

## VIEWS OF R.O. WINSTEDT ON INHERITANCE OF PROPERTY IN MALAYA: A COMPARISON OF ISLAMIC LAW AND ADAT PERPATIH

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### ABSTRACT

*R.O. Winstedt, an orientalist working as a British administrator in Malaya, based his ideas on the philosophy of empiricist positivism. He emphasized the exclusive reliance on reason as the main way of collecting scholarly facts through systematic and thorough research methods. This philosophy rejects the proof of any fact using divine sources as irrelevant to historical evidence. This article focuses on analysing Winstedt's views on property inheritance in Malaya by comparing Islamic law and Adat Perpatih. It also seeks to identify the orientalist approach to assessing Islam and Malay society. The author employs historical, comparative, and content analysis methods to analyze these views. This study reveals that the orientalist viewpoint, specifically Winstedt's, exhibits a skeptical stance and partial considerations when assessing Islam, particularly its legal system. When it comes to property inheritance issues, Winstedt contends it is impractical to simultaneously apply adat and Islamic law. The Orientalist perspective holds that the fundamental principles of Islamic law are not applicable in Malaya due to cultural and residential differences. This is the result of the orientalist's Eurocentric worldview impeding their ability to comprehend Islamic content. This way of thinking esteems European nations above all others and renders them more civilized; consequently, they are referred to as "ambassadors of civilization," the saviors of nations needing civilization.*

**Keywords:** Adat Perpatih, Empiricist Positivist Philosophy, Islamic Law, Malaya, Orientalist

### 1.0 INTRODUCTION

Orientalism derives from the word "orient" with the addition of "al" and "ism." The term "orient" is a French word meaning east. Geographically, the Orient refers to the Eastern world, while ethnologically, it signifies the peoples of the East (Joesoef, 1985). In English, the term "oriental" refers to things related to the East, and "ism" denotes a belief, doctrine, teaching, system, trend, or attitude (Muin, 1978). Orientalism, as defined by Rahman et al. (2017), is a political ideology that promotes the destruction and colonization of Eastern

cultures, with Islam being particularly targeted while emphasizing the superiority and global dominance of Western civilization. Meanwhile, Said (1977) ascribed Orientalism as an approach to comprehending the Eastern world through the lens of Western observations. Said's perspective comprises three discrete yet interrelated facets:

- 1) Orientalists are scholars, authors, or researchers who specialize in the study of the Eastern world. Anthropologists, sociologists, and philologists comprise this group.
- 2) Orientalism is a system of thought founded on the ontological and epistemological differences between the Western and Eastern cultures.
- 3) The West used Orientalism as a strategy to restructure, control, and dominate Eastern societies. Its primary focus is formulating assertions regarding the Eastern world, with a specific emphasis on matters on religion, and education, and exerting control over and modifying the Eastern world to suit their objectives.

Fadzil (2012) asserts that Western explorers, colonial officers, and orientalists pioneered scholarly writings on the history of the Malay people following the first colonizer occupation during the Malacca Sultanate's reign. These writings took the form of reports and observations on Malay society, rather than adhering to scientific research methods. Orientalist works on the history of the Malay world, especially in Malaya, show many methodological weaknesses laden with negative prejudices and biases, rendering their conclusions unrealistic (Rahman et al., 2019).

One such explanation is property inheritance by Winstedt, a British administrator in Malaya. Winstedt, an orientalist who extensively studied the people of Malaya, particularly Islam, covered areas such as religion, culture, history, and literature (Rahman et al., 2016). Therefore, the present study examines Winstedt's viewpoint regarding the transfer of property in Malaya. This study seeks to accomplish two objectives: initially, to examine Winstedt's viewpoint regarding property inheritance in Malaya through a comparative analysis of Islamic law and Adat Perpatih; and secondly, to identify any orientalist prejudice that may be present in the assessment of Malay society and Islam.

This study is of considerable significance due to its potential to illuminate the misinterpretation of property inheritance issues in Malaya by orientalists, specifically Winstedt, during the British colonial period. By performing a comparative analysis of Winstedt's literary contributions, such as "Kedah Laws," "The Malays: A Cultural History," "A History of Classical Malay Literature," and "A History of Malaya," the author scrutinizes his stances regarding the inheritance of property in Malaya. During his tenure in Malaya, Winstedt made concerted efforts to enact a variety of reforms, which encountered opposition from the Malay society. He advocated for a traditionalist position on Islam, contending that progress in the human race could be attained exclusively through the influence of the West and not Islam.

