

THE LEGACY OF COLONIAL REFORMATION OF SYARIAH IN NETHERLANDS EAST INDIES AND BRITISH MALAYA: A COMPARATIVE ESSAY

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I. Introduction

The Federation of Malaya became independent from Great Britain on August 31, 1957. Indonesia attained statehood from the Netherlands on December 27, 1949 after having already proclaimed independence on August 17, 1945. Centuries before, both the British and Dutch came to Southeast Asia with the same objective – to set-up colonies that benefited themselves. Indeed, the British and Dutch were rivals in the race for colonies, two among other European nations in the age of colonialism.

(a) The Indonesian Archipelago

The Dutch were not the first Europeans to arrive in the archipelago: the Portuguese came in 1511, after their conquest of the Islamic sultanate of Malacca on the eastern Malay Peninsula. The Portuguese were followed by the Spaniards.¹ Created in 1602, the Dutch East India Company or V.O.C. (*for Vereenigde Oostindische Compagnie*), founded Batavia on Java in 1609. It should be no surprise that the Europeans found themselves amongst ancient civilizations.

When the Europeans first arrived, the archipelago was under Islamic dominance. However, Islam was also a late comer – before the advent of Islam, kingdoms with a high degree of organization were thriving under Hindu or Buddhist rulers. Indian culture and customs had been introduced, including the monarchy, the ancestry system, literature, music, architecture, religious practices and rituals, and also division into castes. Great Hindu literary works such as *Vedas* and the *Mahabharata* and *Ramayana* epics were also introduced through the *wayang* or the shadow-play, a form of popular entertainment that can be seen in present day Indonesia. The first Indian Buddhists arrived in Indonesia by the 2nd century AD, bringing the *Hinayana* and *Mahayana* sects.² With the spread of

¹ Both began to propagate Christianity and were most successful in Maluku, also known as the Moluccas.

² Mahayana Buddhism dominated by the 8th century AD.

Buddhism to China many Chinese pilgrims began sailing to India through the Strait of Malacca. On their way, some stopped and temporarily stayed in Indonesia to learn more about Buddhism. Even some Buddhist kingdoms were established in Java,³ but these gave way to Hindu, the most famous of which was Majapahit. Hindu kingdoms, in turn, yielded to Islamic ones.

Muslim merchants from Gujarat and Persia had begun to visit Indonesia in the 13th century, bringing with them Islam and the *Syariah*, especially to the coastal areas of Java, like Demak. Over time, Hindu kings converted to Islam, the first being the Sultan of Demak who is credited with destroying the power of Majapahit (1293-1520). After the fall of Majapahit, Islam spread from Java far and wide. To the east, the Sulawesi and Maluku sultanates were established. Islam was also brought further west to Sumatra, where Palembang, Minangkabau (West Sumatra), Pasai and Periak were converted. Meanwhile, descendants of the Majapahit aristocracy, religious scholars, and Hindu *Ksatriyas* retreated to the island of Bali and Lombok. Later, the eastern part of Lombok was converted to Islam which penetrated from the southern Sulawesi city of Makassar. The capital of the West Java Kingdom of Pajajaran was Sunda Kelapa (1300 AD). It was located in the present capital city of Indonesia, Jakarta. In 1527 Sunda Kelapa was conquered by Falatehan, an *amir* of the sultan of Demak. After his conquest, the city was renamed Jaya Karta, meaning "the great city," this was the origin of the present name, Jakarta.⁴

The Dutch turned out to be the most successful of the Europeans. Towards the end of the 17th century, the fertile island of Java was ruled by three powers: the Pasisir (Islamic), Mataram (Indo-Javanese), and the V.O.C. Using the strategy of "divide and rule," the Dutch took advantage of the rivalry between Mataram⁵ and the Pasisir powers. Slowly but surely, the V.O.C. in their quest for spices to sell in the lucrative markets of Europe, emerged dominant. After the nationalization of the V.O.C. in 1799, the Dutch Government continued to consolidate their grip on the spice and coffee monopoly and Sunda Kelapa was renamed Batavia from where colonial power expanded into densely populated Java.

