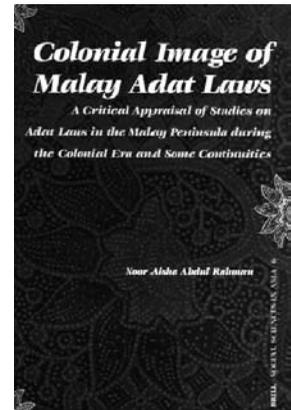


# Colonial Image of Malay Adat Laws: A Critical Appraisal of Studies on Adat Laws in the Malay Peninsula during the Colonial Era and Some Continuities

徐玉燕（新纪元学院马来西亚族群研究中心研究员）

CHEE Nyuk Yan (Researcher cum Lecturer, Malaysian Centre for Ethnic Studies, New Era College)

Noor Aisha Abdul Rahman, *Colonial Image of Malay Adat Laws: A Critical Appraisal of Studies on Adat Laws in the Malay Peninsula during the Colonial Era and Some Continuities*, United States: Brill Academic Publishers, 2006.



“Colonial Image of Malay Adat Laws: A Critical Appraisal of Studies on Adat Laws in the Malay Peninsula during the Colonial Era and Some Continuities” is an academic book written by Noor Aisha Abdul Rahman and published by Brill Academic Publisher. It explores the following issues: the colonial perceptions of Malay adat laws, problems concerning the conceptualization of Malay adat laws, Islam and its relationship with Malay adat laws, adat land and inheritance law, Malay rulers and Malay adat laws.

Due to the tension between western world and the Muslims, Islamization becomes an important academic issue in recent years. In this groundbreaking book, Noor Aisha aims to give a critical appraisal of the studies on Malay adat laws in the Malay Peninsula by authoritative colonial administrators and scholars. Through analyzing dominant representations of Malay adat laws and Islamic laws, she intends to clarify some misconceptions about these two laws and rejects the hegemony of western epistemology when dealing with Malay laws.

During the colonial time, few colonial writers could take a holistic approach to Malay

laws due to their ethnocentric attitudes. With the expansion of colonialism, Orientalism has become a well-defined style for colonial scholars to classify and investigate types of knowledge within the conquered territories since the early 19<sup>th</sup> century. According to Noor Aisha,

As a style of thought, Orientalism is based upon a fundamental distinction between the west and the Orient in which the superiority of the West and the latter's inferiority are unquestioned. This epistemological divide is inextricably tied to political domination and authority over the Orient creating a network of interests which inevitably penetrates perspectives and representations on any subject involving the Orient such that what emerges is a certain consistency of ideas.<sup>1</sup>

She believes that due to the superiority of western political power and ethnocentric attitude, the colonial administrators and scholars always carry bias and prejudice when dealing with Malay adat laws.

She scrutinizes the works of John Crawford, Stamford Raffles, R.J. Wilkinson, R.O. Winstedt, E.N. Taylor, Josselin de Jong, Michael Peletz, W.E. Maxwell, F.A. Swettenham and Braddel Alatas, and critically examines and reveals their misconceptions and inadequacies. Melaka Legal Code (Undang-Undang Melaka), the Kedah Legal Code (Undang-Undang Kedah), the Minangkabau Digest from Perak, and the Sungei Ujong Legal Code (Undang-Undang Sugei Ujong) have been utilized as the primary sources to portray the Malay adat laws.

Adat Perpatih and Adat Temenggong are two different types of Malay laws. Colonial writers felt that the Adat Temenggong is largely influenced by Hinduism and Islam, however, they categorized the Adat Perpatih as the original Malay laws prior to the coming of Islam and Hinduism. From their point of view, Malay laws are backward and inadequate in dealing with social issues, and they see the coming of Islam as the main obstacle to the progress of Malay laws. They perceived Islam and Malay adat laws as irreconcilable and conflicting because Islamic laws originated from a different social context, so it could not practically serve the needs of the Malays. The colonial writers judged Islamic law as static and arbitrary and that it has a negative impact upon the traditional Malay laws.

Through discussing the topics of Islam and its relationship with Malay adat laws,

---

1 Noor Aisha Abdul Rahman, **Colonial Image of Malay Adat Laws: A Critical Appraisal of Studies on Adat Laws in the Malay Peninsula during the Colonial Era and Some Continuities**, United States: Brill Academic Publishers, 2006, p. 3.

adat land and inheritance laws, Noor Aisha points out some significant problems in the conceptualization of Malay adat laws and Islam among the colonial writers. She criticizes that their works are full of bias and prejudice due to insufficient knowledge of both Islam and adat laws. Their misconceptions prevented them to go further in understanding the relationship between Islam and Malay adat laws. For instance, the collusion of interest between colonial rulers and colonial capitalists influenced their understanding on Malay land tenure. In order to deal efficiently with land issues, British colonial administrators adopted the “land belonged to the ruler” theory, in which they ignored the fact that the ruler is merely a trustee and custodian of the land, and that the Malays have a permanent and transmissible proprietary interest in the soil even if they have offended the sultan and fled from the village.

