

【論 説】

Controversial Boundary:  
The Construction of a Framework for Muslim Law  
in Singapore in the Period of Decolonization

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要 旨

植民地から独立国家への移行期にあった 1950～1960 年代、シンガポールでは婚姻法改革が進められ、非ムスリムの婚姻法は、一夫一婦制と婚姻における女性の権利と地位を保護することを謳う女性憲章（1961 年制定）に統一された。一方、ムスリムは独自の法枠組みを維持し、1957 年ムスリム条例（Muslim Ordinance, 1957）以降、複数回の改訂を経て、1966 年ムスリム法施行法（Administration of Muslim Law Act, 1966）制定で締め括られた。婚姻法枠組みは女性憲章とイスラム法制とに二分されたが、いずれの改革も婚姻における女性の権利と地位の改革を焦点としていた。このことは、改革論議において法枠組みの二分が必ずしも前提とされず、これを乗り越える動きが現れうること、それによって法枠組みの境界が固定的なものではなく、議論と見直しの対象として動的なものになりうることを意味する。本論文は、脱植民地化期という社会再編期の制度変革の議論の中で、ムスリムと非ムスリムを二分する法枠組みの境界の展開を検討する。特に、改革をめぐる議論を牽引した人物として、シンガポール生まれでマレー人女性福祉協会を創設したチェ・ザハラ（Che Zahara）、ボンベイ生まれのパハイー教徒でシンガポール女性会議を立ち上げたシリン・フォズダー（Shirin Fozdar）、南カリマンタン出身のアラブ系ムスリムでムスリム同胞団を結成したアフマド・ルトフィ（Ahmad Lutfi）、シンガポール生まれのインド系ムスリムの法律家アフマド・イブラヒム（Ahmad Ibrahim）の活動と構想に焦点を当てる。

Introduction

The decolonizing period of Singapore was a period of reorganization of family law systems. In Singapore, the Women's Charter has been enacted in 1961 which replaced existing marital ordinances<sup>1</sup> and introduced a prohibition on plural marriage, except

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<sup>1</sup> At that time, Christian Marriage Ordinance, and Civil Marriage Ordinance were in force.

Muslim population. In other words, a separate framework for Muslim law was retained without subsumed into the national family law system, and developed as a part of national law. Nevertheless, the contents of Muslim legislation also underwent essential changes in this period that mirrored changes in non-Muslim family legislation, the Women's Charter went through; a series of Muslim legislations introduced the control of divorce, the restriction on polygamy, and the lowest marriageable age and lengthened the period of maintenance for divorced women. In short, Muslim family law reform attempted to improve women's status by tightening marital ties. The Administration of Muslim Law Act (AMLA) in 1966 was the finishing touch on this reformation; it was advocated as 'the Muslim side of Women's Charter'. The course of legislation, however, was criticized both by Muslim and non-Muslim activists. The debate primarily pertaining to the boundary between Muslim and non-Muslim family law frameworks.

The intention of this paper is to trace debates over Muslim family law reforms in the 1950s and 1960s in order to understand the formation of the Muslim law administrative system from the perspective of the formation and development of definitive boundaries between the Muslim and non-Muslim legal frameworks. The protagonists of this debate were Che Zahara<sup>2</sup>, a pioneering Malay Muslim women's activist who established the Malay Women's Welfare Organization in 1947; Shirin Fozdar<sup>3</sup>, a Bahai woman born in India who set up the Singapore Women's Council, which strongly advocated for the prohibition of polygamous marriage; Ahmad Lutfi<sup>4</sup>, Arab-descendant Muslim from Kalimantan who founded Qalam Press in 1948 and published a monthly *jawi* magazine, *Qalam* for 20 years from 1950 to 1969; and

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<sup>2</sup> Che Zahara binti Noor Mohamed (1907-1962) was Malay Muslim born in Singapore. Her father, Noor Mohamed was of the first generation educated in English and worked as revenue officer. Che Zahara was a member of AWAS (Angkatan Wanita Sedar), which was formed as women's section of Malay Nationalist Party to 'arouse in Malay women the consciousness of equal rights they have with men, free them from the old bonds of tradition, and to "socialise" them'. After World War II, Che Zahara opened an orphanage to help orphans and prostitute girls (Manderson, 1980: 55,62; *The Straits Times*, hereafter *ST*, 1947.10.12: 5; *ST*, 1950.10.1: 5; Sham, 3-5).

<sup>3</sup> Shirin Fozdar (1905-1992) was born from Persian-Bagai parents in India. She took part in activities to help women from her teenage and got close with Mahatma Ghandhi. With her husband, Khodadad Fozdar, a medical practitioner of Bahai faith, she moved to Singapore in September 1950 and established the Singapore branch of 'Bahai National Assembly of India and Burma' at that year (Chew, 1994: 114-115; Ong, 2000: 11; *ST*, 1950.10.16: 7).

