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*The Dato' Yuthitham* and the  
Administration of Islamic Law  
in Southern Thailand

Ramizah Wan Muhammad

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# The *Dato’ Yuthitham* and the Administration of Islamic Law in Southern Thailand<sup>1</sup>

Ramizah Wan Muhammad<sup>2</sup>

*Shariah* is often misunderstood as having solely divine origins. It should, in fact, be seen as both divine and man-made, with objectives that include upholding justice and protecting the public interest. A proper judicial institution is therefore needed to implement the rulings of *Shariah*. Without this, any system of law, whether Islamic or not, is useless. Like any other judge, a *Shariah* judge should employ legal skills to harmonise existing laws and use the power vested in him or her to reach the right decision and then enforce it. A judge can only be effective in this if given proper jurisdiction and powers.

The effective implementation of Islamic law in any country thus has two fundamental preconditions. The first is the existence of substantive law, typically consisting of family law, commercial law and, in some cases, criminal and constitutional law. The second precondition is the existence of procedural law, that is, laws that determine the application and enforcement of the substantive law by Islamic judges or courts. Although there are substantive and procedural mechanisms available to apply and enforce *Shariah* in Thailand, they are currently restricted to four southern provinces, and are weak and very limited. In practice, they are also subordinate to the substantive and procedural law administered by secular civil courts.

This paper considers these issues in the specific context of laws for Muslims in Thailand, with specific attention paid to the credibility of the Muslim officials who are authorised to administer and enforce it, the *Dato’ Yuthitham*.

## Muslims in Thailand

The Kingdom of Thailand occupies the center of the South-East Asian peninsula. According to the census of 1 April 2000, ([http://web.nso.govth./pop2000/spc\\_e.htm](http://web.nso.govth./pop2000/spc_e.htm)) it has a population of over 60 million people. Like Singapore and the Republic of the Philippines, Thailand has a Muslim minority. Of the 5 million Muslims in Thailand, the majority (3.5–4 million) live in the southern part of the country in the provinces of Pattani, Narathiwat, Satun and Yala.

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<sup>2</sup> Ramizah Wan Muhammad, LLB., MCL., Ph.D., is an Assistant Professor at the Department of Islamic Law, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia (IIUM).

These provinces were once part of the old Malay Kingdom of Pattani (Che Man, 1996: 425) and this heritage continues to have a strong influence on the identity of Muslim people in Thailand. 'Malay Muslim' is the usual term used to describe the Malay-speaking Muslims who have resisted assimilation into Thai society and culture (Farouk, 1981: 97), and it covers the majority of Muslims in the south who speak Malay or the *Yawi* dialect (Thomas, 1982: 159). By contrast, the term 'Thai Muslim' describes those who have adopted the Thai language and are seen to have absorbed Thai culture (Farouk, 1981: 97). Muslims residing in other parts of Thailand are likely to converse in Thai both at home and in public and usually are no longer familiar with the languages of their ancestors (Thomas, 1982: 159), but this is not true for the Malay Muslims of the south. Despite attempts by the government to cultivate a feeling of Thai nationalism among the population, Malay Muslims' sense of ethnic and religious identity continues to set them apart (Pitsuwan, 1982: 28). This is compounded by the use of the term *Khaek*, which is often applied to Muslims by non-Muslim Thais. *Khaek* usually refers to dark-skinned foreign visitors or immigrants residing in Thailand (Gowing, 1985: 185) and the Muslim community resents it. They argue that the term is misplaced, since Muslim immigration preceded Thai Buddhist influence in what is now southern Thailand by several centuries (Thomas, 1982: 159).

### Administration of Islam

Islam has been institutionalised in Thailand since the arrival of Sheikh Ahmad at the beginning of 7th century. Given the high-ranking noble title of *Jaw Phraya* (Tohmeena, 1997: 13), Sheikh Ahmad was a figure of considerable political importance and acted as personal advisor to the King on Islamic matters (Gilquin, 2005: 43).