## **2.0 RESEARCH METHODOLOGY**

This study utilizes three approaches that are considered appropriate for achieving the research objectives: historiography, comparison, and content analysis.

### **2.1 Historiographical Method**

This method refers to studying a problem from its historical perspective (Ferman & Levin, 1975). It utilizes chronology and historical background to trace the origins of a particular development by referring to evidence and historical facts from primary and secondary sources in the field of study. The author employs this method to examine Winstedt's views on property inheritance in Malaya and identify the orientalist approach in evaluating Islam

and Malay society, using his works such as *Kedah Laws*, *The Malays: A Cultural History*, *A History of Malaya*, and *A History of Classical Malay Literature*. Additionally, this method is used to analyze Winstedt's work.

## **2.2 Comparison Method**

This methodology employs an impartial approach to assessing a given topic (Ferman & Levin, 1975). Its objective is to generate a study that is unbiased and equitable. Each piece of information acquired is scrutinized to prevent a skepticism-based approach and to prevent the presentation of errors exclusively on one side. To assess Winstedt's written works concerning his stance on property inheritance in Malaya, the author employs this methodology: a comparison of Islamic law and Adat Perpatih with the perspectives of academic scholars, regardless of their alignment with him. The purpose of this is to remove misconceptions regarding the role of Islamic law in the inheritance of property and its connection to Adat Perpatih in Malaya.

## **2.3 Content Analysis Method**

This method involves scrutinising, analysing, and interpreting the text to ascertain patterns and themes within it. The author employs this method to analyze Winstedt's works on property inheritance in Malaya and identify his views and arguments regarding the superiority of Adat Perpatih over Islamic law in dealing with property inheritance issues. Additionally, this method identifies orientalist approaches to evaluating Islam and Malay society.

## **3.0 RESULTS AND DISCUSSION**

### **3.1 The Orientalist Approach to Islamic Law**

Orientalists, according to Rahman et.al (2020), consider Islam to be a cultural religion that originated in Arab society situated in the Middle East, which is characterized by a blazing climate and is therefore regarded as harsh and aggressive. This faction maintains the view that character development is influenced by climate, which causes them to disregard Islam as a contemporary way of life (Goldziher, 1981). On the contrary, Orientalists adopt a secularist perspective that deviates from any religious limitations in everyday existence and delineates the following procedures for examining Islamic law:

To get started, a rigorous criterion for assessing reference sources in the field of Islamic law is implemented (Goldziher, 1981). Orientalists employ a rigorous process when evaluating the veracity and credibility of sources cited by Islamic scholars. Nevertheless, they cast doubt on this veracity and elect to utilize the reference materials of previous Orientalist scholars, who openly demonstrate prejudice against Islam.

Second, any study of Islamic law must be conducted by the "higher criticism" methodology (Goldziher, 1981). At first, this methodology was employed to unveil inaccuracies within the Christian faith; subsequently, it was expanded to encompass Islam as well. Orientalists employ this methodology to substantiate inaccuracies within the Quran and Hadith, the primary sources venerated by the Islamic community.

The Islamic legal system, according to Goldziher (1981), is static and applicable only in the Middle East. Regarding religious matters such as matrimony, secularism establishes Islamic law as superseding Western law as the supreme form of state governance. The Constitution of Malaya, formulated by the Reid Commission, acknowledges Islam as the designated religion for religious ceremonies; however, it does not confer legislative power (Spuler, 1960). This action unequivocally disregards the invaluable input of academicians who significantly influenced the development of the great civilization of Malaya in its quest

for independence. If the Malay community wishes to advance, it must abandon Islamic law in favor of a Western legal system that is more pragmatic and centered on human interests.

### **3.2 R.O. Winstedt's Perspective on Islamic Law in Malaya**

Winstedt, in "The Malays: A Culture History," compared Islamic law and customary law with an emphasis on the implementation and social approval of each during the period in question. Islamic law, according to al-Attas (1978), is the most equitable legal system because it satisfies every human need. In Malaya, nevertheless, Islamic law and human-made customary law have intertwined to preserve the social standing of specific groups, including the nobility (Rahman et al., 2019). In response to Winstedt's (1969) analysis, the "Undang-undang 99 Perak" was a form of Islamic law that was adopted as the official code of Perak between the 17th and 18th centuries, influenced by regional circumstances.

