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Jurnal Hukum Islam
p-ISSN 2548-3374
e-ISSN 2548-3382
Institut Agama Islam Negeri (IAIN) Curup, Bengkulu, Indonesia

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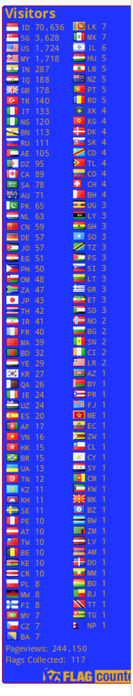

Sultan's Law and Islamic Sharia in The Ottoman Empire Court: An Analysis of The Existence of Secular Law

Husnul Fatarib, Meirison Meirison, Desmadi Saharuddin, Muchlis Bahar, Suud Sarim Karimullah

Abstract

This article aims to describe the impact of legal dualism within the Ottoman Empire. After Constantinople was taken over, Sultan Muhammad Al-Fatih instituted a significant policy, including issuing laws and regulations for the benefit of society; then, there was also a dualism system within the Ottoman Empire, which was visible during the reign of Sultan Sulaiman I. During this time, foreign nationals were mainly recruited, and foreign traders began to gain impunity at the peak of power. This then prompted several questions, such as were the sultans free to create the laws they wanted, or was Islamic law still binding on them? Was Sultan's law an innovation from the Ottoman Empire or a legacy from the preceding dynasty in the form of Capitulation? To address those issues, the authors conducted a comparative historical analysis of various types of literature. We used a descriptive qualitative approach to Qānūn's position, which served as a springboard for foreign intervention in an Empire that was strong but weak in political policies which occasionally strayed outside the corridor of Islamic Sharia which had become customary and national culture. The tolerance separated from the corridors of Islam derailed during the crisis. This became a springboard for legal dualism in a state body with integrity in various dimensions.

Keywords: Sultan's Law, Sharia, Judiciary, Ottoman

Keywords

Sultan's Law; Sharia; Judiciary; Ottoman Empire

Full Text:

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DOI: http://dx.doi.org/10.29240/jhi.v8i1.4908

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Al-Istinbath
Jurnal Hukum Islam

Vol. 8. No. 1, May 2023, 117-134
P-ISSN: 2548-3374 (p), 25483382 (e)
http://journal.iaincurup.ac.id/index.php/alistinbath

Sultan's Law and Islamic Sharia in The Ottoman Empire Court: An Analysis of The Existence of Secular Law

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DOI: https://dx.doi.org/10.29240/jhi.v8i1.4908

Received: 05-07-2022	Revised: 21-04-2023	Accepted: 06-05-2023

Cite this article:	Fatarib, H., Meirison, M., Saharuddin, D., Bahar, M., & Karimullah, S. (2023). Sultan's Law and Islamic Sharia in The Ottoman Empire Court: An Analysis of The Existence of Secular Law. Al-Istinbath: Jurnal Hukum Islam, 8(1 May), 117-134. doi:http://dx.doi.org/10.29240/jhi.v8i1.4908

Abstract

This article aims to describe the impact of legal dualism within the Ottoman Empire. After Constantinople was taken over, Sultan Muhammad Al-Fatih instituted a significant policy, including issuing laws and regulations for the benefit of society; then, there was also a dualism system within the Ottoman Empire, which was visible during the reign of Sultan Sulaiman I. During this time, foreign nationals were mainly recruited, and foreign traders began to gain impunity at the peak of power. This then prompted several questions, such as were the sultans free to create the laws they wanted, or was Islamic law still binding on them? Was Sultan's law an innovation from the Ottoman Empire or a legacy from the preceding dynasty in the form of Capitulation? To address those issues, the authors conducted a comparative historical analysis of various types of literature. We used a descriptive qualitative approach to Qānūn's position, which served as a springboard for foreign intervention in an Empire that was strong but weak in political policies which occasionally strayed outside the corridor of

Islamic Sharia which had become customary and national culture. The tolerance separated from the corridors of Islam derailed during the crisis. This became a springboard for legal dualism in a state body with integrity in various dimensions.

Keywords: Sultan's Law; Sharia; Judiciary; Ottoman Empire

Introduction

At the beginning of the 14th Century, when the Ottoman Empire was founded, it was only a tiny duchy under the Seljuq sultanate. The rulers of the Ottoman Empire alternated up to 36 sultans, with the rest being mere symbols.[1] After the annexation of the Arab region in 1517 AD, the Ottoman Empire became the most powerful country in the Islamic world. However, it had submitted (capitulated) to Western Europe, particularly France, in administering the law in its vast territories. Under the reign of Sulaiman al-Qānuni (1520-1566 AD), the Ottoman Empire had become a force controlling the political climate in Europe, Asia, and Africa.[2] After reaching the pinnacle of power in all fields, the Ottoman Empire annulled the application of Islamic law in many fields, especially in the field of Mu'amalat with foreign countries, where Western European countries at that time adhered to the principle of legal unity within the territory, which means that the law applied to all individuals who existed in the region. At the same time, the Ottoman Turks made exceptions to the law's application for ease of trade.

Initially, Islamic law was the primary source in the Turkish state, which was still a duchy under the Seljuqs.[3] However, a change occurred when Constantinople was conquered in 1453, which led to friction with foreign ethnic groups such as Venice, Geneva, France, and Russia. Added to this were the newly conquered territories in Central Europe, such as Bulgaria, Hungary, and parts of Austria. This required a great deal of legal improvisation, which is difficult to manifest from the Quran, sunnah ijma', and qiyas. In addition, Ottoman Turk was not a multi-madhab state after Sultan Sālim I declared that the state school was the Hanafi school, which had narrowed the broad horizons of Islamic thought. Therefore, the sultans took part in the world of law, which was the full right of the scholars and muftis because the knowledge of most of the sultans was not on a par with that of the scholars and muftis.