The rest of the archipelago was unevenly colonized: from strictly Islamic Aceh⁶ in North Sumatra to the head hunting tribes of Borneo or the Christian islands of the east, there remained strongly entrenched a wide variety of religious and social systems. The Dutch adopted an "open-door" policy towards Chinese immigrant traders and employed them to help deal with the local peoples.

³ For example, the Buddhist kingdom of Cailendra was founded in Central Java. The Cailendra kings built the famous Buddhist temple, Borobudur, (750-850 AD). Other Buddhist temples are the Mendut, Kalasan and Pawon near the modern city of Yogyakarta.

⁴ Falatehan also repelled the Portuguese, who had also tried to seize the city.

⁵ The Kingdom of Mataram began to see its downfall after it was divided by the VOC into the Principalities of Yogyakarta and Surakarta.

⁶ Aceh was the first region in the archipelago to host Arab merchants and consequently is the most Islamic region, this being to be point a harboring a determined separationist movement.

To render give events an added complexity, the British⁷ took custody of Batavia and Java during the Napoleonic Wars when the Netherlands were occupied by France, this regency being implemented by the British East India Company (1811-1816). Sir Thomas Stamford Raffles was appointed Lieutenant Governor-General of Java.⁸ Raffles began to reform the exploitative Dutch system by introducing partial self-government, abolishing the slave trade, and introducing the land-tenure system which replaced the hated Dutch forced-agricultural system, whereby crops were grown and surrendered to the Government.⁹ After the defeat of Napoleon, the British and Dutch governments signed a convention in London on August 13, 1814, in which it was agreed that Dutch colonial possessions dating from 1803 onwards should be returned to the Netherlands. Dutch rule based in Batavia was reestablished in Indonesia. As the Dutch intensified their colonial rule, they also had to suppress widespread revolts many of which were Islamic in nature.

Indonesian independence was only achieved after nationalists with encouragement from the Japanese, fought the Dutch who were trying to reestablish after the defeat of Japan at the end of World War II. The United States through the United Nations, helped end this armed struggle by applying diplomatic pressure on the Netherlands. The Dutch reluctantly quit the islands without ever laying down the foundations for an orderly transition of power – their legacy is remembered as one of exploitative and self serving lucre. After the departure of the Dutch, the quest for national unity has not been smooth for Indonesia: armed factions ranging from conservative Muslims and Communists continued to feud with the government well into the sixties. The forces of fragmentation continue to be felt to this day.

Due to her geography with 13,677 islands, (about 3,000 inhabited), and with an approximate reach of 1/8 the perimeter of Earth, Indonesia must face and overcome almost overwhelming problems of national unity and national identity. Being the fifth most populous nation in the world, Indonesia has an uneven distribution of her population – about two thirds are concentrated on Java, the fifth largest island, where the density is one of the highest in the world. The *priyayi* although now Muslim trace ancestry to the old Indo-Javanese caste aristocracy and constituted the upwardly aspiring bureaucrat class in the Dutch East Indies.¹⁰ Like the nation, Islam as practiced in the archipelago is complex and features a wide range in form and practice. Deeply influenced by Javanese tradition, the Islam, particularly in the eastern portion of the island, is unorthodox and highly syncretic, and thus may appear to be somewhat marginal within the larger Muslim world. The western and central provinces of Java may be more deeply Islamic. Indonesians who profess and practice Islam strictly are known as *santri* as distinguished

⁷ In 1814 the British arrived and built Fort York in Bengkulu on the west coast of Sumatra. It was later renamed Fort Marlborough.

⁸ He was reported to the Governor General in Bengal, India.