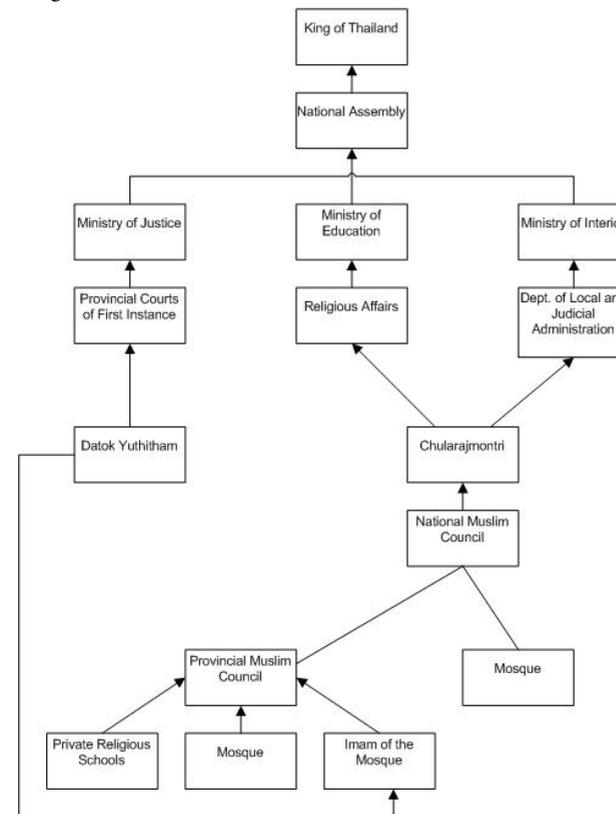
Prior to 1947, a form of Shariah Court existed in Thailand, but was attached to the Provincial courts. In 1947, a demand for a separate *Shariah* Court was made to the Bangkok authorities. This was, in fact, one of seven demands put by a group of Pattani Malays led by a Muslim activist and *ulama'* (religious scholar), Haji Sulong Bin Abdul Kadir. His group asked that Shariah court judges be appointed by Muslims themselves and not by the government (which then, as now, was largely non-Muslim). The Pattani Malay demand for the teaching of Malay and Arabic languages in Muslim schools was granted, but their call for a separate *Shariah* court was rejected, and Haji Sulong's resistance to the Thai state soon became more aggressive. In 1952, however, he disappeared in mysterious circumstances (Aphornsuvan, 2003: 23). No separate, formal *Shariah* Court institution has since been established in southern Thailand, although Islamic law is applied in that area in a limited fashion through the institution of the *Datok Yuthitham*, described later in this paper.

In 1997, the Constitution was amended to provide that the King of Thailand is the spiritual head of all religions in the country, including Islam (*Thai Constitution 1997*, s 9). The *Chularajmontri* or *Sheikh al Islam*, is an advisor to the King on Muslim affairs and represents the interests of Muslims. He has no legal authority but his role is to advise the King on the Islamic administrative matters. He also presides over a national council of Islamic affairs. The office of the *Chularajmontri* has a long history, dating back to the 17<sup>th</sup> century, and he is now appointed by the King on the recommendation of the Interior Minister. Interestingly, the *Chularajmontri* has traditionally been Shi'ite since most of them are of Persian origin. Some *Chularajmontri* have also been from the Indian sub-

continent. Muslims in southern Thailand by contrast are Sunni Malays, closely related to Sunni Malay communities in Malaysia and Indonesia. As a result the *Chularajmontri* has historically not been an effective link between the government and the Malay-Muslim minority in the south, and there is often disagreement on the interpretation of Islamic law as between the southern Sunni Muslims and those elsewhere in the Kingdom.

Today, the government continues to play a limited role in Muslim religious affairs in Thailand through the various ministries and councils shown in the following diagram. The National Muslim Council is intended to play a key role in the administration of the Muslim legal matters such as solemnisation of marriage, paying zakat, mosques and so on. This council is accountable to Chularajmontri, who in turn answers to the Ministries of Education and the Interior and, ultimately, the king. The Provincial Muslim Council is part of the national Muslim council, but operates at the provincial level in Southern Thailand.

Diagram 1: Hierarchical structure of Islamic institutions in Thailand<sup>3</sup>



<sup>3</sup> Diagram developed from Jehtae, Nima, *Administrative Offices in Managing the Religious Affairs in Thailand* (1998). Unpublished Masters thesis, International Islamic University Malaysia, p. 26.

## Application of Islamic law

The formal application of Islamic law in Thailand can be traced to the early 1900s. On 10 December 1901, a Royal Decree was passed that applied only to Muslims in Thailand (Pitsuwan, 1982: 119). Article 32 of this Decree provided that the Criminal and Civil Codes were to be applied in all cases in which both the plaintiff and the defendant or the defendant alone were Muslim, except civil cases concerning husbands, wives and inheritance. In the latter group of cases, Islamic law was to be applied instead of the Codes (Pitsuwan, 1982: 120). This Decree remains in force today.