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[1] Ahmet Tunç Şen, "Reading the Stars at the Ottoman Court: Bāyezīd Ii (R. 886/1481-918/1512) and His Celestial Interests," *Arabica* 64, no. 3–4 (September 2017): 557–608, https://doi.org/10.1163/15700585-12341461.

[2] Yasir bin Abdul Aziz Rari, *Daur Imtiyazat al-Ajnabiah fi Suqut ad-Daula al-Usmaniyah* (Riyadh: Jamiah Ibnu Saud, 2001).

[3] F. Ahmad, "OTTOMAN PERCEPTIONS OF THE CAPITULATIONS 1800-1914," *Journal of Islamic Studies* 11, no. 1 (January 2000): 1–20, https://doi.org/10.1093/jis/11.1.1.

In writing this article, we referred to a book entitled Daulah Iliyah al-Usmaniyah, compiled by M. Farid Beik, which explains that the Ottoman Turkish Qanun first began to be codified towards the end of the 15th Century, following the fall of Constantinople in 1453.[4] The expansion of the Empire led to the desire to concentrate legal decisions on authoritarian powers. However, this book has not detailed its impact on legal matters and judicial structures. In this article, we also referred to the journal Osmanli Arastirmalari - Journal of Ottoman Studies, explaining that Qānūn allowed the Sultan to become an unchallenged ruler. Early Qānūn nāma (literally: law book) related to financial and fiscal matters, which were based on custom (urf)[5], tried to integrate previous practices (local wisdom) with the priorities and needs of the Ottoman state.[6] This paper did not explain how to trade with foreign parties with particular legal rights. An article written by Mohammad Muhibbin, "The Concept of Land Ownership in the Perspective of Islamic Law," published in Al-Risalah, explained that Qānūn nāmah was also applied to each province after the conquest of new territories; this provincial law book would usually retain some most of the existing tax and fee collection systems that were under the previous rule and only adapted them to the legal standards of the prevailing Sultan's policies.[7] This book is limited to discussing the treatment of the Ottoman Turks in new areas without mentioning any impact of legal improvisation on Islamic areas that have long been controlled. In work by M.R. Hickok, Ottoman Military Administration in Eighteenth-Century Bosnia, it was mentioned that "Mnemosyne: Bibliotheca Classica Batava" has been cited as a reference explaining that the use of Qānūn redefined Ottoman society in a two-tiered hierarchy, with the Askeri (or military) consisting of a tax-exempt ruling class that belonged to the military group. The second is the administrative officers, while the rest of the population, labeled as Reaya (people of manual labor groups), are under the orders of the foremen, with the obligation to produce goods and pay taxes. This can explain the economic system of the Ottoman Empire before the renewal period.

According to a journal compiled by Umut Özsu and Thomas Skouteris, "International Legal Histories of the Ottoman Empire: An Introduction to the Symposium," Journal of the History of International Law 18, no. 1 (October 2016), legal improvisation was needed due to the expanding territory and

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[4] Gérard Prunier, "Military Slavery in Sudan during the Turkiyya, 1820–1885," *Slavery & Abolition* 13, no. 1 (April 1992): 129–39, https://doi.org/10.1080/01440399208575054.

[5] Muhammad Farid Bek Al-Muhami, *Tarij al-dawla al-'aliyya al-'utmaniyya* (Beirut: Dar al-Nafa' is, 2009).

[6] Halil İnalcık and Donald Quataert, eds., *An Economic and Social History of the Ottoman Empire, 1300-1914* (Cambridge ; New York: Cambridge University Press, 1994).

[7] Muhammad Farid Bek Al-Muhami, *Tarij al-dawla al-'aliyya al-'utmaniyya* (Beirut: Dar al-Nafa' is, 2009).

friction with foreign nations who had many interests in various dimensions:[8] During the golden period, there was a gap created by Sultan Salim I, where previously the Ottoman Empire accepted multiple schools of thought then it turned into a single school of thought, namely the Hanafi school of thought which became the official state school of thought. The jurists who served in the judiciary who were free in opinion had been united by one control, namely Shaykh al-Islam, who had the right to issue fatwas that became a reference for the government and the entire judiciary, so that freedom of expression for jurists had been limited by the fatwa of Syaikhul Islam, which was heavily influenced by power, especially at the end of the weakening of the Ottoman Empire.[9] Even so, we discovered that the sultans' progress in law had benefited the people. This Sultan's Law had inevitably protected the manual workers or reāya (proletarian people) from the tyranny of the landlords and regional troops. This then prompted questions, such as is this Qanun a genuine Sultan's initiative or a legacy from previous dynasties? Sometimes these activities went beyond the limits and rules on the ground, opened up loopholes for foreign parties to infiltrate Ottoman politics, and finally began to undermine Islamic law. What types of foreign interventions are these? What kind of judicial dualism resulted from Sultan's law? Could the consequences that the Empire had received, namely changing the judicial system and its materials that were no longer constrained to Islamic law, bring the Ottoman Empire back to its golden age? This transformation penetrated the sultans' policies through Qānūn Nāmah, starting with Sultan Ahmad I, Abdul Majid, which was then continued by Sultan Abdul Hamid by presenting Majallah al-Ahkam Adliyah as a book so that Islamic law would survive in the field of Mu'amalat. The focus of our discussion is the dualism of justice, which occurred during the era of political and military dominance and had a significant impact on Islamic justice throughout the decline, both in the structure of the judiciary and in the material of the applicable law.

In this research, we conducted a literature review study using a historical juridical approach through the following steps, first, by providing limitations to the problem, namely the causes and seeds of dualism law in the Ottoman government, which had an impact on the application of Islamic law in various dimensions, especially in the judiciary. Second, by collecting various sources from diverse historical sources, we made comparisons and, after conducting a qualitative study and explanation, we thoroughly described the background of dualism and its impact on the judicial structure of the Ottoman Empire. The

[8] Umut Özsu and Thomas Skouteris, "International Legal Histories of the Ottoman Empire: An Introduction to the Symposium," *Journal of the History of International Law* 18, no. 1 (October 2016): 1–4, https://doi.org/10.1163/15718050-12340049.