<sup>4</sup> Ahmad Lutfi was the pen name of Abdullah bin Hamid al-Edrus (1911-1969), an Arab-Muslim born in Kalimantan. As an editor and the main writer of *Qalam*, a monthly Jawi-language periodical published from 1950 to 1969, he had broad outlook over politics, culture, social problems, as well as religious issues. He also founded the Muslim Brotherhood in 1956 (Yamamoto, 2003: 59-64).

Ahmad Ibrahim<sup>5</sup>, born in Singapore to Indian Muslim parents and became a top legal officer in decolonizing period as a common law expert.

## I The Aim of this Paper

This study intends to describe the formation of Muslim legal framework through 20 years, by examining a controversy undertaken by four activists over family law reforms. But the Muslim legislation in Singapore in the 1950s and 1960s failed to attract much academic interest. Syed Muhd Khairudin Aljunied and Judith Djamour are of few made reference to this topic.

Aljunied investigated the aftermath of the Maria Hertogh riots in 1950 and assumed that a change in the colonial authorities' non-interventionist attitudes toward religious matters led indirectly to the enactment of the Muslim Ordinance in 1957. Prior to this, there had been repeated Muslim demands for systematic reform and they skilfully took advantage of the authorities' bafflement (Aljunied, 2009: 2-20, 119-126).

Djamour, who researched on Malay marriage and the kinship system in Singapore around 1950 (Djamour, 1959) conducting a survey of trial hearings immediate aftermath of the introduction of *Shariah* court<sup>6</sup>. As an account of Muslim law administration in Singapore at that crucial time, her study describes the administrative conditions of the *Shariah* court and Muslim marriages in rich detail. She argued that divorce rates among Muslims in Singapore declined dramatically thanks to the procedural rules enacted in Muslim Ordinances and the function of the *Shariah* court (Djamour, 1966: 172-182). It is regrettable, however, Djamour treated the convergence of the critical awareness of the high divorce rate and the course of legislation as a natural outgrowth, thus the formation of the system was described linearly. By contrast, Aljunied suggested that Muslims' approach toward legal reform was not monolithic, rather it was based on activities undertaken by diverse participants, including those in the women's movement and male leaders of the Muslim Advisory Board<sup>7</sup>, while his study doesn't cover the detail of such multiple

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<sup>5</sup> Ahmad bin Mohamed Ibrahim (1916-1999) was Indian Muslim born in Singapore. His grandfather was from North India and his mother was also from Indian family (Abdul Monir Yaacob et al., 2007: 13-17).

<sup>6</sup> *Shariah* court had been set up by the provision of Muslim Ordinance of 1957 and began to run in November 1958.

<sup>7</sup> The board was established on June 10, 1915, as an emergency measure during the Muslim

debates (Aljunied, 2009: 119-124).

It is Ahmad Ibrahim whose proliferated studies which traced the development of family law and Muslim family law in Singapore (Ahmad, 1965a; Ahmad, 1965b; Ahmad, 1965c). As an expert on law as well as a moderate Muslim leader, he successively held various posts such as Vice Chairman of the Muslim Advisory Board (1947–1968), a nominated member of the Legislative Assembly (1951–1955), Singapore's first Advocate General (1959–1963) and Attorney General (1963–1967). He drafted many Muslim legislations and also the Women's Charter. While his essays are rich in information from a legal perspective, it does not elucidate the debates in the course of the legislation. But as some of his essays show that he took part in debates over Muslim family law reforms and eloquently states his conception for legislations, this paper examine those essays as primary sources.

Biographical studies have not so thick in comments on the legal reform. Phyllis Chew Ghim Lian picks up Shirin Fozdar as a driving force in the promulgation of the Women's Charter. She described that how Shirin Fozdar urged leaders of religious and ethnic groups to enhance women's status in marital law, and also refer to her cooperation with Muslim women activists such as Che Zahara and K. M. Siraj<sup>8</sup> (Chew, 1994: 116). But since she concentrates on the promulgation of the Women's Charter, she did not pay much attention to the Muslim side of legal reformation and disputes over it. Talib Samad, who wrote a biography of Ahmad Lutfi, made analysis on Lutfi's understandings of old-fashioned religious customs and negative influence of Western culture, but made no mention to his commentaries over actual legislation (Talib, 2002: 17-43).

Elsewhere, one sees little discussion of Islamic legislation in Singapore in the 1950s and 1960s<sup>9</sup>. However, developments in Singapore was important for both

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rebellion in India, and was changed into a standing committee after the end of World War I. The original name was the Muhammedan Advisory Board. English official R.J. Farrell served as the chair, alongside Muslim leaders representing in 'each clan' who were appointed to the board member. Muslims saw the board as a quasi-official body that issued recommendations to the government, and whose recommendations and advises toward Muslim general were not particularly welcomed (Yegar, 1979: 99-109). The board was dissolved during World War II, and reorganized and renamed to be Muslim Advisory Board in October 1947 with its membership composed solely of Muslims (Ahmad, 1979: 13).

