. Press, 393; Koh Keng We, "Singapore and Surviving Regime Change in the Nineteenth Century Malay World" dalam Derek Thiam Soon Heng and Syed Muhammad Khairudin Aljunied, *Reframing Singapore: Memory, Identity, Trans-Regionalism*, Amsterdam University Press, 2009, 54.

⁹ Timothy P. Barnard, "The Hajj, Islam and Power among the Bugis in Early Colonial Riau", dalam Eric Tagliacozzo, *Southeast Asia and The Middle East: Islam, Movement, and the Long Duree*, Singapore, NUS Press, 2009, 78.

¹⁰ Khalif Muammar A. Harris. (Editor: Arba'iyah Mohd. Noor & Mohd. Hanafi Ibrahim). *Raja Ali Haji Pemikir Ulung Alam Melayu Abad ke 19*. Kuala Lumpur, Dewan Pustaka dan Bahasa, 2017, 38

“Law enforcement in all civil cases and corporal punishment against residents of the Riau and Lingga kingdoms except being fully mentioned to Your Excellency Sultan and on behalf of the viceroy, but as far as corporal punishment is concerned, Your Majesty is always bound to abolish all torture and mutilation punishments and will not carry them out return, and can only carry out the death penalty by stabbing the accused with a dagger or by other means resulting in immediate death. In all important matters, including administration, Your Majesty will seek the views and advice of the resident.” (English Translation)

The role of the Resident giving advice is a form of intervention against the king's status as the highest judge in his kingdom. The escalation of further interventions increased, including interference in politics, which eventually led to the removal of Sultan Mahmud Muzaffar Syah from the throne on September 23, 1857, due to his departure to Singapore without permission from the Dutch resident in Tanjungpinang. This step was considered a violation of the 1830 political contract that stated the king must ask for permission from the resident to leave his area. This event was the culmination of conflicts that had been occurring for several years, with the Dutch resident in Tanjungpinang often complaining about the behavior of Sultan Mahmud Muzaffar Syah.¹¹

Sultan Sulaiman Badrul Alamsyah II, as his successor, signed a new contract with the Dutch resident, F.N. Nieuwenhuijzen, on 1 December 1857, once again intervening in the matter of the judiciary, namely in Article 19, which states:

“Setiap pelaku kejahatan dibukum menurut peraturan di tempat kejahatan dilakukan; tetapi mereka yang menjadi kawula pemerintah Hindia Belanda akan dihadapkan kepada hakim yang ditunjuk oleh pemerintah Hindia Belanda selain yang akan ditunjuk kemudian, sesuai hukum yang berlaku bagi hakim itu, dan bagi tujuan ini diserahkan kepada keputusan residen Riau. Kawula kesultanan Lingga, Riau dan taklukannya yang bersama-sama dengan kawula pemerintah Hindia Belanda melakukan tindak kejahatan akan dihadapkan kepada pengadilan bersama kawula ini, di depan hakim yang ditunjuk atau akan ditunjuk kemudian untuk ini oleh pemerintah.”

Therefore, the applicable law is no longer solely the law of the sultanate, but also other laws, especially the law of the Dutch colonial government. Since the issuance of the Regeringsreglement in the Staatsblad van Nederlandsch Indie over het jaar 1855 no. 2, the Dutch legal system has also been implemented in the colony, and indigenous people can willingly submit themselves to it. This principle is called concordance. The colony is not a foreign country but a part of the mother country, including its inhabitants.¹²

The colonial government considered the law in the Riau-Lingga Sultanate to be too cruel, as mentioned in Article 20:

“Hukuman siksa tubuh atau yang menyakitkan oleh pemerintah Hindia Belanda dihapuskan dan akan diganti oleh Paduka Sultan dan para bangsawannya dengan hukuman lain yang manusiawi.”

Slowly, colonial law began to be implemented by differentiating the population groups, with the principle based on the individual as the subject of law and not the state as

¹¹ Sultan Mahmud selanjutnya melarikan diri ke Pahang dan mencoba menyusun kekuatan, meskipun tidak terwujud, kehadirannya di Pahang tidak dilarang oleh Inggris. E. Netscher, *“De Nederlanders in Djohor en Siak, 1602 tot 1865”* dalam *Verhandeligen van Bataviaasch Genootschap*, vol. XXXV, 1870, 305.