[9] D. Saharuddin, I. Chusna, and A.S. Mulazid, "Capitulation and Siyasah Syar'iyah Al-Maliyah Impact on Economic Stability of the 18th & 19th Ottoman Turks," *Qudus International Journal of Islamic Studies* 7, no. 2 (2019): 329–366.

actions taken by the rulers had provided loopholes in legal improvisation which would, at one point, significantly change Islamic law. According to Ibn Khaldun, such a law is unnecessary because the Islamic Shari'ah is complete and does not require any additions.[10] The focus of our discussion in this article is the process and form of loopholes and legal products that are no longer in compliance with Islamic Sharia issued by order of the Sultan.

Discussion

The Origins of the Sultan's Law (*Qānūn Nāmah*)

At the end of the 15th Century, the Sultan of the Ottoman Empire reformed and issued new laws other than Sharia. These rules stood alone and were referred to as Qānūn (قانون). This qanūn was only based on logical rules that had nothing to do with Islamic law. Qānūn was divided into two categories, namely general Qānūn and administrative Qānūn. During the time of Sulaiman Qānūni, the number of legal products increased. He was known for making laws to regulate state affairs, known as "Qānūn Nāmeh Sultan Suleimān," or Sultan Suleimān's constitution, and these laws were enforced until the 19th century A.D.

Qānūn Nāmeh was established to regulate administrative affairs to limit government officials' authority so that they did not commit injustice or minimized the injustice they committed against the people. Taxes were taken from foreign traders by implementing the Ushr system, namely: Tithe, which is a tax on merchants similar to the current customs tax, and the Arab Islamic countries followed the principle of reciprocity for foreign traders, thus taking a tenth of its foreign citizens, half of one-tenth of the dhimmis, and one-fourth of the tenth taken from the Muslims, provided that the commodity price reached two hundred Denari/Florin (gold currency) or more.[11]

Theoretically, in terms of utility, the laws and regulations issued by the Sultan were acceptable as long as they did not contradict the verses of the Quran and Hadith. Qānūn was critically needed to avoid absences in laws and regulations in solving cases and legal certainty, such as in Islamic law's regulation of land ownership.[12] The Qānūn issued by these sultans reflected Sultan's own policies. Qanūn must primarily benefit Muslims. It would be accepted by society if the Sultan could implement it effectively while not conflicting with Shari'ah.

Therefore, the preamble to Qānūn Nāmah proclaimed by Sultan Sulaiman al-Qānūni was solely concerned with tax collection rules, especially

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[10] M.R. Hickok, *Ottoman Military Administration in Eighteenth-Century Bosnia*, Mnemosyne, Bibliotheca Classica Batava (Brill, 1997).111

[11] Yusuf Magiya, "Predatory Rulers, Credible Commitment, and Tax Compliance in the Ottoman Balkans," *Journal of Historical Political Economy* 2, no. 2 (2022): 263–97, https://doi.org/10.1561/115.00000030.

[12] *Tarikh Daulah Usmaniyah Min Nusyu' Ila Inhidar.*

taxes on agricultural land because customary law rarely discussed Jinayah. However, Qānūn Nāmah, published at the beginning of the 15th century A.D., began to include Jinayah matters after establishing the foreign capitulation agreement. The Sultans ordered the publication of Qānūn Usmani because these rules were required for the world's advancement and for solving people's problems.[13] With the expansion of the jurisdiction of the Ottoman Empire, the foundations of Qanun became stronger and were mixed in practice with Islamic law. In Turkish culture and customs, there was a powerful attachment between the authorities and the legal products they issued, known as Torū.[14]

Qānūn Usmani was issued in the form of Sultan's decree, with Sultan outlining everything, so he was called Qānūn Sultan. All rules and systems issued by the Sultan were adapted to the existing circumstances. If necessary, the newly ascended Sultan could cancel or establish the previous Qanun and issue a new one. Qānūn basically should not conflict with Islamic Shari'ah and the previous Qānūn. However, numerous legal materials defied Islamic Shari'ah, including the law of cutting hands replaced with money, taxes on marriage, and legal immunity against minority groups who had obtained foreign capitulation certificates and dual citizenship.[15] It was inevitable for one caliph's policies to differ from another. However, the number of deviations from Islamic Sharia that departed from the tolerance for minority groups was too great, so the Ottoman government no longer saw modern Europe, which had turned into a unitary state of law and territory without any exceptions.[16] Irregularities were also influenced by elite groups around the Palace, such as the Qasim and Harem, who served as the medium for foreign diplomacy in influencing the policies of the Ottoman Empire from time to time.[17]

Qānūn Usmani was divided into three criteria, and the first was a legal decree issued by the Sultan under certain conditions.[18] It contained a collection of documents and thousands of rules, as was common in most Ottoman legal formats. The second form was a rule concerning an extraordinary scope or a particular layer of society; the third was the entire Qānūn Nāmahh which

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[13] Mohammad Muhibbin, "The Concept Of Land Ownership In The Perspective Of Islamic Law," *Al-Risalah* 17, no. 1 (January 2018): 61, https://doi.org/10.30631/al-risalah.v17i01.25.

[14] R. C. Repp, "The Capitulations and the Ottoman Legal System: Qadis, Consuls, and Beratlis in the 18th Century * BY MAURITS H. VAN DEN BOOGERT," *Journal of Islamic Studies* 18, no. 1 (January 2007): 131–33, https://doi.org/10.1093/jis/etl060.