<sup>8</sup> Khatijun Nissa Siraj (1925-) is Singapore born Muslim with mixed origin. Her father, T. K. S. Dawood was rich merchant from Madras and her maternal grandfather was Turkistan Muslim moved to Singapore and made a fortune. Siraj studied in Methodist Girls School and in 1952, established Young Muslim Women's Association, which later joined the Singapore Women's Council led by Shirin Fozdar. When *Shariah* court has been set up in 1958, she appointed as social worker after broke down the opposition of Chief *Kadhi*.

<sup>9</sup> Hickling situated the legislation of 1950-1960 as an extension of the process started in 1880,

Singapore and Malaysian legal history for some reasons. First, the family law system in Singapore and Malaysia share a common origin in the context of British colonialism and in post-colonialism<sup>10</sup>. For constructing the system of Muslim family law administration, Singapore was a model for Malaysia in the first decade of 20<sup>th</sup> century and then, in the decolonizing period, institutions developed in Malay states were taken as models by Singaporean legislators. It is worth noting that this cross reference continued since the political independence of each. As Horowitz pointed out, the Administration of Muslim Law Act (AMLA) in 1966 of Singapore became one of the models for legal reform undertaken in Malaysia in the 1980s (Horowitz, 1994a: 292-293). This has been promoted because Ahmad Ibrahim, a drafter of AMLA later moved to Malaysia and involved in the reformation of the Muslim family law administration<sup>11</sup>. Ahmad Ibrahim, in his advocacy statement for Muslim family law provisions as well as for Women's Charter, had shown his basic ideas regarding the construction of 'modern family' through legal measures. This is the second reason why this study emphasizes the importance of legislation in decolonizing Singapore.

Given the relationship in the early period and the legal development, this paper argues that legislation enacted in Singapore in the 1950s and 1960s was an intermediate point in the history of Muslim Law in Singapore and Malaysia. In

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with the enactment of Muslim (Mahomedan) law. Hickling saw that this set out the legal precedents set by British judges, who applied Islamic law as an extension of common law, and shaped the position of Islamic law in Singapore's judicial and legal institutions (Hickling, 1992: 157).

<sup>10</sup> The Straits Settlements was the heart of the administration in English-occupied Malaya, and served as a model for Islamic administration in British Malaya. Yegar argues that the enactment of Muslim law in 1880 as a precedent for all Malay states, thereby providing a framework for application of Islamic administration to Muslims. However, since the position of religious administration and Sultanate authority were significantly different in Singapore (the Straits Settlement) and in Malay States, this led different standard of institutional development in those region. For example, the *Kathis* in Singapore were only to register the marriage and divorces and seen as government officials who had no expert knowledge of Islamic law, where in contrast, the Malay *Kathis* were given wide latitude in terms of authority up to hold court with jurisdiction (Yegar, 1979: 94-109, 150-159). In Singapore's legislation of the 1960s clearly articulates the construction of institution in accordance with Malaya (*ST*, 1961.5.15: 4).

<sup>11</sup> Ahmad Ibrahim moved to Malaysia in 1969, at which point he played a critical role in the creation of a law department at the University of Malaya, in addition to his work in reforming the country's Muslim legal system. Although Ahmad Ibrahim has been a subject of discussion among theorists, very little academic analysis has been done of his ideas or the concepts for the legalization. Horowitz has written most about Ahmad Ibrahim's contributions to legalization; he also assesses Ahmad Ibrahim's influence—as he was involved in similar reforms in Singapore—on the legal reforms enacted in Malaysia in the 1980s, and with reference to the legal rules of Pakistan, British India, and Singapore. He alludes to the rules that largely gave rise to common law, which are employed in procedural law, and how such procedural laws became a point of advocacy for Ahmad Ibrahim, who himself was an expert in common law (Horowitz, 1994a: 292-3). For other analysis on the Ahmad Ibrahim's work in Malaysia, see (Hamayotsu, 2003; Hooker, 1984).

reviewing the content and contested points of debates surrounding legislation in the two decades, this paper will clarify aspects of Ahmad Ibrahim's legislative thinking and form the basis for further analysis of the subsequent development of Muslim law in this region.