⁹ During his stay in Java, Raffles wrote his book, The History of Java in which he described Javanese high civilization. Borobudur and other temples were restored and research conducted. During the British regency, William Marsden wrote a similar book on the history of Sumatra, which was published in 1889.

¹⁰ The *priyayi* has become less relevant with independence as opportunities have opened up for the non-aristocratic classes. As a curiosity of the Hindu system, Bali located as the eastern end of Java preserves the last outpost of the Hindu religion in the Archipelago

from the *abangan*, the folk Muslims. Yogyakarta and particularly Jakarta are more cosmopolitan and host enclaves of Christian, Hindu, and Buddhist minorities.

The most pressing challenges for modern Indonesia are to maintain a viable national identity, to restore national confidence in the government, and to rebuild its debilitated economy, thereby raising the overall standard of living for every Indonesian.

(b) The Malay Peninsula

The Malacca sultanate is the best known of the Islamic city-states in Malaya. The port city was established in about 1400 and the flow of Arab and Indian traders¹¹ who sailed in from the Indian Ocean through the Strait of Malacca introduced Islam to Malaya. However, the Malay Peninsular also features pre-Islamic civilizations. Small Malay polities can be vaguely traced to the 3rd century AD, mostly along the east and northwestern coasts. Indian traders and priests began exploring the maritime routes and brought with them Hindu (and also Buddhism with *Mahayana* sect predominating) concepts of religion, government, and culture to these early Malay royal courts.¹²

Between the 7th and 13th centuries many of these small, often prosperous peninsular maritime states came under the loose control of Sri Vijaya, the great Sumatra-based Buddhist empire (650-1377). At various times the Cambodian Angkor (Buddhist) and Javanese Majapahit (Hindu) empires and the Tai Ayutthaya (Buddhist) kingdom also exerted suzerainty in the region. As the peninsula lacked the fertile plains such as that in Java, it did not develop density in population and was often overshadowed by the power of the larger neighbors. However, for the most part, Hindu influence was not spread by the sword but by Indian trade.¹³ These early civilizations left a living legacy, traces of which can still be found in the political ideas, royal rituals, societal structures, social customs, language, arts, and cultural practices of the Malays who now profess Islam.

Like the religions preceding it, the coming of Islam to Malaya was also linked with trade by way of the Indian Ocean. Like its predecessor too, the spread of Islam was not the result of conquest or organized religious missions. It was a gradual and voluntary reception of a new religion by a people who were impressed by the first introduction of

¹¹ A controversy between historians exist as to whether Malacca received the Indian or Arab version of Islam. The Indian version would contain vestiges of Hinduism. Of course, Hinduism could have predated the arrival of Islam or have been absorbed concurrently. An observations of Malay wedding and coronation ceremonies would reveal the presence of Hindu influence. See, Wut Min Aun, The Malaysian Legal System, Chapter 1: Malaysian Legal History, 2nd Ed. Longman, 1999.

¹² The most prominent was Langkasuka, thought to be located in modern Kedah and was a rich source of metals such as gold and tin.

¹³ The centres of Indian trade were places such as Pasai, Indragiri, Melayu and Jambi in Sumatra; Kuala Muda in Kedah; and Surabaya in Java.

monotheism.¹⁴ By the end of the 14th century, Islam was becoming dominant and the nuclei many Malay kingdoms were taking shape. These were to replace the decaying Indo-Javanese empire of Majapahit and the most powerful was Malacca which in addition to hold eminence in the Strait, eventually claimed lordship over the lesser Malay principalities all the way to the Thai border.