¹² G.J. Resink, *“Conflictenrecht van de Nederlands-Indische Staat in Internationaalrechterlijke Setting”*, dalam *Bijdrage tot de Kolonial Instituut (BKI)*, 1959, Jilid 115, 2.

the institution of law, and the last contract between Sultan Abdurrahman Muazzam Syah on May 18, 1905, Article (Clause) 19 Lid (paragraph) 3 stated:

"Tentang hukuman yang dijatuhkan oleh atau atas nama pemerintah pinjaman (Sultan), grasi diberikan oleh Gubernur Jenderal.

Lid (ayat) 4 menyatakan:

Hukuman mati tidak bisa dilaksanakan sebelum Gubernur Jenderal diberi kesempatan memanfaatkan pemberian grasi. Pelaksanaan hukuman mati dilakukan dengan cara yang biasa terjadi di tanah-tanah pemerintah.

Lid (ayat) 5 menyatakan:

Hukuman pembuangan karena tindak pelanggaran yang dilakukan di wilayah kesultanan, tidak bisa dilaksanakan sebelum terdakwa diberitahu, dengan mempertimbangkan proses peradilan yang ditentukan menurut hukum dan adat setempat untuk itu dan residen memberikan persetujuan bagi pelaksanaannya, setelah diberitahu tentang vonis dan semua berkas lainnya yang berkaitan dengan perkara itu."

Although local customs and laws (Islamic law) are still recognized, not all of the regulations can be implemented before being ratified by the colonial government. The Governor General has the authority to grant clemency to the decisions of the Sultanate Court as a court that enforces the Islamic judicial system.

Islamic Justice System According to the Book of *Tsamarat al-Muhimmah*

Among the books that describe the Islamic justice system in the Kingdom of Riau Lingga is the book "*Tsamarat al-Muhimmah*" by Raja Ali Haji. The author named the book "*Tsamarat al-Muhimmah Dhiyafatan lil Umara'i wa al-Kubara'il-Ahl al-Mahkamah*," which can be translated as "*Fruits that are very important as support for leaders and high-ranking officials of the judiciary*". Raja Ali Haji himself interpreted the title of his book by saying: 'Namely, fruits that are aspired to be a banquet for kings and for the great people who have jobs in the court.' In it, he presents an introduction, three chapters containing several articles, and a conclusion.¹³

Tsamarat al-Muhimmah is a book in the field of legislation and governance that applies to the Malay kingdoms, printed in the Arabic-Malay script by the Riau Lingga Government Office in 1304 H/1888 M. This book has a total of 79 pages, divided into 3 chapters and 17 articles.

Compared to Raja Ali Haji's other works, *Muqaddimah fi Intizam*, *Tsamarat al-Muhimmah* has a much broader scope. According to Raja Ali Haji, *Muqaddimah fi Intizam* is a dedication to his cousin Yamtuan Muda Riau VIII Raja Ali (1845-1857).

The book *Tsamarat al-Muhimmah* serves as a book on legislation and governance in the Malay world, during the time of the life of Raja Ali Haji. It was spread in the Malay states, starting from Riau Lingga, Johor, Pahang, and Trengganu, which were formerly part of the Johor-Riau kingdom. The First Chapter of the book *Tsamarat al-Muhimmah* discusses the concept of the King and the Kingdom, the Second Chapter delves into the position of the qadi and judicial officials, the rules and procedures of the judiciary, while the Third Chapter talks about the matter of self-purification, both physically and spiritually, that must be carried out by government officials.¹⁴

¹³ Raja Ali Haji, *Tsamarat al-Muhimmah*, 3.

¹⁴ Pemerintah Kota Tanjungpinang, *Sejarah Perjuangan Raja Ali Haji*, Unri Press, Pekanbaru, 2004. 153-156.

Hierarchically, the book *Tsamarat al-Muhimmah* mentions the ranks of positions in the kingdom, starting from the King, Wazir as the head of the state (government), Ministers with specific positions determined by name and rank according to custom, tradition, and the nation. Wazir al-A'zam is of the same rank as Mufti or Sheikh al-Islam, below the rank of Wazir is Amir, whose rank is the same as Qadi al-Qudat, below the rank of Amir is Hakim, whose rank is the same as Qadi Khusus or all Naib al-Qadi. As for Katib (scribe, clerk) for Qadi, their rank is below Qadi, and Katib for Hakim is below Hakim. Furthermore, there are soldiers from both the side of Amir and the side of Qadi al-Qudat. The author in creating this hierarchical position quotes from the book "*Durrat al-Manzum*".¹⁵