## II Debates in the 1950s: The Rise of Women Activism

### 1. Activity of Che Zahara and Nadra case

One of the earliest women's activists urged the Muslim family law reform was Che Zahara, who established the Malay Women's Welfare Association in October 1947. As an ex-member of AWAS Singapore branch, Che Zahara criticized Malay customs like easy divorce and child marriage as these customs led Malay women into financial difficulties until they forced to live immoral lives. She tackled with this issue through various activities; performing educational sketches; establishing a women's school to teach English, *Jawi*, sewing and domestic science; advising for marital conflict; and supporting to remarriage for young divorcees. Che Zahara's activities were frequently covered by English press as 'sophisticated', while some of her activities such as procession, sketches and her sheltering of runaway couples induced severe critiques from the Muslim Advisory Board (*ST*, 1947.11.27: 6; *ST*, 1948.6.9: 3; *ST*, 1954.10.23: 7). Tension between Che Zahara and the Muslim Advisory Board reached critical level when Che Zahara supported a bill to ban the marriage of person under 16 years old irrespective of his/her religion in 1950. The bill had been brought to the Legislative Assembly as a reaction to the marriage of Nadra, then 13 years old Dutch girl whose custody rights were disputed by her biological parents in Holland and her Malay foster mother.

Nadra was a Muslim name of Maria Huberdina Hertogh. She was born to a Dutch father and an Eurasian mother in the Dutch East Indies in 1937 and was baptized in the Roman Catholic Church. In 1942, during the Japanese military invasion, Maria was entrusted to a Malay woman called Aminah, and Aminah raised Maria in Muslim faith naming her Nadra. After the Japanese surrender, Aminah brought Nadra to her birth village in Terengganu. In 1950, since the Dutch Consul General demanded that Nadra be handed over to her biological parents, Aminah brought Nadra to Singapore to settle the dispute. Though the High Court in Singapore ordered Nadra to be handed

to Dutch parents, in July 1950, the Court of Appeal rescinded the order on the ground of a legal procedural error. Upon receiving the verdict, Aminah arranged for Nadra, who was 13 years old at the time, to be married to a Malay Muslim man, Mansoor Abadi, a teacher in training from Kelantan. The marriage incited debate because of her age. Nadra's marriage was problematized as 'child marriage' and Muslim leaders expressed that child marriage was oppose to modern society, while they stood that marriage already took place under the Muslim law should be left untouched. Shortly thereafter, John Laycock, a member of the Legislative Council, began a move to ban the marriage of person under 16 years old (*ST*, 1950.8.28: 5; *ST*, 1950.9.2: 7)<sup>12</sup>.

Che Zahara welcomed this move and when Laycock announced that the bill would be revised not to include Muslims since the original bill received united opposition from the Muslim Advisory Board, she held a mass meeting calling for inclusion of Muslims into the application of the bill (*ST*, 1950.9.5: 7; *ST*, 1950.10.16: 7). Che Zahara also urged to look up the problems faced by Malay young divorcees because of another child marriage (*ST*, 1950.10.1: 5). Shirin Fozdar, who had arrived in Singapore just one month prior undertook Che Zahara's deed. The allegation of Che Zahara, however, as well as Shirin Fozdar, met strong opposition from members of the Muslim Advisory Board (*ST*, 1950.10.19: 5; *ST*, 1950.11.13: 4). The bill submitted was revised that Muslims excluded from its application. Furthermore, the bill itself did not bear fruit due to continued opposition from Muslim members of Legislative Council (*ST*, 1950.10.25: 6).

On Che Zahara's allegation, Ahmad Lutfi also countered in his essays in *Qalam*. Ahmad Lutfi argued that in Islam, ability of marriage of a girl is determined based on whether she has attained puberty (*baligh*), not by fixed age. But the attitude of Ahmad Lutfi was not simple. He presented his interest on the same topic as Che Zahara, in criticizing 'forced Marriage'. Forced marriage is the marriage of virgin girl solemnized by her guardian (*wali mujbir*) without consent of bride. While the orthodox view of *Shafi'i* school recognize the right of guardian to do so, Ahmad Lutfi condemned the view as baseless in *Quran* and *Hadith* of Prophet and tried to conceptualize 'women's right' in the context of Islam. Ahmad Lutfi argued that women and girls, once they're attained puberty, were independent from their parents and had the right to consent to marriage, thus her guardian's right to marry her out should depend on it.

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<sup>12</sup> For chronological event and judicial disputes, see (Hughes, 1980; Haja, 1989).

The religion affords woman who has already attained puberty freedom and independence according to logic and in practice, so our woman who has already attained puberty has the freedom with her and that freedom including the rights of marriage. Therefore, according to *al-Quran* and *Hadith* it is illegal to marry a virgin girl to a man without her consent. Asking for her consent is not a matter of recommendation (*sunat*) but an obligation (*wajib*), because if she does not consent, the marriage straightly illegal and if she got pregnant, her child becomes illegitimate (*haram*) child (*Qalam*, 1950.11: 14).