Moreover, "Undang-undang Adat Perpatih" and "Adat Temenggong" were regarded by Winstedt (1961) as two discrete legal systems in Malaya. The speaker elaborated that "Adat Temenggong" was shaped by Islamic and Hindu principles, while "Adat Perpatih" was classified as Malayan indigenous law devoid of these influences. According to Winstedt (1988), the advent of Islam posed a significant impediment to the advancement of Malay law, particularly in the realm of customs, and was therefore regarded inappropriate for implementation in Malaya. To elucidate the arguments above, the author includes Chee's perspective. Her statement read:

They perceived Islam and Malay adat laws as irreconcilable and conflicting because Islamic laws originated from a different social context, so they could not practically serve the needs of the Malays (Chee 2009, 140).

She also added:

The colonial writers judged Islamic laws as static and arbitrary, and that has a negative impact on the traditional Malay laws (Chee 2009, 140).

Chee's viewpoint provides substantiation for the notion that Orientalists evaluate Islamic matters with a partiality that is shaped by the traditional Orientalist research methodology, which is adamantly opposed to Islam. Orientalists, according to Swettenham (1893), classified religious Eastern societies as rejecting progress and necessitating colonial intervention to usher them into the modern era. Orientalists additionally characterized Islamic law as ruthless, unchanging, and exclusively applicable within the Middle East. Furthermore, according to Swettenham (2005), the Malay community's negative outlook was primarily attributable to their strict adherence to Islamic principles, which included accepting destiny, disregarding the value of time, and rejecting modernity. To rectify this, it is essential to implement Western thought systems, especially legal systems that are considered more adaptable and contemporary.

The signing of the Pangkor Agreement in 1874 and the Federation Agreement in 1895, according to Ibrahim and Jones (2005), extended colonial control over Malaya's governance. The authority of Islamic law as the primary legal authority was restricted to matrimonial affairs exclusively. Mukmin (2009) asserts that after the implementation of these agreements, the British extended their dominion over Malay states by undermining the Islamic governance policies that had been established earlier. The British undermined the harmony and integration of religion and customs within Islamic communities in Malaya, thereby calling into question the sultanate's authority as the guardian of traditions.

### **3.3 The Status of Islamic Law and Adat Perpatih on Inheritance of Property in Malaya**

According to Winstedt (1961), all property inheritance matters were governed by Adat Perpatih law, which was deemed indigenous law in Malaya. The influence of Islamic law on land inheritance within Malay Islamic communities is disregarded by this viewpoint. In this regard, Winstedt (1961) espoused the notion of "wife's relations," which conferred an enhanced status on women about the inheritance of ancestral property. This notion accords precedence to women over males in the resolution of disputes by Adat Perpatih law. According to Winstedt (1961, 95):

Yet if criminal law in Negri Sembilan became British, the law of property remained matrilineal, and was hardly affected even by the Muslim canon. Ancestral property (hartapusaka) devolves from mothers to daughters or to their direct female descendants.

It was found that Winstedt maintains an inclination towards the application of Adat Perpatih law as opposed to Islamic law. In support of Winstedt's assertion, the author cites Chee's (2009) perspective, in which she writes:

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 that are different from the Malay cultural context (Chee 2009, 141).

Based on these two statements, the author believes that Winstedt rejects the implementation of Islamic law in the lives of Malay communities due to cultural and geographical differences. Winstedt (1961) believes that Islamic law from the Middle East, characterized as rough, does not resonate with the Malay psyche. He seems to favor using laws based on reasoning, such as Adat Perpatih, over Islamic law based on revelation.

The author believes that Winstedt's perspective demonstrates a deficiency in comprehending the genuine substance of Islamic law. The assertion that Islamic law is unsuited for implementation in Malaya is erroneous. This perspective would oversimplify Islamic law and perceive it as a hindrance to a community that strongly values its traditional roots, thereby marginalizing tradition and giving precedence to Islamic law. Winstedt prioritized Western law over Islamic law in property inheritance matters. He expressed:

It cannot be claimed that the British administered the matrilineal law of succession to property in an informed manner or framed appropriate legislation to carry it into effect. A basic error was the failure to recognize that the law follows not the land but the person. Collectors transferred from other states were swayed by a bias towards the Muslim law of succession, with which they were already acquainted, in preference to the intricacies of a matrilineal law of which they were ignorant. Judges failed to distinguish between the various classes of personal property or, contemptuous of the unwritten, based erroneous decisions on such European anachronisms as the entry of the word "Customary" on a title. (Winstedt 1961, 99).