Furthermore, after mentioning the positions of the government and determining their hierarchy, the procedure for the removal/resignation of these positions is also discussed, except for the position of the Sultan as the Imam al-A'zam which cannot be removed even if his just nature is lost, with reference to the book *Jauharat al-Tauhid*, that the King cannot be removed from his position if his just nature is lost, unless he disbelieves and turns away from the Islamic religion, both in words and actions, or makes the forbidden permissible and vice versa, resulting in disbelief, then his position can be released.¹⁶

The Great Qadi Officer who receives a mandate (Tauliyah) from the Sultan can be removed from his position due to the loss of qadi qualities such as insanity and fainting, negligence, deafness, forgetfulness that eliminates the qualities of intelligence and cleverness, his mind no longer being determined by the law due to old age or illness. The King must remove a qadi from his position due to an apparent defect, provided that another suitable person is found or someone with more knowledge than him, or for the benefit of suppressing slander. If such conditions are not met, it is forbidden for the King to remove a qadi from his position, even if another more righteous person is found. As for positions below the Great Qadi, such as assistants and deputies, they can be removed by the Great Qadi even without any reason. This is the opinion of Sheikh al-Islam Zakaria Yahya al-Anshari in his book *Fath al-Wahhab*. However, in the book *Fath al-Mu'in*, the King must remove a qadi from his position due to numerous complaints from people within, with valid and clear evidence, not just based on their oath. A qadi must also be removed from his position due to being a fasiq (a person who openly disobeys religious laws). If a qadi is removed from his position, the position of the deputy qadi will also be removed, unless the deputy qadi is appointed by the King. Lastly, a qadi and all the leaders of a region and villages will not be removed from their positions due to the death of the King or other reasons.¹⁷

In the book *Tsamarat al-Muhimmah*, there is a section that discusses the Judiciary and its Process, namely in Chapter Two, which consists of 10 Articles. It is titled 'On the declaration of the kingdom's order and the court's rules on its deliberations and laws.' Among the arrangements of the judicial system are as follows.

1. Definition of Court

The meaning of the court/judiciary is to establish law for all servants of Allah. In this regard, Raja Ali Haji states that the judiciary is the place for legal matters for all kingdom inhabitants. The judiciary is obliged to handle every legal case submitted by citizens.

¹⁵ Raja Ali Haji, *Tsamarat*, 7-15.

¹⁶ Raja Ali haji, *Tsamarat*, 15.

¹⁷ Raja Ali Haji, *Tsamarat*, 16-7.

2. Judicial Officers, composition, duties and functions

In the judiciary there are several high-ranking officials who hold positions with different jobs, including:

- a. Qadi who acts as the head/leader of the judiciary
- b. Na'ib al-Qadi, as a deputy or substitute judge
- c. Katib, as a clerk (panitera) who consists of 2 (two) people, the requirement is that he must be fair and a free man and know all the duties of the position.
- d. Turjuman, interpreters who amount to 2 (two) people taken from those who qualify to become witnesses.
- e. Muzaki is a person who examines the witnesses for justice.
- f. Derah, an authorized official who can hit and imprison the wrongdoers.

The number of court/judicial organizers is at least 9 (nine) people, plus 1 (one) person from the clergy, making it a total of 10 (ten) people, which is the minimum number of judicial organizers.

In addition, for the security of the court, there is also a unit consisting of 10 soldiers, called Jundi.¹⁸

3. Adab and Ethics of Judicial Officials

Among the manners and ethics that judicial officials must uphold are: Judicial officials must not be arrogant and proud of their acquired positions, they should instead reflect and be conscious of the defendant and the parties involved, that justice is like a ship in the vast sea, if a storm hits it and the crew is not competent, it will sink and perish in this world and the hereafter. They must always fear Allah, be fair, thorough, and complete in investigating and examining, and always patient, firm, and strong in upholding and enforcing every punishment correctly. Judicial officials must be brave and not be afraid or hesitant, they should not worry about being criticized or belittled by the parties involved for not obeying the desires of foolish people.

Similarly, judicial officials should not joke around and laugh, even if they find the opposing party's situation amusing. They should not mock or ridicule them by laughing at them. They must restrain themselves as if they were in Padang Mahsyar where no one can joke around. Judicial officials must maintain decorum and politeness, exhibit consistent and authoritative behavior, and should not be noisy in court. They should speak and raise their voice slowly as necessary and not interfere in each other's work, which is not part of their responsibilities.