In 1902, King Chulalongkorn (Rama V, 1868-1910) enacted the *Rule of Administration in the Seven Principalities* and set up a special court for the Muslims as part of the Provincial Court System. This reflected the fact that the Thai Muslims were generally protected under Rama V's reign. His wish was not to suppress and destroy Muslim Malay identity but to encourage them to feel Thai, despite their minority religious status.

Historical evidence also shows that there was a form of *Shariah* Court in Satun during the reign of Rama V (Aphornsuvan, 2003: 16-17). This institution was led by a *Phraya Shaikh al Islam*, *Phraya* being a title given by a King to a person close to him. The *Phraya Shaikh al Islam* was a religious teacher and had to decide cases according to Islamic law. Satun was at that time within Sai Buri precinct, which consisted of Perlis, Kelantan and Terengganu. When Satun separated from Sai Buri in 1909, the position of *Tok Kadi* was abolished. In 1917, however, a Royal Decree by the King mandated the application of Islamic Law in Satun and hence the appointment of a *Dato' Yuthitham*, or *Kadi* (Tohmeena, 1997: 17). *Kadi* is a form of the Arabic *Qadi* or 'judge'. *Yuthitham* is a Thai word denoting 'justice'. *Dato'* is a Malay title for a venerable or respected person. Malay Muslims in the South usually address the *Dato' Yuthitham* as *tok kadi*, as throughout much of the rest of Malay Southeast Asia (Dorloh, 2004).

The 1932 revolution in Thailand was the beginning of a nationalist movement that ultimately led to a decline in the application of Islamic law in Thailand, and, some would say, to the neglect of Muslim communities. General Phibun Songkhram, the military leader who overthrew Thailand's absolute monarchy in June 1932, was initially responsible for stimulating this form of Thai nationalism (Leifer, 1995: 190-1). The General sought to "Siamise" all non-Buddhist minorities, including Muslims (Gowing, 1985: 183-4), to the extent even of trying to convert Muslims to Buddhism (Gowing, 1985: 19). He became Prime Minister in 1938 and introduced *The National Culture Act 1943* in an attempt to entrench 'Thai-ness' and Thai nationalism in the country. Phibun felt that uniformity in Thailand could only be achieved by having a single system of law and by assimilating all Muslims into the Thai legal system. He believed that enacting a special law applicable to Muslims would be equivalent to granting Muslims special rights, and thus fragmenting Thai identity. In one of his addresses to his cabinet and senior officials, Phibun said;

In an effort to build a nation with a firm and everlasting foundation, the government is forced to reform and reconstruct various aspects of society, especially its culture which here signifies growth and beauty, orderliness, progress uniformity and the morality of the nation (Baker & Phongchit, 2005: 140).

Under General Phibun's leadership the position of *Datuk Yuthitham* was abolished in 1943. This was done through the Civil and Commercial Code, Books 5 and 6, which also annulled the application of Islamic law to Thai Muslim marriage and inheritance.

General Phibun's policies were, however, short-lived. He fell from power in 1944 (Baker and Phongchit, 2005: 140) and his Civil Code was amended shortly after by the *Royal Act 1946* (Thailand). This statute reintroduced Islamic law with respect to family law and inheritance cases where Muslims are both the plaintiff and the defendants. As mentioned, Section 3 provides that 'Islamic Family Law and Inheritance shall be applied in the Court of First Instance in Pattani, Narathiwat, Yala and Satun where Muslims are both the plaintiff and the defendant or a Muslim files a request in non-contentious cases.' This provision re-established the policies of Rama V, and become a socio-political standard for subsequent Thai leaders (Pian, 2002: 7).