On September 1, 1509, a Portuguese fleet under Admiral Diego Lopez De Sequeira sailed into Malacca harbor. At first welcomed as a curiosity, hostility soon erupted. The small Portuguese flotilla was driven off¹⁵ but in 1511 a larger armada under Alphonso d'Albuquerque returned for battle. Sultan Mahmud was defeated and fled to Johore. The Portuguese fortified themselves in Malacca, using the port as a naval base, but avoided involvement on the Peninsula other than fending off efforts by the sultan and his heirs to recover the city. The Portuguese finally met their match when the Dutch arrived and ousted them in 1641. As it turned out, the Dutch were more interested in the spice islands of Indonesia and in 1824 finally traded Malacca for good to the British who already had wrested Penang (1786)¹⁶ and Singapore (1819) islands from the sultans. With this acquisition, the British Straits Settlement was completed in 1826 and in 1851 was brought directly under the control of the British Governor-General of India.¹⁷

From this base, the British began to show interest in other parts of the Peninsula. By 1888, British presence in the Malay states beginning in Perak¹⁸, and expanding to Pahang, Selangor, and Negri Sembilan¹⁹ was solidified with solemn treaties with the sultans who acquiesced to the advice of British Residents as to the many aspects of state administration. In 1895, under the hegemony of the British, these four states came together as the Federated Malay and the Residents were subordinated to the Governor of the Straits Settlements who took on the title of High Commissioner of the Federation. The other Malay states of Johore, Kedah, Perlis, Trengganu, and Kelantan remained outside the Federation and enjoyed greater autonomy. In 1914, Johore also accepted a British Resident.

There were a number of reasons for the ascendancy of the British in Malaya. Like the Dutch, the British employed its version of “divide and rule” against the weaknesses inherent in a population that is diverse racially and in an Islam that is syncretic. Another reason is that the northern Malay sultans historically were threatened by Siam and the

¹⁴ The first physical evidence of Islam was found at a spot twenty miles up the Trengganu river. There, a stone inscribed with Arabic letters has been found, dating as far back as 1386 or probably 1326. Given the location, an interesting countervailing theory arose that Islam came by way of China.

¹⁵ One of the men who escaped was Ferdinand Magellan, who was later to become the first man to circumnavigate the world.

¹⁶ Captain Francis Light negotiated the ceding of Penang from the Sultan of Kedah in exchange for protection against his hostile northern neighbor, Siam (now Thailand). Penang was also known as Prince of Wales Island.

¹⁷ In 1867, yet another change was made to bring the Settlements directly under the Colonial Office in London.

¹⁸ Starting with the Pangkor Engagement of January 1874 which provided for the reception of a British administrator bearing the title of Resident for the Sultan of Perak.

¹⁹ As implied by its name, this Malay state is comprised of nine smaller political subunits.

British extracted much favor by promising protection against their old enemy.²⁰ A third reason, often not mentioned by commentators, was that the British imperialists and the Muslim aristocracy were simply interested in different things. The British were after goods and commodities that were valuable in Europe and in securing naval bases to project their naval power into the Pacific Ocean and the rest of Asia. The sultans were interested in preserving their religion, personal power, and agrarian way of life and had very little interest in or understanding of the priorities in European empire building. With such apt *quid pro quo*, were the two powers able to coexist in the Malay Peninsula during the age of colonialism. The sultans ceded to the British what the British wanted most and the British in return protected the sultans and preserved the sedentary Islamic way of life, things that the sultans desired most. It was later at the end of the 19th and the beginning of the 20th century with the rise of national consciousness that the British became a force to be resisted under a modern national movement towards independence

II. Was the *Syariah* Ever Reformed Under Colonialism?

By the time the first Europeans stepped foot in Indonesia and Malaya, the local religion that predominated was Islam. As Islam unified religion and law, the *Syariah* was the natural legal system in the Muslim sultanates. As was pointed out in some detail *supra*, both Indonesia and Malaya, (especially the former) exhibit an Islamic manifestation that is syncretic and that varies from area to area. The existence of *adat*²¹, that localized custom that has been absorbed into *Syariah* is a source of complexity, especially given the fact that *adat* was not uniform but varied from locality to locality. The additional fact that much of *adat* is unwritten (just as the *Quran* originated under the oral tradition) enhances the complexity by an order of magnitude.²²

Such a state of affairs makes it very difficult for any outside power, especially these from as far away as Europe to reformulate. How is a syncretic system of religion with centuries of existence and accretion to be reformulated when it is not subject to easy definition or study in the first place? A further complication is that for both Malaya and Indonesia, the population is ethnically and culturally heterogeneous. A third confounding factor, racial grouping along the broad lines of European and native was used to apply separate and different law in the colonies.