A Katib as a secretary, in a situation where there are no cases, should perform his duties in matters of correspondence, making copies of all certificates, minutes, and legal documents. The judge and deputy judge should always remember all the laws of Allah SWT; if they forget, they should review the books of law again, as well as the translator and preacher if there are no cases, they should study the books related to their positions.¹⁹

4. Rules of speech in the Judicial Officials Conference

Musyawah is a command from Allah SWT mentioned in the Quran and the teachings of the Prophet, which is recommended in every matter and work. If we have aspirations (intentions) to do something, we should hold on to and rely on Allah SWT, and not rely on musyawarah (consultation) because Allah SWT loves those who rely on Him.

¹⁸ Pasal 1, Bab yang Kedua, Kitab *Tsamarat al-Muhimmah*, 20-21.

¹⁹ Pasal 2, Bagian yang Kedua Kitab *Tsamarat al-Muhimmah*, 21-22.

Sages say that whoever is given four things will not be hindered by four things: whoever is grateful will not be hindered by an increase in sustenance, whoever repents will not be hindered by goodness, whoever consults will not be hindered by truth."

By quoting the Book of Mustath Raf'alal Jumlah, the time and the person must be chosen for consultation. Do not choose a time when a person is very hungry or in a state of extreme fullness, and also when a person needs to relieve themselves or is sleepy. In consultation, do not choose ignorant and foolish people, or people who have enmity, envy, hypocrisy, cowardice, stinginess, have many women, and people who follow their desires because it will harm and damage the results of the consultation.

When the judge has taken his place, he sits in a high position facing the qibla. The area where the judge sits should be distinguished from others, and a cushion should be provided for support. He should wear a black turban and all the attributes recommended by the scholars of fiqh.

After all the preparations for the trial have been made, all judicial officials should sit in an orderly manner according to their positions on the right and left of the judge. Their behavior and conduct should be by their dignity and position, remaining silent to maintain calmness and waiting for the judge's speech and instructions. If the judge asks a question to someone, others are allowed to answer or interfere with it once it is their turn to be asked. Only after all the questions have been asked, they may answer.

When asked about matters of knowledge in the effort of consultation regarding an action or punishment, the judicial officer should answer according to their level of knowledge, starting from the lowest-ranking and least knowledgeable officer. The purpose is to ensure sufficient knowledge regarding the sharia and the community, as accepted by the qadi's provisions so that a decision can be made promptly as a consensus among the judicial officers.

Questions do not need to be redirected to someone above because the higher person is usually high in knowledge and intellect, which is the main issue in religion and knowledge. If the person of lower rank cannot answer, then the question is moved to someone above, that is how the orderly discussion of consultation is conducted at hierarchical levels until it reaches the top. In conducting consultation, each person must adhere to their respective limits as defined between one person and another to maintain and avoid intense envy (*hasd al-mahsad*), as well as with *muhadharah* and *mukhatabah* between them.²⁰

5. Procedure for Settlement of Differences of Opinion of Judicial Officials

Suppose there is a difference of opinion among all the judicial officials. In that case, that is, in a state of conflicting thoughts and efforts, if the difference is in religious matters. It should refer to the Al-Qur'an because it is a matter of sharia, and return to the strategy of consulting with scholars if the judge's knowledge is insufficient. This is similar to expert witnesses in the modern judicial system now."

However, although the knowledge of the qadi is sufficient, according to the *fuqaha*, he should consult with the scholars, because the scholars have a wide range of *ijtihad* from the light of knowledge produced by the scholars of the past and the scholars of the present as a result of the light of the Quran and hadith. Sometimes a law can arise from fragments of letters and words as a convenience and mercy for creatures to practice it, one text can have dozens of volumes of explanation and one explanation can have dozens of volumes of commentary, difficult problems and future problems already have their answers. Therefore, these scholars have also discussed complex issues such as humans with two

²⁰ Pasal 3, Bagian yang Kedua Kitab *Tsamarah al-Muhimmah*, 22-5.

heads, humans giving birth to animals, and animals giving birth to humans over a long and exhausting period of time.