In 1997, the government of Thailand issued *The Royal Act Concerning the Administration of Islamic Organisations* BE2540 (AD 1997). This affects Islamic organisations including the *Chularajmontri*, the Central and Provincial Islamic Committee and the Mosques Committee. These committees deal only with Muslims in southern Thailand and have no authority in respect of Muslims living in the northern or central parts of Thailand. Muslims who live outside the southern provinces are not obliged to follow Islamic law, since section 3 of the *Rule on the Application of Islamic Law in Four Provinces 1946* provides only that:

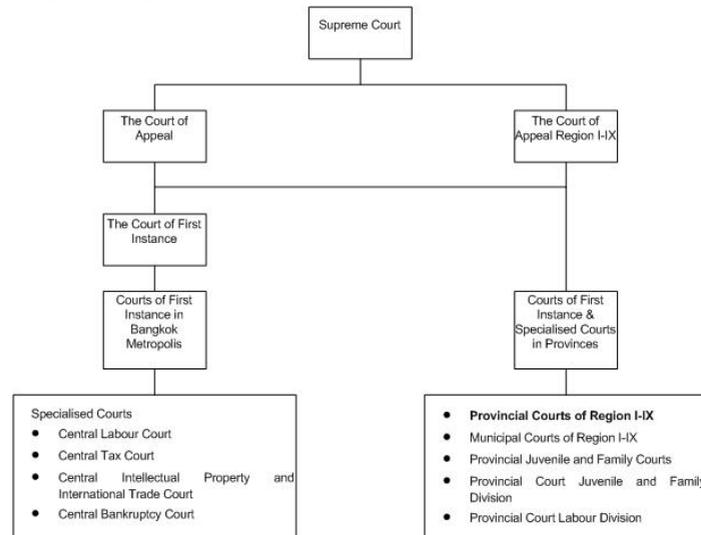
Islamic family law and inheritance shall be applied in the court of first instance in Pattani, Narathiwat, Yala and Satun.

## The Dato' Yuthitham and Jurisdiction to Apply Islamic Law

Despite there being no separate *Shariah* Court, Thailand's judicial system does, as mentioned, have mechanisms for the application of Islamic Law. The *Act for Exercising Islamic Law in Pattani, Narthiwat, Yala and Satun*, BE 2489 stipulates that Islamic law may be applied by the provincial courts of first instance and specialised provincial courts in the four southern provinces. There are now five provincial courts that cater to the needs of Muslims in these provinces.<sup>4</sup>

<sup>4</sup> Yala has two *Shariah* Courts, in the city of Yala and in Betong.

Diagram 2: Organisation of the Courts of Justice



As mentioned, the official who adjudicates *Shariah* matters in Thailand is known as *Dato' Yuthitham* or *Dato' Kadi* (Uwanno and Sathirathai, 1987: 88). The *Dato' Yuthitham* sits in the Thai Provincial Court in four southern provinces where he assists the civil court judge.

The Ministry of Justice has the power to appoint and dismiss the *Dato' Yuthitham* pursuant to the *Judicial Official Act 2000 (Justice Ministerial Decree No. 5 (1979) Art. 3)*. Special procedures must be observed before the appointment of *Dato' Yuthitham* is made, and potential candidates are usually scrutinised to ensure they will support the Bangkok government. Any vacancy must be announced by the Regional Director General of Judges. Interested Muslims are then invited to submit their application within a specified period. The Regional Director consults the Provincial Chief Judge and the Provincial Governor of the relevant province to determine the qualifications and suitability of each applicant before allowing them to sit a religious proficiency examination. The salaries and promotion of Muslim judges are also placed under the Ministry of Justice (*Judicial Official Act 2000 (Thailand) s 45*). It is common for there to be two *Dato' Yuthitham* in each provincial Court. Like any other civil servant, the *Dato' Yuthitham* is eligible for the pension after retirement at the age of sixty (Section 46, *Judicial Official Act 2000*).

The basic qualifications required for appointment as a *Dato' Yuthitham* are set out in the 1902 *Rule of Administration in the Seven Principalities of Thailand* (section 32).

... the Islamic law shall be applied and decided by the *Dato' Yuthitham* who has knowledge of the Qur'an and enjoys the respect of the people.

A person aspiring to be appointed as *Dato' Yuthitham* must fulfill certain other requirements to section 44 of the *Judicial Official Act 2000*. He must:

1. be a Muslim of Thai nationality and loyal to the government
2. be not less than 30 years of age
3. be capable of formulating judgments in cases relating to marriage and inheritance
4. have achieved a level of academic excellence equivalent to lower secondary school
5. be well versed in the Holy Qur'an
6. be fluent in Thai language

After successful completion of the religious proficiency examination, a candidate must then stand for election in the respective province. As mentioned, the final authority for appointment rests with the Ministry of Justice, who chooses successful candidates from a roll of elected candidates submitted by the Regional Director General of Judges.