By conceptualizing women's right, Ahmad Lutfi reacted to Che Zahara's allegation, but also tried to counter the course of court procedures which trying to determine Nadra's religious and marital status through custodial argument, not through Nadra's own confession notwithstanding the fact that she already attained puberty (Tsuboi, 2013). Ahmad Lutfi's critique of forced marriage also went to condemn *ulamas* who had recognized such customs. His stand on forced marriage issue and his conception of women's rights caused criticism from the Mufti of Johor, who argued the Lutfi's idea was deviate from Islam. Ahmad Lutfi insisted his view.

In the court, Nadra's natural parents claimed that the marriage was invalid since her biological father did not give consent to his daughter's conversion to Islam, and the High Court applied Dutch law on the grounds that legally speaking, Nadra's domicile was the Netherlands according to her father. As a result, the marriage was deemed invalid and a verdict was handed down declaring that custodial rights of Nadra rested with her natural parents. Seeing emotional ties between Nadra and Aminah, and Nadra herself strongly resisted to be separated from Aminah, the case attracted broad public interest from the first moment. This escalated into deep dissatisfaction when Nadra's marriage incited legislative effort to ban similar marriages and when court issue developed to question her Muslim status and legality of her marriage. The verdict instigated Malay riots resulted in 18 deaths.

## 2. Disputes over Muslim Divorce

After the riot, neither Che Zahara nor the Muslim Advisory Board slackened their requests for Muslim law reform. Che Zahara claimed to check Muslim divorce, as easy divorce was the biggest cause of Muslim divorcees' difficulty, while the Muslim Advisory Board requested the establishment of Muslim court with special jurisdiction



to deal with Muslim matrimonial issues in along with the laws of colony, criticizing *Kathis*, including the one that solemnised marriage of Nadra, neglecting legal procedures in the administration of Muslim law. At their first point, the Muslim Advisory Board did not weight the divorce rates and they did not refer to the necessity to check Muslim divorce by establishing the court. This attitude changed once the discourses regarding Muslim divorce trend as problem began to attract public interest. Its leading actor was Shirin Fozdar, founder and the radical leader of inter-religious and inter-ethnic women's body, Singapore Council of Women (SCW). As soon as SCW was founded in April 1952, Fozdar put up the marital law reform for all Singaporean women. Fozdar criticized the authority's inaction toward Muslims divorce trend adopting sensational terminology such as "two marriages, one divorce" (*ST*, 1952.12.31: 5), "divorce rate here is higher than in Hoollywood" (*ST*, 1954.1.29: 1).

Beside this, SCW drafted monogamous bill as Fozdar thought that polygamous marriage symbolically present the unequal status of women. Up to December 1953, SCW drafted the bill to ban polygamous marriage and sent it to colonial authorities, members of the Legislative Council, represent bodies of ethnic/religious communities including the Muslim Advisory Board. In their letter, SCW claimed that monogamy was the only way to relieve misery and unhappiness condition of married women.

(...) We are confident that our appeal to you to assist the women to get better marital treatment and rights will not go unheeded. The greatness of a nation is often measured by the caliber of its women. What greatness can we expect for this country where in every home, the women live in a state of constant fear of being deprived of home, security and everything that goes to maintain a happy family. All advanced nations including Islamic countries like Persia and Turkey have granted similar rights to their women and progressed through the efforts of these same women who strove to offer their mite to the cause of human progress. It is very unfortunate that in this country the women are very backward and their marital ties insecure.

Nowhere in the world is divorce so easy as in this country, but all the facilities of divorce are enjoyed by men. Those who indulge in this practice are governed by a Book which to them should be the word of God. Therein it laid down, "And if you fear a breach between the two, then appoint a judge from his people and a judge from her people if they both desire agreement, Allah will effect harmony between them surely Allah is knowing aware". Again it is said "of all things permitted to men divorce is the most hated by Allah." (...) Our contention is that the condition laid down about doing

"justice between them" makes polygamy impossible. Justice does not consist in giving them equal share of the material wealth of a man, but equal share of the affection as well. Is such a thing possible that a man can show the same degree of affection to more than one woman? The other alternative therefore, in order to please God is monogamy, "this is more proper that you may not deviate from the right course."(...) (SCW, 1953.12.14)

But the Muslim Advisory Board opposed the SCW that their claim was against Muslim law and unacceptable to both Muslim men and women. Not only the Muslim Advisory Board challenged SCW's view. Che Zahara, a founding member and once a vice president of SCW but soon withdrew from her post in SCW (SCW, 1952.4.24), opposed to the SCW's plea to apply the 'one man one wife bill' to all the marriages including Muslims with reasoning that high rate of divorce among Malay Muslims had relevance to polygamy. Che Zahara denied the argument and commented that Muslim law sanctioned the polygamous marriages (ST, 1953.5.19: 3).