[15] Harald Motzki, *The Origins of Islamic Jurisprudence: Meccan Fiqh before the Classical Schools*, Islamic History and Civilization : Studies and Texts (Leiden ; Boston: Brill, 2002).113

[16] Donald C Blaisdell, *European Financial Control in the Ottoman Empire: A Study of the Establishment, Activities, and Significance of the Administration of the Ottoman Public Debt*, 1929, https://doi.org/10.7312/blai91054.

[17] Abdurrahman Atçıl, *Scholars and Sultans in the Early Modern Ottoman Empire*, 2017.

[18] Viorel Panaite, *Ottoman Law of War and Peace: The Ottoman Empire and Its Tribute-Payers from the North of the Danube*, Second Rev (Leiden ; Boston: Brill, 2019).

applied to the entire territory of the Ottoman Empire. The majority of Qānūn originated from the central government to solve administrative problems. High officials prepared these legal drafts to become the words (sultan decrees). After the draft Qanun had been reviewed, the prime minister and the Supreme Court justices signed it. If all the procedures had been passed, the draft Qanun was shown to the Sultan. After the Sultan stated his agreement verbally or in writing, the draft Qanun was made into a Qanun. This was the standard procedure for placing a Qanun, but if there was an urgent matter, the Sultan might issue a Qanun himself without any procedure. The process of issuing Qānūn Nāmah, led by legal issues, was the authority of the Supreme Court justices (Nisanji). Statistical data on property and settlements significantly increased, requiring the development of a new Qānūn.

Contradictions of the Sultan's Law with Islamic Shari'ah

Shaykh al Islam and the scholars had the authority to ratify laws issued by the sultans. On the one hand, he was the custodian of Islamic Shari'ah. However, when Sultan Sālim I (1512-1520 AD) decided to Islamize the Ottoman Empire's entire population, it was banned by the Ulama. Then, Sultan Sālim I made Arabic the language of communication within the Empire, and this idea was also prohibited by Ulama. Ulama relied on the Qānūn Nāmāh issued by Sultan Muhammad al-Fatih regarding religious freedom as an excuse. Indeed, making Arabic the official language benefited Islamic religious learning and it was consistent with Maqasid shari'ah.

In other cases, non-Muslim testimony (Musta'min/entering Muslim territory with permission) in court could be accepted under Sultan's law. This was motivated by the foreign capitulation agreement (privilege).[19] Syakhul Islam Abu Saud Afandi conveyed his objections to Sultan Sulaiman I. The Sultan, who had signed the Capitulation Agreement with France, was forced to cancel his own law, which had been circulated to foreign consulates and all areas in major cities.[20]

The legal intervention of the sultans against Islamic Sharia in Jinayah was also inevitable during the reign of Sultan Bāyazid II (1481-1512 AD) and Sulaiman al-Qānūni (1520-1566). Both of them changed the death penalty for rapists by cutting off their genitals and stabbing women's genitals with hot irons for those who committed adultery. Some perpetrators of criminal acts were put in a pile of dirt to death. The death penalty was also applied to murderers without regard for Qisas's demands from the victim's family. They were coupled with the hand-cutting for the Baitul Mal (state treasury) thief, who was still a suspect, contrary to the Hanafi School, which distinguished private and state

[19] Robert Mantran, *Histoire de l'Empire ottoman* (Paris: Fayard, 2003).

[20] Sezen karabulut, "Savaş Yılları Osmanlı Kudüs'ünde Mülkiyet Hakkı (1914-1918)," *Tarih İncelemeleri Dergisi* 33, no. 2 (December 2018): 451–80, https://doi.org/10.18513/egetid.502715.

property theft. The suspect in the theft of the Baitul Mal immediately had his hands cut off, whereas the general rule mentioned that hudūd was rejected with doubt.[21]

Foreign Capitulation

The foreign Capitulation gradually eroded this Ottoman state sovereignty because foreign nations or peoples under the auspices of foreign flags were above the law and could not be tried in the courts of the Ottoman Empire. The Ottoman Empire lost its authority, allowing European countries to exploit its natural, legal, social, and political resources for the benefit of Western countries. Capitulation was a severe blow to Islamic law in Muslim countries worldwide.[22]

This foreign Capitulation emerged during Sultan Sulaiman al-Qanūni in 1535 AD, the first agreement made by the Ottoman Empire, a privilege given to the French when the Ottoman Empire was at its peak of power. However, the agreement showed the humiliation of a powerful and highly influential empire in mainland Europe. This agreement was initially centered on trade agreements, the provisions of which were the French consul who received complaints and lawsuits in civil and criminal cases would be decided by the laws in force in France and this was applied to all people under the French flag in any Turkish territory. The Ottoman judges were not allowed to execute perpetrators of violations under French protection (immunity).[23]

In 1840 A.D., a unique commercial court was established to judge disputes between local and European merchants. Then, civil courts were created by royal order in 1871 AD and expanded in 1880 A.D. In this new legislative situation, preparatory commissions, administrative organization, and legislative reform were created, and two commissions emerged from them:

The first is the State Consultative Council, which is tasked with preparing regulations and laws and monitoring their implementation.
The second: Law defines cases considered and decided under European law.

The Existence of two types of justice with different characteristics caused a lot of confusion and turmoil; commercial law was a European law, while civil law until then was based on Islamic law.[24] This study found that the efforts made in it were not persistent efforts to launch new horizons in the Hanafi school combined with Western methods of discussion consisting of chapters and explanations. Religious judges or officials had no authority to

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[21] Islāmik Fiqh Akaiḍmī, ed., *Fatwā fiqhīya muʿāsira*, Ṭabʿa 1 (Bairūt: Dār al-Kutub al-ʿIlmīya, 2008).