### Limitations of the *Dato' Yuthitham*

The criteria just described prove that the *Dato' Yuthitham* is far indeed from being a full-fledged judge in a judicial institution and indeed, the *Dato Yuthitham* is commonly known in Thailand as a 'judge without a court' (Jehtae, 1998:100). This is because for a judgment given by the *Dato Yuthitham* to have legal effect, the legislation requires that a civil court judge sit with *Dato Yuthitham* during the course of trial: *Act of Exercising Islamic Law in Territorial Jurisdiction of Pattani, Yala, Satun and Narathiwat* BE 2489 (Thailand) s 4). This means that the *Dato Yuthitham* lacks proper organisational resources, staff or even a place to hear a case. As a mere assistant to the civil court judge, he cannot make a decision independently. In other words, the application of Islamic law for Muslims in Thailand is subject to the approval of a civil court judge.

In practice, however, the decision of *Dato' Yuthitham* can sometimes be decisive. According to Mr Apirat Mad Sae, a *Dato' Yuthitham* in Pattani, the civil court judge generally respects his decisions and follows them (see also, Kovilaikool, 1995: 391). However, this is not always true. Interviews I conducted with other *Dato' Yuthitham* who requested anonymity revealed that civil court judges will sometimes hear the case and write the judgment, simply requiring the *Dato Yuthitham* to countersign a judgment to which he has made no contribution whatsoever.

### Scope of Islamic Law

As indicated above, jurisdiction to hear cases under Islamic law is restricted to civil law cases that deal with matters of personal laws and succession: *Act of Exercising of Islamic Law in Pattani, Narthiwat, Yala and Satun*, BE 2489 (Thailand), s 3. According to the Act, Islamic law on family and succession applies to all Muslims residing in those provinces.<sup>5</sup> This means that cases involving penal or criminal matters fall under the general Thai legal system. The Act is also not applicable to persons living outside the four provinces stated. They are instead subject to the civil law of Thailand, even if they are Muslim. This has particular implications for Muslims who have had a marriage registered in one of the four provinces, but then move to a province outside the jurisdiction.

5 Thai Government Judiciary Website: <[http://www.judiciary.go.th/The %20Judiciary.htm](http://www.judiciary.go.th/The%20Judiciary.htm)>.

This was the main issue in the case of *Santi-Phap Sing Haad v Jamilah Sing Haad*, Civil Suit No. 522539 (1996) (Narathiwat Provincial Court), which related to the custody of children (*hadanah*), where the parties were Muslims living in Songkhla (which is not one of the four provinces). The case was brought to Narathiwat Provincial Court because the marriage was registered in Narathiwat. The *Dato' Yuthitham* in Narathiwat held, however, that he had no authority to hear the case because the court could hear Muslim matters only if the applicants were resident in one of the four southern provinces. *Santi-Phap Sing Haad v Jamilah Sing Haad* thus shows that it is possible for a Muslim who has committed a civil offence at Islamic law to escape territorial jurisdiction simply by fleeing to a province that does not have an Islamic jurisdiction.

There also seems to be some uncertainty as to when *Shariah* law will be applied. For example, in another case, *Zainab Senik Wati v Rushdi Senik Wati*, Civil Suit No. 17/1999 (Narathiwat Provincial Court), the plaintiff wife applied on behalf of her two children to the Juvenile Court for maintenance of her children by her husband. However the Court was reluctant to hear the case because it was not sure that it had jurisdiction. The Juvenile Court wrote a letter to the President of Supreme Court in Bangkok enquiring as to whether it possessed jurisdiction to adjudicate the matter. The Supreme Court decided that it did, and invited a *Dato' Yuthitham* to hear the case. According to the Supreme Court, jurisdiction is granted by virtue of section 3 and 4 of the *Act Relating to Exercising Islamic law the Four Provinces* BE 2489, which gives power to a *Dato' Yuthitham* to hear the case in a court of first instance, with the Juvenile Court being considered a division of the Court of First Instance.

It is also unclear, however, whether Islamic law will always be applied, even if the case is one that is fit to be heard by a *Dato' Yuthitham*. In the case of *Mari Yea Tayi v Hamad Tayi* (Yala Provincial Court 2001), for example, the applicant filed a suit alleging that her husband, Hamad, had deserted her and children for two years. There was no witness called to testify whether the allegations made by the wife were true or not, and the husband did not appear either. The *Dato' Yuthitham* of Yala Provincial Court held that the applicant had the right to dissolve the marriage in accordance with Art. 1516 of the Thai Civil and Commercial Code. Reference was not made to *Shariah* at all.