How can we, who are in darkness and have little time to gather, surpass the scholars of the past and the present? It is indeed far from us. Therefore, it is advisable for the judge to consult with the scholars, and study the previous books to broaden the mind and virtues.

If the difference of opinion is regarding the law and custom, then refer to the laws and aksar (note: possibly referring to atsar), which are the former practices and traditions of previous kings and leaders that are considered beautiful, appropriate, just, fair, and not in violation of Sharia law. The judicial officer's decision is also considered as ittifaq ahli al-mahkamah (the consensus of the court experts).

A qadi is not allowed to follow laws that contradict Sharia law and undermine justice, like some states that enforce their own laws. If a law is doubtful, a law is created that accuses a person who passes through a highway where a loss occurs, even if there are no witnesses and the person does not confess. An examination is conducted, like a fresh branch breaking, the person is arrested and forced to confess through various tortures, such as having their legs twisted until they break or their fingers squeezed until they burst. Due to extreme pain, the person confesses. Then they are also asked where the stolen goods are placed, and due to the pain, they point to any place to stop the torture."

When the item was searched for in the indicated place, it was certainly not found. Then the person was tortured even more harshly, so their body couldn't bear it. They then showed another place that, when searched, also did not yield any results, as the person wanted to escape from the pain of torture. Sometimes, this person experiences a lifelong disability of broken legs and arms. Then, if the actual thief is caught, the accused person is already ruined and destroyed due to the aforementioned fabricated law, with no one able to replace their legs, arms, or life.

Some enforce laws in ambiguous matters, where two people claim to own the same object. They are ordered to dive into the water, and the longest stay underwater is considered the rightful owner. Or they are instructed to hold boiling oil, and the one whose skin does not get burned is deemed the rightful owner. The clever person seeks medicine to prevent their hand from blistering, and thus they win with their deceit. Due to their wounded hearts, there are also those who surrender the disputed object to the king or minister, so that they can both be blinded by greed. Meanwhile, the king or minister, lacking in frugality and dignity, gladly accepts it, praising the person and calling it "humble fortune." All of that is cruel regulations and not accepted in the book of Allah SWT, as well as in the books of the scholars, all of them are free from unjust matters.²¹

6. The Law is Islamic Religious Law/Shari'a Law Derived from the Qur'an and Hadith

It is understood that the great imams (schools of thought) that serve as references for great nations are the Maliki, Shafi'i, Hanafi, and Hanbali mujtahids. Turkey, India, Arabia, and Syria follow the Maliki, Hanafi, and Hanbali schools of thought. As for the Jawi region (Nusantara), the Shafi'i school of thought is the basis for making legal decisions.

If not to improve the country and strengthen the government, Ijtihad on global issues would become a harmful innovation. Firstly, it should not harm one's life and body. Secondly, it should not be treacherous towards someone's wealth. Thirdly, it should not

²¹ Bagian Kedua, pasal 4, *Tsamrah al-Muhimmah*, 25-29

bring shame and disgrace to someone. Fourthly, it should not tarnish the reputation of the king and ministers.

Therefore, qadi and the leaders in the field of law should strive earnestly to seek knowledge, diligently studying fiqh books, diligently reviewing (muraja'ah) with knowledgeable scholars, and examining all difficult and rare issues to avoid making mistakes in judging people. Especially in emergency situations, such as when a qadi does not meet the qualifications to be a qadi, they should still ensure the welfare of the Muslim community, as is the case in our country. Therefore, when making a decision, it is necessary to examine and study the books as meticulously as possible thoroughly.²²

7. The law is decided when the examination has been completed with all the conditions.

A qadi resolves a case by uttering the phrase: hakamtu kaza wa kaza (I have decided like this and like this). The letters written by court clerks are:

- a. Muhadir Letter: a lawsuit letter stating the plaintiff's allegations against the defendant.
- b. Certificate: made in it, the law against the defendant is stored (archived) in the qadi's house.
- c. Hukmiah letter: a letter of judgment (consideration) given to the defendant stating whether they have won or lost, it is preferable for the qadi to write it.

After the decision was pronounced, the judge put a seal on the legal documents stating the names of the plaintiff and defendant and the witnesses. The letter also mentioned the basis and references of legal books and the opinions of quoted scholars. This is the form of the decision and can only be changed if it contradicts the text or consensus, contradicts the more authoritative Shafi'i school of thought, and only then can it be altered (repaired).²³

8. Qadi al-Qudat must appoint an official to handle special cases according to his expertise.

The Qadi al-qudat has absolute authority in appointing someone to handle matters of muamalah (business transactions), munakahat (marriage), and jinayah (criminal cases), and they work according to their respective fields if there is someone who meets the qualifications. However, suppose there are not enough qualified individuals. In that case, it depends on the king's policy or the head of the selection process to approve it with the justification of urgency as long as it retains the remnants (spirit) of Islam.