[22] Farid Bek Al-Muhami, *Tarij al-dawla al-'aliyya al-'utmaniyya*, 2009.282

[23] Muhammad Zuhaili, *Tarikh al-Qadha fi al-Islam* (Beirut: Muasasah Risalah, 1992).214

[24] Daniel O'Quinn, *Engaging the Ottoman Empire: Vexed Mediations, 1690-1815*, Material Texts (Philadelphia, Pennsylvania: the University of Pennsylvania Press, 2019), 1690–1815.

resolve any cases involving people under the protection of France, whether they were French traders or French people living in the territory of the Ottoman Turks. Even though the French citizens asked the Ottoman Empire's court to resolve it, the law issued was considered null and void until the French consulate in Ottoman territory acknowledged it. The judges of the Ottoman Empire could not accept complaints or lawsuits against French citizens filed by Ottoman citizens against French merchants. They should summon the accused French to appear at the prime minister's residence.[25] The Ottoman government could not pass judgment on French merchants who also served as religious missionaries and forced them to perform other tasks. It was not permissible to arrest a foreigner or enter his house to deliver a court decision or force him to appear before a judge to carry out the law that had been decided upon him, except through the intermediary of the consul of his own country. It was permissible for Sultan Sulaiman, per the agreement with the King of France, to determine the residence of the French consuls throughout the Ottoman Empire as well as to allow the presence of French envoys to witness the judicial process of French citizens involved in it.[26]

They received preferential treatment in the application of the law. Christian priests and Patriarchs may use their own law and judiciary in Mu'amalat for criminal acts, which applied to the Armenian Patriarch and Jewish Priests.[27] The consequences of this Capitulation were disastrous and very difficult to undo. Ultimately, this agreement was canceled at a significant cost in 1914 A.D., resulting in the loss of territory and exploitation of natural resources. At first, the Western countries did not recognize it until the Lausanne agreement was made in 1923. This Capitulation, which had terrible impacts, divided the Ottoman Empire and the entire Arab region. In 1949, the entire Capitulation was completely annulled.[28]

Judicial Dualism in the Late Ottoman Empire

The import law resulted in a distinct dichotomy between the judicial system and the courts in the Turkish sultanate. This was caused by the loopholes created by the Ottoman Turks themselves, therefore there was a Western conspiracy against the Turkish government and people who had begun to falter due to a leadership crisis and a decline in faith, which was incompatible with Islamic law. The hedonic attitude of the sultans and state officials eroded vigilance and awareness of the dangers that arose. For the Western European

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[25] Ali Muhammad Al-Salaabi, *Daulah Usmaniyah Awamil Nuhud wa Asbab as-Suqut*, 4th ed., vol. 2 (Beirut: Dar an-Nafais, 2017).423

[26] Farid Bek Al-Muhami, *Tarij al-dawla al-'aliyya al-'utmaniyya*.425

[27] Maurits H. van den Boogert, *The Capitulations and the Ottoman Legal System: Qadis, Consuls, and Beraths in the 18th Century*, Studies in Islamic Law and Society, v. 21 (Leiden ; Boston: Brill, 2005).

[28] J. C Hurewitz and J. C Hurewitz, *The Middle East and North Africa in World Politics: A Documentary Record Vol.2 Vol.2* (New Haven; London: Yale University Press, 1979).

countries, the success of measures to accelerate degradation was insufficient. They eventually ended it with continuous warfare. Capitulation was used as an effective tool to change all forms of government structures and applicable laws; even though improvements were made in the law and justice fields, they were unsuccessful because they always encountered challenges and obstacles from outside and within the country.

This judicial dichotomy persisted because Turkish politicians believed that the judicial system adopted from the West would result in rapid progress. Western countries continued to carry out repressive actions by interfering in the affairs of the Ottoman Empire government. As a result, Sultan Abdul Majid was forced to issue a renewal decree through the Gulhane Charter in 1839 M/1255 H. Khat Hamayun followed the agreement in 1856 M/1274 H. Then secular courts were formed. The courts included probationary, criminal, corruption, magistrate, cassation, and appeal courts, state administrative courts, minority group courts, and foreign courts (consulate courts) under foreign embassies. These Courts dealt explicitly with foreigners and those deemed foreign citizens. This was a direct impact of the capitulation agreement.[29] These courts then broke apart from the shari'ah courts and adopted Western European laws that were no longer valid in Modern Europe, such as Swiss law in the Middle Ages.[30]

Regular Court

The establishment of regular courts was the starting point of reforming the domination of the Syar'i judiciary in the Ottoman Empire. The dichotomy arose because there were already two judicial systems: Islamic Courts and Regular Courts. The Hamayuni Charter was issued to maintain minority rights through the Millet trial, abolish the death penalty, legalize LGBT, abolish Islamic rules on non-Muslim soul taxes (jizya), and abolish the death penalty for apostate Muslims as a result of the adoption of the judicial system and foreign laws.[31] The Regular Court was separated from the Sharia Court, with the Sharia court used as a temporary reference. Once the regular court judges could work well, the religious courts were given limited authority. They only handled Ahwal al-Syakhsiyah (marriage, divorce, ruju', and inheritance).[32]

The Regular Court consists of:[33]

1. Magistrates' Court: established in 1913 M/ 1329 H as a circuit court that moved from village to village. This Court had one judge and a

[29] Farid Bek Al-Muhami, *Tarij al-dawla al-'aliyya al-'utmaniyya*, 2009.211

[30] Farid Bek Al-Muhami.

[31] Farid Bek Al-Muhami.

[32] Kent F. Schull, M. Safa Saracoglu, and Robert W. Zens, eds., *Law and Legality in the Ottoman Empire and Republic of Turkey* (Bloomington, Indiana: Indiana University Press, 2016).

[33] Douglas Howard, "From Manual to Literature: Two Texts on the Ottoman Timar System," *Acta Orientalia Academiae Scientiarum Hungaricae* 61, no. 1–2 (March 2008): 87–99, https://doi.org/10.1556/AOrient.61.2008.1-2.9.

representative. Sometimes this institution appointed local clerics to settle certain cases, similar to civil matters arbitration.