²⁰ In 1909, under the Anglo-Siamese Treaty, Siam surrendered any claim to Kedah, Perlis, Kelantan, and Trengganu, and these Malay states in turn accepted British Advisers – Kelantan and Trengganu in 1910, Kedah in 1923, and Perlis in 1930. See, Wu Min Aun, The Malaysian Legal System, at pp 22-23.

²¹ For a comprehensive review of *adat* in Indonesia, see, M.B. Hooker, Adat Law in Modern Indonesia, Kuala Lumpur Oxford University Press 1978.

²² See, T. Lindsey, Chapter 4: Adat & Islam: The Origins & Continuing Influence of Traditional Law and Syariah, lecture material for LMC 101 at pp. 25-31.

(a) Dutch East Indies

From the earliest years of Dutch control, different law was applied according to the *golongan rakyat*, (subject grouping, *bevolkingsgroupen*). The idea was to divide the population according to racial grouping (or national origin as this grouping seems to coincide with race). The Dutch themselves and other Europeans were held to Dutch law and some Roman law (as would be cause as if a person was on a Dutch ship). Then there were the non-white “natives.” At least two distinct groups of natives emerged – the Indonesians (the *bumiputra* who were indigenous to the archipelago) and the other foreign Orientals, that are those who came from elsewhere in Asia. Three distinct subgroups were readily identified as foreign Orientals: Chinese, Arab, and Indian. The very small minority of Japanese were able to get themselves, with the aid of the Japanese government, classified as Europeans under the Dutch administration. As most Indonesians were Muslim they naturally obeyed their *adat* plus the *Syariah*. However, religion was not high on the priority of the Dutch – pursuant to the discretion of the Dutch Governor-General, Indonesians who converted to Christianity remained under the native grouping. This racial/national origin grouping or “apartheid” approach for legal purposes continued into the twentieth century.²³

The lack of attention towards any reformulation of the *adat* and *Syariah* is particularly true in Indonesia. While Dutch law is based on the civil law tradition where codification of statute is paramount, the Dutch was unable to reformulate the native custom and law. It is clear that the colonial lawyers and jurists made some valiant effort to create a code applicable to the *bumiputra* but their efforts only had efficacy in and around Jakarta and maybe also in some of the other larger colonial centers of the archipelago. In the farms, countryside, and *desa*, life went as in the way of *adat* as an oral tradition applied by the *penghulu*, just as life always had went on. Questions of marriage, divorce, inheritance, and all that touched upon the family was settled in the traditional and local manner. The Dutch made their impact felt in land use, the transfer of agricultural produce, the allocation of labor, and perhaps in the arena of trade in the city centers, but outside of these, traditional life went on as before. Religious life and worship also was *de facto* largely unaffected, even after 1848 (this date is important because this was when the “mother country” Netherlands received a new more liberal constitution) and most of these changes were limited to Javanese urban centers. It has been noted that “[i]ndifference to the legal needs of the indigenous population is seen in the postponement from 1816 to 1848 of the introduction of permanent reforms in the administration of justice in the Netherlands East Indies.”²⁴

Perhaps, because of this non-interference or “indifference” in the spheres of religion and family life, Dutch rule, oppressive as it was, was generally tolerated until the last century.

Professor M. B. Hooker has observed that

²³ The division into three groups was affirmed by Article 163 as an amendment to article 109 of the *Regerings Regelement* (1920) and in 1926 incorporated unchanged into the *Indische Staatsregeling*.