Around nearly the same phase, arguments of Che Zahara and the Muslim Advisory Board getting closed in urging to setting up of Muslim court to deal with divorce. The Secretary general of the Muslim Advisory Board clearly connected two issues when he stated to the press that "There is nothing wrong with our divorce laws, but we certainly do need better machinery to administer them" (ST, 1953.11.19: 5). Ahmad Lutfi also took this opportunity to welcome the move to set up *Shariah* court:

...The divorce cases of the last several years in Singapore, which show no sign of decreasing, are creating an atmosphere that demands the establishment of *Shariah* court. Because this is a public matter, in-our opinion, it should be administered by the government and the government should deal with the matters that are not to be left out like this. It is desirable to be brought to the government by Muslim members of Legislative Council (*Qalam*, 1953.11: 4).

He goes on to argue that the administration of Muslim marriage and divorce laws is a public matter, and that the government should bear expenses of setting up and running courts (*Qalam*, 1953.11: 4). Behind such arguments was the fact that the Muslim community had sought, for many years, to set up appeal institutions for the *Kathis*.

The Muslim Advisory Board pointed *Kathis* as the main cause for the high divorce

occurrence. In the Legislative Council, Ahmad Ibrahim appealed the necessity to have a 'Kathi Court', since 'at present matters of Muslim marriage and divorce are dealt with by individual *Kathis* who are to a large extent unfettered by any control or rules' (LC, 1954.7.20). He also pointed that 'the *Kathis* in Singapore had in effect a free hand in the solemnisation of marriages' and that 'the ease with which divorces were granted by *Kathis* in the past has been the principal defect of the administration of Muslim law in Singapore'. For him, this caused by the fact that '*Kathis* in their eagerness to earn the fees for the marriage have been too ready to accept the statement of parties' (Ahmad, 1958.12: 75).

By asserting 'high divorce rate' as problem, the Muslim Advisory Board adopted the position of Che Zahara. The time was ripe; problematic recognition for Muslim divorce had established through high coverage of press, and this gave the colonial authority a ground to establish the Muslim court. By the Muslim Ordinance of 1957, *Shariah* Court has been set up first in history of Singapore and it administered the stricter divorce procedures embedded in the Muslim Ordinance.

Fozdar's claim to ban the bigamous marriage, on the other hand, received support from the People's Action Party government, and in September 1961, it bear fruit as a provision in the Women's Charter<sup>13</sup>. The preamble of the Women's Charter declares that the charter is 'An Ordinance to provide for monogamous marriages and for the solemnization and registration of such marriages; to amend and consolidate the law relating to divorce, the rights and duties of married persons, the maintenance of wives and children and the punishment of offences against women and girls; and to provide for matters incidental hereto', thereby outlawed polygamous marriages among non-Muslims. Parts of the charter such as marital provisions including monogamous marriage, were not applicable to Muslims<sup>14</sup>. Thus, Muslim side of reform became a continuous issue. In 1960, before the Women's Charter passed by the Legislative Assembly, the Muslim Ordinance was amended to restrict polygamous marriage by legal procedures; the applicants of polygamous marriages were required preliminary inquiry by Chief *Kathi* so that make sure that the marriage have no legal obstacles in regard to Muslim law. In August 1966, a year after the sudden independence from

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<sup>13</sup> It repealed the Christian Marriage Ordinance, the Civil Marriage Ordinance and other Ordinances related to the status and properties of girls and women.

<sup>14</sup> Part II to IV (provisions of monogamous marriages and its solemnization and registration) and part IX (provisions of divorce) and section 166 (provision that assure marriages contracted before the date of 2<sup>nd</sup> March 1961 deemed valid) of the Ordinance shall not apply to any person who is married under the Muslim law. See Women's Charter Section 3, Item 1, 2.

Malaysia, the Administration of Muslim Law bill, which introduced the extension of custodial period, the minimal age for marriage, the prohibition of registration of triple talak, and so on passed by the Parliament. Othman Wok, then Minister for Culture and Social Affairs, advocated for the bill.

While it has not been possible to please everybody and to accept all the representations made, it is hoped that the Bill will be welcomed as one more step - a significant step - in the regulation of affairs and in the proper administration of law in Singapore. The Bill also represents a significant advance in social legislation for the protection of women, and it is hoped that women will, in particular, welcome the Bill. The Bill has not, it is true, given the women all the benefits of the Women's Charter, 1961, but in itself and within its limitations it represents a charter which has restored to women their rights of which for long they have been deprived (*SP*, 1965.12.30).

Between five years since the Muslim Ordinance was amended, there were another debate between Ahmad Lutfi and Ahmad Ibrahim, a legislator and advocator for both the Women's Charter and Muslim family legislations.