Whoever is authorized (appointed) by the king or qadi to examine a case in court, whether it is a minister or other official, then he occupies the position of an interpreter. And whoever is authorized to write a letter in court occupies the position of a scribe, and whoever is authorized to decide a case occupies the position of a qadi.²⁴

9. The qadi is forbidden (haram) to accept gifts from people not used to giving when he is not a qadi.

A Qadi must not accept gifts from people. And if there is someone who used to give gifts before the Qadi became a judge, but once they become a judge, they excessively give more than before. It is also forbidden to accept gifts from people who have a dispute

²² Raja Ali, *Tsamarat*, 29-30

²³ Bab Kedua, Pasal 6, *Tsamrah al-Muhimmah*, 30-31.

²⁴ Bagian Kedua, Pasal 7, *Tsamrah al-Muhimmah*, 31-32.

with the Qadi, even if that person used to give gifts before they became a judge, because it will make them more inclined to favor that person.

What is prohibited is receiving gifts from people under one's authority, but if it is from someone outside of their authority, they may accept it. If they receive something that they are not allowed to accept, they should donate it to charity. They are obligated to attend wedding invitations but should not go to the house of someone involved in a dispute. They are recommended to refrain from selling themselves, and if they do not have a representative, it should be due to an emergency. It is forbidden for judges and judicial officials to accept bribes, which are gifts from people who request a favourable outcome, even if the law and their decision are correct.²⁵

10. Procedures and Criteria for Judicial Officials Selection

The criteria for selecting individuals to become judicial officials are:

- a. Good Behavior
- b. Having dignity
- c. Feeling Embarrassed
- d. Polite and civilized
- e. Do not be arrogant in words and actions.
- f. Knowledgeable and good at doing good deeds
- g. Avoid actions prohibited by Allah and His Messenger (such as gambling, cockfighting, bribery, adultery, and actions that are punished by hudud and ta'zir). Those who engage in such actions are not angry towards the perpetrators of those actions. People like this are not worthy of becoming great individuals as judicial officials who should uphold what is right and distance themselves from falsehood. How can someone covered in filth and disgusting dirt be able to decay the nation and the royal council? If the king allows someone like that, what is the name of a king who is associated and allied with corruption and evil.²⁶
- h.

11. Oath of Allegiance to Judicial Officers Appointment

The King must foremost take the oath of loyalty from the judicial officials as royal officials before being given the authority and title of royal office. The oath of loyalty consists of 12 (twelve) matters, namely:

- a. 'Ahdul Mahkamah (Promise of Judicial Officer)
This is the first agreement upon all judicial officials, the basis of which is the word of Allah SWT. *واوفوا بالعهد ان العهد كان مسؤولا*
Meaning "fulfil your promise, verily the promise will be questioned on the Day of Resurrection."
Those who wish to enter the judiciary should purify their intentions (tasdiq al-niat) solely for Allah and His Messenger, seeking only the pleasure of Allah SWT and strengthening the Islamic religion by assisting the ruler in acting justly towards the entire population.
- b. Oath of allegiance to the King
Faithful to the King with sincerity and pure heart, when there is a war or major conflict, he sides with the king; even if there are close relatives on the enemy's side, they should no longer be considered. However, if the conflict has not

²⁵ Bagian Kedua, Pasal 8, *Tsamrah al-Muhimmah*, 32-33.

²⁶ Raja Ali Haji, *Tsamarat*, 33-4.

escalated to war, he can advise, persuade, and forgive his close relative if successful.