²⁴ J. Ball, Indonesian Legal History 1603-1848, Sydney Oughtershaw Press, 1982 at p234.

The colonial Religious Court System was the main legacy of the Dutch. In 1882, they promulgated the first regulation concerning the Colonial Religious Court system. The law, revised in 1937, established Religious Courts in Java, Madura, Banjarmasin and associated areas of southern Borneo.²⁵

This confirms that any Dutch effort to reform the *Syariah* came late in the High Colonial Period (1800-1945)²⁶ and was limited in geographic coverage. The 1937 law also narrowed the jurisdiction of the Religious Court to matters of dowry, marriage, and divorce. However, besides the issue of land and criminal matters, family relations already was the focus of the *Syariah*. Colonial law reform also took on an “apartheid” coloration in that imposed different systems of law according to race.²⁷ Despite the confusion created by the various belated efforts to reform the *Syariah*, Professor M.B. Hooker made this conclusion: “Dutch policy was clear: *adat* was administered as a suitable law for the bulk of the indigenous population.”²⁸

Towards the last half century of Dutch rule, with the rise of militancy within the *ulama*, the colonial government sought to counter their influence by promoting *adat* and village religious heads (*penghulu*) into the civil service. In this matter, the differences of *adat* and the orthodox Islamic *Syariah* was exploited. Beginning around 1889, Muslim bureaucrats who were suspected of favoring strict orthodoxy were deemed to be disloyal to the Dutch crown and were systemically excluded from positions of influence in non-Muslims regions of the archipelago. As a practical matter, Christians began to receive favorable treatment over the Muslims under colonial law. Both the *priyayi* and the Dutch saw Islam whether traditional or modernist as a threat to the *status quo*. The “Guru Ordinances” of 1905 and 1925 were directed at regulating the activities of Islamic clerics in the name of controlling subversives.²⁹ From then on, the Dutch lost control over the Muslim activists, be they traditional *ulama* or modernist revolutionaries. Any claim to further reforming the *adat* or *Syariah* rang hollow after the arrival of the 20th century. The Dutch transferred neither a system of modern law nor a system of government for Indonesia – this was left to efforts of the revolutionaries and their successors.

(b) British Malaya

British Malaya comprised in descending order of colonial authority, the Straits Settlement, the Federated Malay States, and most loosely, the Unfederated Malay States.

²⁵ M.B. Hooker, *The State and Syariah in Indonesia 1945-1995*, in *Indonesia: Law and Society*, T. Lindsey (Editor), The Federation Press 1998 at p98 (Chapter 6).

²⁶ See, T. Lindsey, *Chapter I: An Overview of Indonesian Legal and Political History*, lecture material for LMC 101 at pp. 7-9.

²⁷ *Id.* at 8

²⁸ M.B. Hooker, *Adat Law in Modern Indonesia*, Kuala Lumpur Oxford University Press 1978 at p20.

²⁹ See, J.D. Howell, *Indonesia: Searching for Consensus*, in Caldarella C., *Religion and Societies: Asia and the Middle East*, Mouton 1982 at p519.

The situation in the Straits Settlement is easiest to summarize, as is ably attempted by Professor M. B. Hooker:

The key to understanding the history of Muslim law in the Straits lies in two things: First in remembering that it was a local, non-intellectual, and non-literary form of Islam with which the British were dealing. Islam had no connection with any territorial or State power; in this respect it was in marked contrast with the neighboring Malay states. Further, it is also worth recalling that the Muslim population was always a minority in the Straits, and this also contributed to the feeling that the Straits were in no sense “Muslim”; there was never any suggestion that the followers of Islam had inherent rights, superior to any persons of other religions residing there.³⁰

This is a convenient approach but overlooks the fact that some parts of Malacca have a strong tradition of *adat perpatih*, as well as a proud Muslim sense of empire.³¹ Since Islamic law is personal to Muslims only (and not to those of other religions), and as there are Muslims in the Straits Settlement, their legal cases caused the *Syariah* to become part of the law way of judicial precedent and also by legislation.³²