As per the author's account, Winstedt's explanation aimed to reduce the impact of Islamic law on the resolution of societal challenges in Malaya. Musa (2001) argues that the Western perspective on these matters serves primarily to distance Islamic followers from religious fundamentals and diminish the significance of religion in their daily existence. Furthermore, Winstedt endeavors to sway Malay thought in the direction of Western law admiration, as he explains:



..while a new Ruler or a neighboring chief would prefer some harsh provision of Hindu or Muslim law. Under the British, justice, though often harsh, became everywhere uniform and always honest. (Winstedt 1961, 81)

Winstedt, in his 1928 publication "Kedah Laws," delineated a multitude of concerns of land inheritance rights that emerged as a consequence of British intervention. This group held the belief that to benefit Malay society as a whole, land proprietorship exchange should be regulated following Western land law principles. Winstedt elucidated that Western law was more suitable for all facets of Malay life and extolled the superiority of customary law in comparison to Islamic law.

To quote R.J. Wilkinson, the impact of Islamic law on Malay society, includes matters such as matrimony, criminal activities, property inheritance, and more: To what extent does Islamic law impact Malay society, and to what extent does it function as a supplementary framework to customary law? What he stated was:

Notwithstanding the influence of Muslim law in Malaya, it had not supplanted the local adat in its entirety. It was accepted in religious matters, in family law, and in the law of succession, but in order matters, the adat prevailed, with only some Muslim additions incorporated into it over the course of centuries. (Wilkinson, 1908, 48)

Wilkinson's elucidation provides substantiation against the Orientalist claim that Islamic law in Malaya has a significant impact on the Malays' way of life. Orientalists, in the author's opinion, recognize the veracity that Islam has a substantial impact on Malay thought but refute this by expressing several negative opinions concerning Islamic law, thereby weakening the community's position.

The analysis demonstrates that in Adat Perpatih, the act of bequeathing inheritance to women pertains to the transmission of ancestral land. Ancestral land is transmitted from one generation to the next by the members of a specific family. In the context of property inheritance, to maintain Adat Perpatih and strict adherence to Islamic inheritance law (faraid), it is deemed suitable for the mother to transfer her complete ancestral property to her daughter before her passing. Faraid is a mechanism to determine the distribution of a deceased's property to heirs after death, if the property is distributed before death, it is not called faraid. Several mechanisms can be used such as hibah, grants give property to heirs during the lifetime of the land owner. By performing this action, Adat Perpatih is not only preserved but also brought into conformity with Islamic law. By the daughter's inheritance, the aforementioned ancestral property is now her sole possession and is no longer regarded as an inheritance. In contrast, should the daughter fail to bequeath this property before the demise of the mother, it shall be included in the inheritance as per Islamic inheritance law (faraid) (Gunardi et al., 2017).

#### **4.0 CONCLUSION**

Winstedt argues that the incompatibility of Islamic law and Adat Perpatih prevents their simultaneous implementation. He contends that Islamic law is not suitable for Malaya due to cultural and residential differences. His argument stems from the orientalist approach, which views Islam through a Euro-centric lens, considering European nations as superior and more civilized. This approach undermines the relevance and applicability of Islamic law in non-Muslim societies, including Malaya. Winstedt's views on property inheritance in Malaya reflect his bias towards Adat Perpatih and his skepticism towards Islamic law. He believes that Adat Perpatih, being native to the Malay community, is better suited to address property inheritance issues in Malaya compared to Islamic law. However, his argument fails to

acknowledge the diversity within the Malay community and the relevance of Islamic law to Muslim Malays. The orientalist approach adopted by Winstedt in evaluating Islam and Malay society is evident in his preference for Adat Perpatih over Islamic law. This approach reflects a Euro-centric perspective that undermines the contributions and significance of Islamic law to Malay society. By prioritizing Adat Perpatih, Winstedt perpetuates colonial ideologies that seek to marginalize Islamic law and promote Western legal systems.

In summary, Winstedt's perspective on the inheritance of property in Malaya is indicative of his predilection for Adat Perpatih and his skepticism regarding Islamic law. The origin of his inclination towards Adat Perpatih rather than Islamic law is his orientalist perspective, which perceives Islam from a Eurocentric standpoint. This approach erodes the practicality and pertinence of Islamic law in societies that do not adhere to the Islamic faith, such as Malaya. To redress this prejudice, it is critical to acknowledge the multifariousness of the Malay community and the profound importance that Muslim Malays place on Islamic law. Further, academicians and researchers must engage in a discerning assessment of orientalist viewpoints to offer a comprehensive and nuanced comprehension of Malay society and Islam.

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