2. Preliminary Courts (First Level). These courts were located in district and provincial capitals throughout the Ottoman Empire. One chief judge and four members covered several areas. They dealt with civil and criminal matters perpetrated by the community, which also had bailiffs. In theory, foreign nationals could also be tried in this Court; however, trade agreements with foreign countries transferred foreign court cases to the consulates of their respective countries.
3. Commercial Court was formed in 1277 H, 1860 AD; this Court was led by the presiding judge, two permanent members, and four non-permanent members.
4. Court of Appeal: located in the provincial capital, this Court handled civil, financial, and criminal cases. This Court was headed by five judges, a chairperson, and four members. Two of the judges were Muslim, and two were non-Muslims. Its members served two-year terms, and this Court of Appeal was the Court with the highest position among the courts of first instance.
5. Court of Cassation: This Court was based in Istanbul, the Ottoman Empire's capital
6. Specialized courts: These independent courts were established after the capitulation agreement. There were two types of specialized courts:
    a. Consulate Court, a court established by foreign consulates to resolve cases of its citizens in the Ottoman Empire. All of the judges were foreigners with ties to the capitulation agreement.
    b. The Spiritual Court, also known as the millet court. In this Court, problems of religious groups were resolved, including family law problems faced by minority groups separately.
    c. The two courts mentioned above, namely the Consular Court and the Spiritual Court, in the Hanafi school of thought, are permissible. However, most jurists in Muslim communities or Islamic countries opined that judges must be Muslim, including judges who settled non-Muslim cases with Muslims. At that time, Europe adhered to a unified jurisdiction in which regional law applied to the multi-ethnic groups in the region. However, at the insistence of Western Europe, in this case, the Ottoman Turks were not allowed to follow the Western approach of enforcing the law due to the capitulation principle that had been in effect.

Sharia Court

The Sharia Court was the fundamental judicial institution in the Ottoman Empire. However, its responsibilities and authorities were limited following the emergence of a capitulation of law carried out under the reigns of Muhammad Al-Fatih and Sulaiman al-Qānūni, as well as Sultan Murad III. As a

result of the capitulation agreement and European pressure, the Sharia court only handled the Ahwal Syakhsiyah issue. Meanwhile, Jinayat issues, such as hudud and Qisas as well as Ta'zir, had limited movement, and many were no longer bound by the shari'ah and Islamic law. Since then, the Sharia court was converted into a district court.[34]

The Hanafi School in the Ottoman Empire

Turkish society generally adheres to the Hanafi school of thought and appoints Shaykh al-Islam from the Hanafi school of thought. After Sultan Sulaiman al-Qānūni took power, he enacted a law regarding the official school of the Ottoman Empire, namely the Hanafi school, which Sultan Salim I had previously declared. This school had to be applied in all government affairs and social matters faced by the people of the Ottoman Empire. Following the legal reform brought about by Western pressure through the Capitulation, the opinion of the Hanafi school of thought was compiled as the Ottoman Empire's official law. This legal codification was called Majallah Ahkam al-Adliyah.[35] In 1855 the Fiqh school of the Hanafi school was founded, and the Qadhis came from that school. Egypt was a multi-school-of-thought province of the Ottoman Empire. After the Ottoman Empire's reign, a Turkish Military Judge named Sayid Syalbi was sent in 923 H/1521 AD. He brought the Ottoman Sultan's decree appointing him as the highest judge in Egypt. He said that the Sultan had abolished all sect judges by assigning Turkish judges with four Sunni sect representatives. He divided Egypt into 36 jurisdictions. There were judges directly appointed by the Sultan and judges appointed by the Chief Justice. The four judges before Egypt became the territory of the Ottoman Empire were put under house arrest and could no longer carry out their activities because the judiciary had been changed to one school, namely the Abu Hanifah school.[36] Even though the majority of people in Egypt adhered to the Syafii school of thought, the judiciary still enforced the Hanafi school of thought in other North African regions such as Tunis, Libya, and al-Jazair. This removed the treasures of jurisprudence and fiqh, which actually had enriched the treasures of previous Islamic thought by emasculating the application of schools other than the Hanafi school of thought throughout the territory of the Ottoman Empire.[37]

Majallah al-Ahkām al-Adliyah

This Majallah was the product of Sultan's law which ordered the codification of the Western style while retaining parts of Islamic law. It was a

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[34] Ahmet Tunç Şen, "Reading the Stars at the Ottoman Court: Bāyezīd Ii (R. 886/1481-918/1512) and His Celestial Interests," *Arabica* 64, no. 3–4 (September 2017): 557–608, https://doi.org/10.1163/15700585-12341461.441

[35] Zuhaili, *Tarikh al-Qadha fi al-Islam*.

[36] Meirison Meirison, "Legal Drafting in the Ottoman Period," *Jurnal Ilmiah Al-Syir'ah* 17, no. 1 (June 2019): 39, https://doi.org/10.30984/jis.v17i1.806.115

[37] Muhammad Arnus, *Marji' al-Ulum al-Islamiyah* (Beirut: Dar al-Fikr, 1990).

financial and civil Mu'amalah regulation compiled based on the Hanafi school of thought. This law was codified to anticipate the effect of the establishment of regular secular courts while still adhering to the Western legal system. Secular courts were unable to function properly and must be guided by Sharia judges with decades of experience deciding cases.[38] The judiciary became ineffective because the Sharia judges had to enlighten these general judges. To make it easier for these secular judges to make a decision and defend Islamic law, even if only in Mu'amalah, the Majallah al-Ahkam al-Adliyah was compiled in 1286 H/1869 AD. This compilation was based on the strong opinions of the Hanafi school and the weak opinions if they contained benefits for the country that were adjusted to the development of the times and where the law was enforced. In 1851, this Majallah Ahkam Adliyah was finalized with its articles and verses and its explanation entitled Laihah al-Asbab al-Mujibah which was used as an explanatory note of Majjalah al-Ahkam al - The Adliyah. It included two introductions about the definition of fiqh and its division and about Qawaid Fiqh, which contained 99 articles.[39]