### III Debates in the 1960s: Ahmad Lutfi and Ahmad Ibrahim

#### 1. Disputes over Divorce Provisions

Seeing that Muslim Ordinance imposed substantial restrictions on divorce, Ahmad Lutfi abandoned its supportive attitude toward Muslim Ordinance and sought the repeal of such laws. The dissatisfaction with the set of legislations first appeared in a discussion opposing the Administration of Islamic Law Bill<sup>15</sup> in 1960:

...(according to the articles,) unless a *Kathi* or Assistant *Kathi* has affirmed, upon inquiry, that both husband and wife have reached an agreement, no divorce or

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<sup>15</sup> Released by the Singapore government in January 1961 and withdrawn in the same year because of the strong opposition from Muslim community. The bill introduced the stipulations to establish the Singapore Muslim Religious Council (*Majlis Ugama Islam Singapura*) to administer Muslim fund and trust, to issue fatwa and to collect and distribute *zakat* and *fitra*. Since the bill combined the existing Muslim Ordinance, it also introduced further marital reform in the custody rights of divorced women or in other topics.

reconciliation (*rujuk*) may be registered. Only in cases where both husband and wife have agreed to a divorce may a divorce be legally registered. In short, a husband may not divorce unless his wife has given consent (*Qalam*, 1961.3: 40).

Ahmad Lutfi argued that the necessity of petitioning the *Shariah* court to register a divorce due to the inability to obtain an individual to register their divorces, was tantamount to being 'unable to divorce', which goes against Islamic law. He further criticizes the legislation as contradicting Islamic law:

...if it (the right of *talak* statement) cannot be exercised freely...then regardless of whether you can get a divorce through law of *Shariah*, the divorce will be held in limbo due to national laws, thus creating a situation in which the husband is committing adultery with his wife (*Qalam*, 1962.6: 5).

Ahmad Lutfi's position on divorce was expressed very clearly.

The aspects in this legislation we must pay the most attention to are the divorce and the attendant payment thereto (with regards to the waiting period), and the enforcement of child support payment for children. The reason is that many males fail to fulfil this obligation, leaving the children entirely to the divorced wife. This legislation would make such payments obligatory, a critical element in stabilizing our society (*Qalam*, 1956.1: 3-4).

He did not advocate for the suppression of divorce; rather he was putting emphasis on legalizing the husband's obligation to provide for his dependents. Ahmad Lutfi repeated same point that 'such reform would improve the lot of mothers in society and prevent harm to the weaker sex' (*Qalam*, 1962.6: 4-5).

There were no significant difference between Ahmad Lutfi and Ahmad Ibrahim on the issue of the divorce rate and economic and social difficulties of divorced wives and their children. On the other hand, there was a gap between them over the measures to address those problems. Ahmad Lutfi was reluctant to change the 'rights' of husbands but attempting to solve problems related to divorce by strengthened obligations and responsibilities of husbands such as providing for dependents. By contrast, Ahmad Ibrahim claimed that restricting the power of divorce would benefit the Muslim community in Singapore:

The Women's Charter, 1961, permits divorce on grounds which are substantially common to the husband and to the wife. It is only the Muslims in Singapore who claim that the Muslim husband should have an unrestricted right of repudiating his wife. Is this freedom really beneficial to the Muslims? Is it to the interest of the Muslim community that a husband should be able to abandon his wife and children for no fault of the wife and to leave the wife without support after three months of *eddah*? Again in most countries the right of the Muslim husband has been restricted and it is only bigoted fanaticism and a lack of social consciousness which leads the Muslim men in Singapore to claim their exclusive rights in this matter (Ahmad, 1964.5: 15).

Ahmad Ibrahim also broached the subject of legal reform in Arab countries, Indonesia, and Malaysia, and positioned Singapore's reform as part of the tide of reform in these countries.

Recent legislation in the Arab countries based on the Muslim law have decreed that where the three *talaks* are pronounced at once, this will only take effect as one *talak*, but in Singapore the views of the orthodox School are still followed. It is possible however by the influence of the *Shariah* Court and the *kathis* to encourage the Muslims to use only the *ahsan* (or best) form of *talak* (Ahmad, 1962.2: xv).

By referring to the movements in Arab countries, Ahmad Ibrahim claimed legitimacy for similarly conceived policies. Responding to criticism that legal reform in Singapore as oppressive towards divorce and polygamous marriage, he argued that 'In many respect, indeed, the AMLA is moderate and even conservative when compared with similar legislation in other Muslim countries' (*ST*, 1966.11.17: 8).

## 2. Polygamous Marriage and the Women's Charter

Ahmad Lutfi complained that since the condition imposed in the inquiry were too severe, 'only three instances of polygamous marriages that successfully met this condition in 1960'. He claimed that although the Chief *Kathi* was charged only with 'confirming that there were no lawful obstacles according to the law of *Shariah*', he actually imposed four requirements: the capacity of the husband to maintain his wives, approval of the first wife, approval of the second wife's guardian, and approval of the

second wife. According to Ahmad Lutfi, the preliminary inquiry was ‘seen by Muslims as a rule going against Islamic law that was being implemented through stealth’ (*Qalam*, 1962.8: 6).