In the Malay States where the sultan rules as head of state and religion, the *Syariah* in tandem with the *adat temenggong*³³ constitute the law for Malays.³⁴ In terms of relations with the British, the Malay States while accepting advice through the Resident, were nonetheless sovereign under their own sultans. English law was not introduced in the manner for the Straits Settlement. Only with the 1937 Civil Law Enactment was English common law and rules of equity formally introduced *en bloc*, then only to the Federated Malay States. In 1951 the Enactment extended into the remaining Malay States.

A line of judicial decisions laid down in the English common tradition established that the *Syariah* is not general law, that is the exclusive law for British Malaya, but instead is personal law binding upon Muslims and thus is one of the laws of the colony.³⁵ This is not inconsistent with the tenets of the *Syariah* in so far as *in personam* jurisdiction is concerned. Thus for Malays, law and religion were State matters under the authority of the sultan who undertook the administration of the *Syariah* as well as religious affairs as they were not separable under Islam. Some unfederated Malay states, notably Johore and Kedah devoted considerable effort to develop private and public law. In the Federated States, the English common law approach held greater sway. Yet in others like Kelantan and Trengganu, the *ulama* and *kathi* brought a traditional conservative approach to the

³⁰ M. B. Hooker, *Islamic Law in South-East Asia*, Singapore Oxford University Press 1984, at p 85.

³¹ For an early effort to summarize Malay *adat*, see, Wilkinson, A.J., *Malay Law*, reprinted from *Paper on Malay Subjects, Law, Part I* (1908) pp 1-45.

³² *Id.* at 87 – 102.

³³ Complexities arise here as *adat* sometimes conflict with *Syariah*, for example, in matters of inheritance.

³⁴ For another excellent summary of *adat perpatih* and *adat temenggong*, see, Wu Min Aun, *The Malaysian Legal System*, pp 175-182.

³⁵ For a summary of the common law decisions, see, *id.* at pp 135-143.

Syariah. This diversity notwithstanding when independence came to Malaya in 1957, the holding that the *Syariah* is not general law but rather is personal law binding on Muslims was recognized as a basis of the new nation. The British liked to refrain from interfering with the prerogatives of the sultan, particularly where Islam and the *Syariah* is concerned. In some limited circumstances, colonial courts attempted to interpret and apply *adat* and *Syariah* in the common law fashion and only when a Malay was party to the litigation.³⁶

III. Conclusion

On the basis of the foregoing analysis, it can be concluded that the former colonial presence in Indonesia and Malaysia did not have a significant impact with respect to the reformation of the *Syariah* as it then existed during the colonial period. It follows also that the weak western influence on the *Syariah* did not make a major difference on the future of the *Syariah* in the new nation-states at the time of independence. Each modern state continues to address issues and challenges peculiar to its own circumstances.

Some clear differences can be discerned between the Dutch and British departures from their colonies. The Dutch was unceremoniously and forcibly ejected by nationalists who placed nation building above the *Syariah*. The British exited on good friendly terms with the new Commonwealth nation after much cooperative effort was invested in preparation for independence for a multiracial Malaya that committed to preserving its pluralistic heritage and after fighting and winning the Emergency caused by communist insurrectionists.

One final distinguishing legacy left by the British is the common law tradition with its emphasis on the integrity and power of the judges, a thing of considerable value that should not be taken for granted or too easily set aside for mere political convenience. The presence of a strong and upright judiciary is a national treasure that, in the opinion of this author, Indonesia desperately needs but does not have, even as the world turned into the 21st century.

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October 20, 2001

³⁶ During the colonial period, the strongest presence of the English system of law was felt in the Straits Settlement, especially Singapore and Penang although even there, the Chinese and Indian immigrant populations followed their own customs and customary law.