Conclusion

The Sultan's law (Qānūn Namah) has created a gap for the entry of foreign law through legal capitulations carried out by the Sultans, sometimes resulting from the intervention of the Palace elite, such as the Qasims and Hareems, whom foreign diplomats made to serve them. Qanun nāmā, starting from Sultan Muhammad al-Fatih, Sulaiman al-Qanūni, to Sultan Ahmad III, had greatly loosened the application of the law to foreign nationals and minority groups. They were exempt from the law, allowed to set up their administration and establish a state within a state. As a result, Islamic law was no longer applied to foreigners and those considered foreign citizens who had never known European countries before just because they were Christians and Jews. The judiciary was no longer functioning properly as a result of legal dualism, namely shari'a law and imported law from the West, which infiltrated through Qānūn Nāmah. The Sultan's policies were significantly influenced by several factors, such as foreign diplomacy, modernization in all its forms, and the most dominant was political pressure brought on by a leadership crisis. Foreign nationals and minority groups received legal immunity and no longer paid the same amount of taxes as Muslims. Muslims of Turkish and Arab nations were no longer treated equitably due to many exceptions and privileges, particularly in the application of the law. Even so, Sultan Abdul Hamid II continued to strive

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[38] Muḥammad Muṣṭafā az- Zuhaili and Muḥammad Muṣṭafá Muḥammad Muṣṭafā az-, *al- Qawāʿid al-fiqhīya wa-taṭbiqātuhā fi 'l-maḏahib al-arbaʿa*, aṭ-Ṭabʿa al-ūlā (Dimašq: Dār al-Fikr, 2006).

[39] Meirison Alizar Sali, Desmadi Saharuddin, and Rosdialena Rosdialena, "Takhrij Fikih Dan Permasalahan Kontemporer," *Al-Istinbath : Jurnal Hukum Islam* 5, no. 1 (May 2020): 51, https://doi.org/10.29240/jhi.v5i1.1235.114

to maintain Islamic law pertaining to Mu'amalah through legal codification with the publication of Majallah al-Ahkām al-Adliyah.

All Hanafi jurisprudence was written in the Ottoman Judicial Jurisprudence Magazine, explaining that the magazine was compiled at the Astana Court in 1286 H, where this task was given to a group of jurists who were tasked with compiling 1800 rules. This magazine was written in Ottoman and translated into Arabic by Fahmy Al-Husseini, and explained in detail by Ali Haydar Pasha, who came from Turkey. Thus, all activities related to proving public rights in Islamic law were adopted in all courts and human rights forums and had been codified as official rules. This Majallah widely spread throughout the Islamic countries of the Ottoman Empire and became a unifying common reference in all places where the judiciary was binding on all levels of society. There were Sharia courts specializing in marriage and divorce, courts for civil matters, and courts for military matters, and those Sharia courts in their principle relied on General Qanun.

The significance drawn from the literature review and previous discussion was that Muslims, who made up the majority in the Ottoman Empire, were unfairly burdened with higher taxes than minority groups and foreign traders, so the domestic economy was disrupted. Local capital could no longer be developed; as a result, foreign investment overtook the Ottoman Empire's economy and continued to the economy of the Republic of Turkey. Deviations from Islamic law had occurred since the Abbasid dynasty, and even without any external pressure, they still occurred.

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Pesan berikut ini disampaikan atas nama Dewan Redaksi Al-Istinbath: Jurnal Hukum Islam.

Meirison Meirison:

We have reached a decision regarding your submission to Al-Istinbath: Jurnal Hukum Islam, "SULTANIC LAW AND SHARIA IN THE JUDICIAL OF THE OTTOMAN EMPIRE".

Our decision is: Revisions Required

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Reviewer B:

1. Apakah judul tulisan naskah menarik?:
   Ya

2. Apakah judul bersifat spesifik?:
   Tidak

3. Saran/catatan untuk judul:
   Topik kajian ini biasa saja. Sudah banyak kajian tentang Ottoman Empire ini. Tidak akan ada novelty, jika penulis tidak maksimal dalam mengelaborasi tulisan ini.

The specifications in this study are basically interesting, but this paper has not optimally elaborated on Sultan's Law And Islamic Sharia In The Ottoman Empire Court . The discussion must be elaborated specifically, the article is more interesting so that novelty appears in the title of the article.

Judul artikel ini juga belum tampak SOTA (state of the arts). Judul mesti ditulis dengan bahasa yang lebih spesifik terhadap kajian yang dikembangkan dan dielaborasi materi kajian secara substantif, sehingga tampak analisis dalam artikel makin menarik.

4. Orisinalitas/keaslian ide tulisan naskah?:
Rendah

5. Keterbaruan isu tulisan naskah?:
Sedang (biasa)

6. Jenis tulisan naskah?:
Artikel Studi Literatur

7. Akurasi data dan fakta bahan tulisan naskah?:
Sedang

8. Apakah abstrak sudah mencakup tujuan, metode, dan hasil kajian/penelitian?:
Ya

9. Saran/catatan untuk abstrak:
Penulisan abstrak dalam tulisan ini belum memuat secara memadai tentang hasil yang lebih signifikan, sebagai adanya novelty dari penulisan artikel ini. Penulisan abstrak ini selain tercakup di dalamnya tentang masalah penelitian, tujuan, metode, dan hasil kajian yang disuguhkan dalam penelitian, diuraikan secara lugas. Abstrak dalam tulisan ini belum memuat secara memadai tentang urgensi kajian ini dilakukan dan hasil yang lebih signifikan dari penulisan artikel ini. Masalah yang dikupas mesti dielaborasi, sehingga substansi kajian dalam hasil penelitian itu disuguhkan secara lebih spesifik dalam menyelesaikan masalah dalam penelitian, sehingga tampak adanya novelty dalam artikel ini.