In dealing with the issues of Islam and its relationship with Malay adat laws, the colonial writers subscribed to the view that Islam contradicts the Malay adat laws, because the Islamic laws are woven into Arabian or Middle Eastern practices which are different from the Malay cultural context. However, Noor Aisha asserts that “Islam accommodates customary laws so long as these are in consonance with its essential doctrine and principles.”<sup>2</sup> From Article 71 of *Undang-Undang Sungei Ujong*:

adat confirms religious law as is said in the hadith “... when adat has a strong position in a country, it serves as religious law”, for the strength of adat is based on the consensus of all religious scholars and the Companions of the Prophet. For that reason, adat is strengthened, religious law is enforced, both are employed to the present day, unchanging down the generations, handed from our ancestors.<sup>3</sup>

Noor Aisha criticizes these colonial writers for having overlooked the mutual influence of Islam and adat laws, and the dynamism and flexibility of the Islamic laws in dealing with social problems. The works of Michael G. Peletz have proven that Noor Aisha’s argument is correct.

Peletz contends that the coming of Islam did not displace the adat in the consciousness of the Malays but led to a selective syncretisation, which effectively linked the adat and Islam in such a manner as to preserve the entire realm of adat.<sup>4</sup>

---

2 *Ibid.*, p. 52.

3 *Ibid.*, p. 52. Also, R.O. Winstedt and Josselin de Jong eds., “A Digest of Customary Law from Sungei Ujong”, in **Journal of the Malayan Branch Royal Asiatic Society**, Vol. XXVII, Part 3, July, 1954, pp. 51-52.

4 Noor Aisha, op. cit., p. 113.

Noor Aisha argues that these colonial writers ignored the fact that culture is always changing and adapting, thus “adat is in a process of gradual transformation in response to the changing requirement and consciousness of the people.” (Abdul Rahman, 2004:104) And, social and economic developments except Islam are the main factors, which cause the changing requirement and consciousness of the Malays.

The works of colonial writers have been examined in detail throughout this book. Noor Aisha gives abundant evidence to support the essential elements of Malay adat laws and Islam. Through various historical documents and works of other colonial scholars, such as Michael G. Peletz, Noor Aisha tries to prove that adat and Islam are compatible in several aspects. However, the lack of real-life case study and instances is the main weakness of her work. Without practical case study, her work is only a superficial analysis and may fail to perceive the latent contradiction of Malay adat laws and Islam. A review of methodology and analysis of colonial writers can only reveal part of the truth about the relationship of Malay adat laws with Islam.

Moreover, Noor Aisha’s study lacks a comprehensive discussion on Malay adat laws and Islam, as the studies on adat land and inheritance laws cannot give a comprehensive analysis of the relationship between Malay adat laws and Islam. For example, we can find some contradictory phenomena in Malay society through gender issues. Makiko Hanami, an anthropologist who did her research in Kelantan from 1984 to 85 and from 1996 to 97, found that there is a tension between the formal and informal dimension in Malay society. According to Makiko Hanami’s study, Islam governs the formal dimension of Malay life, whereas, the traditional and informal dimension are based on adat values.<sup>5</sup> Likewise, according to sociology professor Lau-Fong Mak, Islamic interpretations make Malay women inferior to men, but Malay women are regarded equal in Malay adat laws.<sup>6</sup>

In summary, the book challenges the idea that the relationship between adat law and Islam is irreconcilable and conflicting. Although Noor Aisha reveals part of the truth through discussing the topic of Adat land and inheritance laws, her study is inadequate to provide a comprehensive view of the relationship between Malay adat laws and Islam without discussing gender issues. However, this book provides valuable insights into the relationship of Malay adat laws and Islam; it also criticizes the ethnocentric attitudes of colonial scholars.

---

5 Makiko Hanami, *Gender in Rural Malay Community: Between Adat and Islam*, Los Angeles: University of California, 2002, p. 267.

6 Mak Lau-Fong, *Islamization in Southeast Asia*, Taiwan: Academia Sinica, 2002, p. 51.