- c. Responsibility and integrity
As government officials and the judiciary, they must be consistent in their work, by all the laws of Shariah that have been referred to as wisdom by the king.
- d. Maintain court confidentiality
As government officials and court officials, we must maintain the confidentiality of the court, such as the secrecy of religion or the deception of wisdom to the servants of Allah or the politics of the kingdom. All confidential letters should not be shown to anyone, including children, wives, or parents.
- e. Actualize the motto of the kingdom inside and outside the court
The government's motto cannot be expressed to anyone other than the judiciary; the motto is made every time before carrying out a task using consultation.
- f. Help each other in the task of justice.
Judicial officials must help each other in times of difficulty, like siblings, friends, neighbours, or fellow villagers.
- g. Income from judicial services such as *ujrah* (wages) is not prohibited, as stated in the second chapter of Article 8.
Judicial officials are only allowed to accept something if it is agreed upon and determined by the king, such as payment for distributing land (*ujratul qimah*) or items required or customary by the king. Except for what they receive, which must be reported to the king or the chief of the court (judicial leader) and allowed (required) to accept it."
- h. Suppose there is a dispute among fellow judicial officials. In that case, it should not be decided (examined) within the judiciary, but examined and decided in a closed forum that cannot be attended by anyone other than judicial officials."
- i. If mistakes and disagreements occur, one should not criticize and curse their co-worker by discussing them with people outside the court office. Still, the mistakes and disagreements should be expressed directly in front of the person, or if afraid of embarrassment, they can be conveyed through a co-worker, and one should not curse (tell) everyone."
- j. Being jealous and vengeful towards co-workers is not permissible because of differences in position and income.
Because positions are a gift from God and the king's *ijtihad* in appointing someone to control the disease of the heart, one should increase *istighfar* (seeking forgiveness) and seek protection from Allah from the trait of envy, and also read and study books that discuss the trait of envy and how to avoid it diligently.
- k. One should not judge a job as good or bad, right or wrong, virtue or destruction, and show it to coworkers.
- l. It is not allowed to lie in conveying news about the government, adding or subtracting from it, especially if you intend to humiliate and deceive your colleagues (peers) or the king; that is a forbidden act contrary to the nature of trustworthiness. Such actions should be avoided as they will disgrace the perpetrator if discovered.

Furthermore, when the inauguration process was prepared, the king said: "We kings...give agreements to ministers.... or (title).... with four things:

1. We will not commit acts of injustice against your life, body, and property.
2. We are committed to protecting your name and preserving the honour of yourself and your family.
3. We will do our best to fulfil all your needs according to the requirements of syarak and the appropriate customs and practices for you.
4. We set you free to meet and come to us if our actions violate the religious law and customs or displease you, our behavior or our family's behavior. You are free to meet and come to us, at an appropriate place, at an appropriate time, and with appropriate behavior.²⁷

The above description shows that the judicial system implemented in the Kingdom of Lingga Riau refers to the one implemented in Islamic kingdoms. In his work, Raja Ali Haji also reminds us of the important role of a judge (qadhi) in deciding cases and the ethics that must be maintained so that his decision is not biased or one-sided. Thus, the description of the judicial system in the Malay world has shown that its practice adopts the Islamic kingdom system and becomes a reference for fiqh qadha in general.

Conclusion

Tsamarat al-Muhimmah is a book on legislation and governance that applies to the Malay kingdoms during the time of Raja Ali Haji. This book is spread across the Malay states, starting from Riau Lingga, Johor, Pahang, and Terengganu, formerly part of the Johor-Riau kingdom. The second chapter discusses the qadi position and judicial officials, the order of the judiciary process, and its procedures. In writing this book, Raja Ali Haji mentions several books written by Islamic scholars in the field of Tauhid and fiqh that he used as references, including the books Durratu al-Manzum, Jauhar al-Tauhid, Fath al-Wahab, Fath al-Mu'in, and Mustath Raf'a al-Jumlah. The main topics in the second chapter that discuss the judicial system include the definition of a court, the composition and functions of judicial officials, the applicable legal sources based on Islamic law from the Qur'an and Hadith, the etiquette of judicial officials, the procedure for consultation among judicial officials, the procedure for resolving differences of opinion among judges (qadi), the decision-making process after the completion of the examination and fulfilment of all requirements, the Qadi al-Qudat as the leader of the qadi must appoint judges who are suitable in expertise to examine cases, the prohibition for the Qadi to accept gratuities, the procedure for the selection of judicial officials and their criteria, and the oath of loyalty for the appointment of judicial officials. From this study, it is known that Raja Ali Haji's thoughts on the judicial system refer to the Qadha fiqh practised by Islamic kingdoms. From this study, it is also known that the judicial ethics contained in the book should be further studied and actualized in the present conditions.

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²⁷ Raja Ali Haji, *Tsamarat*, 34-40.

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