10. Apakah kata kunci (keywords) sudah mencerminkan isi/substansi naskah?:
Ya

11. Apakah pada bagian pendahuluan naskah sudah mencerminkan urgensi kajian dan pokok permasalahan yang dikaji/diteliti?:
Ya

12. Saran/catatan untuk pendahuluan:
Tidak tampak shocking statements dalam memulai paragraf dalam Intoduction ini. Ditambah lagi kajian seputar Ottoman Empire ini sudah banyak

dilakukan riset oleh para peneliti dan penulis terdahulu.

The introduction explains the importance of the research problem to be studied. Describe systematically, and enriched with various analyzes, which explain the importance of this research.

The survival of the Ottoman Empire for more than six hundred years (1281-1924 M) with its various weaknesses and advancement had a great contribution to the Islamic history. The empire centered in Istanbul but encompassing major portions of North Africa, the Arab world and Eastern Europe.

13. Metode analisis yang digunakan dalam kajian/penelitian?:
Sedang

14. Apakah hasil dan pembahasan kajian/penelitian sudah sesuai dengan motode analisis yang digunakan?:
Ya

15. Saran/catatan untuk metode:
Dalam artikel ini penulis menggunakan metode penelitian studi kepustakaan library research. Pendekatan kajian dalam tulisan ini, dengan jenis penelitian historical approach, dalam Introduction hal itu sudah dijelaskan, namun digunakan secara praksis dalam penulisan artikel ini dan seyogianya diimplementasikan dalam menyelesaikan masalah dalam penelitian yang dilakukan.

16. Apakah hasil dan pembahasan kajian/penelitian sudah menjawab rumusan permasalahan?:
Tidak

17. Saran/catatan untuk hasil dan pembahasan:
Diformulasikan secara spesifik tentang bentuk-bentuk kontradiksi hukum Sultan dengan Syari'at Islam tersebut, sesuai kajian mengenai Sultan's Law And Islamic Sharia In The Ottoman Empire Court. Selain bidang pidana secara komprehensif dielaborasi, juga tentang keperdataan diuraikan secara spesifik, maupun bidang lain dari pembidangan kajian fiqh dan hukum Islam.

Pada aspek lain dapat dianalisis dan dikembangkan dalam artikel ini bahwa modernisasi hukum pada Kerajaan Usmani dimulai pada pertengahan tahun 1800-an dengan melakukan beberapa proyek kodifikasi di mana sebagian di antaranya masihtetap memiliki pengaruh, jauh setelah runtuhnya kerajaan tersebut. Modernisasi dimulai dengan upaya mengkodifikasi Hukum Pidana Islam

pada tahun 1840 M dan 1851 M,yang kemudian diikuti oleh pengadopsian terhadap dua Code (perundang-undangan)yang terinspirasi oleh hukum Perancis, yakni Kitab Undang-Undang Hukum Pidana padatahun 1858 dan Kitab Undang-Undang Hukum Acara Pidana pada tahun 1879. Silakan dielaborasi dengan optimal dalam penulisan artikel ini.

Perlu juga dielaborasi maksimal dan diuraikan secara spesifik mengeni Majallah al-Ahkam al-'Adliyyah, karena proses modernisasi hukum Kerajaan Usmani yang paling monumental adalah Majallahal-Ahkam al-'Adliyyah (Himpunan Undang-Undang Hukum Perdata) yang dikeluarkan antaratahun 1869 dan 1876. Majallah ini merupakan suatu upaya untuk memberdayakan prinsip-prinsip yang terdapat dalam karya-karya fukaha mazhab Hanafi sebagai mazhab resmi diwilayah kekuasaan Kerajaan Usmani untuk menciptakan suatu undang-undang modern tentang huquq (hak-hak), iltizam (komitmen material) dan beberapa prinsip acara perdata.

Kompilasi Majallah al-Ahkam al-'Adliyyah tersebut merupakan turning point dalam sejarah modern hukum Islam.Untuk pertama kalinya prinsip-prinsip kontrak sesuai syari'ah dirumuskan dan diundangkan sebagaimana model perundang-undangan Eropa.14 Sekalipun aturan-aturan hukum syari'ah,dalam hal ini berdasarkan mazhab Hanafi, dijadikan acuan namun terdapat beberapa modifikasi di dalamnya. Peraturan yang terdapat dalam Majallah ini tidak selalu memuat pendapat fukaha Hanafi terkemuka, tetapi lebih merupakan himpunan pendapat para fukaha Hanafi yang paling sesuai untuk masa itu.

18. Apakah kesimpulan sudah mencerminkan hasil kajian/penelitian?:
    Ya

19. Apakah hasil kajian/penelitian memberikan dampak bagi pengembangan/kemajuan iptek?:
    Biasa saja

20. Saran, rekomendasi, dan catatan hasil review naskah:
    Perlu diuraikan temuan baru dari studi yang dilakukan ini dalam penulisan asrtikel ini dengan optimal, sehingga bisa dikemukakan novelty dari studi yang dilakukan. Jika tidak, artikel ini biasa-biasa saja dan tidak berkontribusi bagi pengembangan ilmu. Penulisan artikel ini memang belum sepenuhnya memuat substansi kajian dari riset yang dilakukan dan belum merupakan jawaban dari masalah penelitian secara spesifik. Atas dasar itu, perlu dikembangkan dan diperkuat lagi dengan analisis yang optimal dengan mengacu kepada referensi yang refresentatif sesaui kajian ini.

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