### Enforcement

Another problematic aspect of Islamic law in Thailand relates to the enforcement of Islamic law. The country's Civil and Commercial Code takes effect throughout the country, including in Pattani, Narathiwat, Yala and Satun. This means that a judgment by a civil court judge will, in principle, have priority over a judgment of a *Dato' Yuthitham*.

As explained by Den Tohmena, a member of parliament of Pattani and a leading Muslim community figure, a couple who have had their marriage registered according to the Civil Code may seek divorce according to Islamic law before the *Dato' Yuthitham*. A binding judgment of a *Dato' Yuthitham* based on Islamic law, however, can have no legal effect if one of the parties to the divorce disagrees with the judgment. This is because the divorce can only be formally enforced if it is registered pursuant to the Civil Code (Tohmeena, 1997: 41–2). This shows that power to enforce is held exclusively by Thai law and not Islamic law, reinforcing the impression gained in my interviews with various *Dato' Yuthitham* and some Muslim court users that the institution of *Dato' Yuthitham*

was created to 'comfort Thai Muslims' and little else. In theory, the *Dato' Yuthitham* play an important role in settling family and inheritance disputes among Muslims in Thailand, but, in practice, their role is negligible.<sup>6</sup>

Finally, it is significant that there is no right of appeal from decisions made by a *Dato' Yuthitham*. Section 4 of the Royal Act 1946 provides that decision of a *Dato' Yuthitham* on Islamic law shall be final. This leaves disgruntled litigants with little option but to ignore a judgment they consider faulty or unjust, as is apparently often the case.

### Conclusion

The need for a formal, independent *Shariah* Court in Southern Thailand has been ignored for centuries, leaving Muslims in Thailand disadvantaged compared to Muslims in other ASEAN countries, including Singapore, Malaysia, Brunei, Indonesia and the Philippines.

The current system for the application of Islamic law that does exist in Southern Thailand is limited in a number of ways, with the result that the institution of *Dato' Yuthitham* is today of little consequence. First, his appointment and standing is problematic. The fact that *Dato' Yuthitham* must sit with a civil court judge is an indication that he is not an independent judge. As mentioned above, the civil court judge sometimes writes the judgment, with the *Dato' Yuthitham* simply countersigning. The civil judge may even hear and decide a case in the absence of *Dato' Yuthitham*, who later simply countersigns.

Likewise, the manner of appointment of the *Dato' Yuthitham* is not analogous to the appointment of other judges in the courts of justice. The *Dato' Yuthitham* is appointed by the Ministry of Justice and can be dismissed by the Ministry, while other judges are appointed by the national Judicial Committee pursuant to the *Thai Constitution 1997* (arts 192, 193). In other words, the post of *Dato' Yuthitham* as a judge is not constitutionally-sanctioned and lacks security of tenure. The two types of judges enjoy very different types of status in the hierarchy of courts.

The *Dato' Yuthitham* is required to sit for religious proficiency examinations before appointment but they are not really *Shariah* experts. The law simply requires that a candidate for appointment possess qualifications equivalent to a secondary school certificate level. The government should appoint *Shariah* graduates to fill the post, but this is not the current practice.

As to the scope of Islamic law in Southern Thailand, it is argued that the *Shariah* Court should be grouped with other specialised courts such as the Labour Court, the Tax Court, the Intellectual Property & International Trade Court and the Bankruptcy Court. This is to ensure the *Shariah* Court has access to the power of the central government in terms of budget, salary, resources and operation ([www.judiciary.go.th/The %20judiciary](http://www.judiciary.go.th/The%20judiciary)).

The protection of basic personal status rights of minorities is a fundamental right universally accepted by most countries and there is a strong move among Thai Muslims to demand the establishment of *Shariah* Court as an independent body with power

<sup>6</sup> Interview conducted with *Dato' Yuthitham* Abdullah in Narathiwat on 10 September 2001.

to enforce Islamic law (Tohmeena, 1997: 46–8). At the very least, however, there is a pressing need for proper and transparent procedural laws to guide the *Dato' Yuthitham* in making decisions. The *Rule of Administration in the Seven Principalities of 1902* should therefore be amended to apply laws to all Muslims across the Kingdom of Thailand and re-establish the *Dato' Yuthitham* as a formal court for Muslims in Southern Thailand.

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Notes

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