Ahmad Lutfi’s criticism of the marriage and divorce rules reached a pitch beginning in January 1961. He came not only argued that the repressive administration of divorce and polygamous marriage was ‘against Islamic law’ but also criticized the law for being ‘Christian law’ (*Qalam*, 1962.8: 40) or an ‘intrusion of the Women’s Charter:’

Currently, the shrewd members of the Advisory Board are scheming to incorporate section 4 of the Women’s Charter<sup>16</sup> into Muslim law (*Qalam*, 1962.10: 6, 40).

Ahmad Ibrahim said of the Women’s Charter: ‘It is an exemplary rule of law from the perspective of a human rights charter’. He argued that the charter’s exemption of Muslims from the monogamy rule should be revised:

Another major reform in the Women’s Charter, 1961, is the abolition of polygamy, which again is made applicable to everyone but the Muslims. Is it really to the benefit of the Muslims that they should be allowed to practice polygamy? Polygamy is not enjoined in Islam but permitted subject to strict conditions. Only a person who is blind to the facts of modern social life will deny that polygamy causes the disruption of a happy family life and brings about hardship to the wife and the children of the marriages. It is difficult enough for the ordinary Muslim to give the comforts of life and a good education to his children. To allow him to practice polygamy is in effect to allow him to neglect the happiness and education of his children (Ahmad, 1964.5: 15).

Arguing that the Women’s Charter’s ban on polygamous marriage was a model for modern society, Ibrahim cited other Muslim countries like Turkey and Tunisia as countries in which ‘polygamy has in fact been abolished’ and added that ‘(polygamy) has been subject to strict control in many other Muslim countries’. His stance was confront to that of Ahmad Lutfi, who said of the Women’s Charter had originated in specific religion or ethnicity, such as Christian law or Buddhist law, and therefore denies its applicability to Muslims. Ahmad Ibrahim countered such critiques:

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<sup>16</sup> Section 4 of the Women’s Charter stipulates the person of disability to contract marriages (and this included person who already married).

„the Government of Singapore is not a Christian Government. It is not the policy and never has been the policy of the Government to impose a Christian or Buddhist form of life on the peoples of Singapore. Rather because of the division between religion and State, the government does not purport to deal or interfere in religious matters. ...It has been stated for example that the Women's Charter, 1961, is a Christian law, because it imposes monogamy and because it restricts divorce. This is clearly absurd for it is clear that historically neither monogamy nor divorce were parts of Christian teachings. It is as absurd to say that the legislation as regards monogamy or divorce is Christian as to say that the lounge suit or the motor car is Christian. The Women's Charter, 1961, in fact repealed the Christian Marriage Ordinance and its provisions override some of the teachings of Christianity, Hinduism, and Buddhism. It is a State law designed for the welfare of all citizens and it should be judged on the basis 'Is it a good law or a bad law?' rather than on the basis 'Does it comply with this or that provision of Christianity or Islam?' (Ahmad, 1964.5: 12)

While championing legal reform by using the examples of other Muslim countries, Ahmad Ibrahim also discussed Muslim welfare in Singapore. For this reason, Ahmad Lutfi's position, which opposes to the preliminary inquire for polygamous marriage on the ground that Singapore government was 'interfering with religious faith'<sup>17</sup>, comes under fire from Ahmad Ibrahim who criticized the position for neglecting the benefits to citizens' welfare and the community and for merely proclaiming 'orthodoxy'.

In rejecting welfare legislation and measures which are introduced by the State on the plea that they are contrary to *orthodox Shafii beliefs*, are the Muslims really benefiting themselves or are they rejecting benefits which they should share with their fellow citizens? Should a legislation be rejected merely because it does not follow the orthodox *Shafii* beliefs as understood in Singapore or should the question be asked will it benefit the Muslims or not? ...In all the criticisms by Muslims of the Women's Charter, 1961, it has never been suggested that it is not beneficial. (Ahmad, 1964.5:

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<sup>17</sup> 'When the Singapore government enacted the law banning polygamous marriage, the government declared that it did not apply to Muslims. However, in fact, the monogamy law was indirectly applicable to Muslims... In response to this situation, some people asked whether Muslims would be compelled to follow a law that was in breach of *Shariah*. Muslims ...were indirectly affected for saying that the government should not interfere with the Islamic religion' (*Qalam*, 1961.4: 3-4).



13-14)

Ahmad Ibrahim insisted that Muslim law should be reinterpreted along the concept of '*maslahah* or the principle of doing the most benefit to the peoples of that period or country'<sup>18</sup>. His tribute to the Women's Charter was based on the notion that provisions for the control of marriage and divorces were the product of progress of the society of the time.

...it might be questioned whether in fact the demand for special rights and privileges for the Muslims is beneficial to them. First it is necessary to emphasize the fact that the ideal modern state is a welfare State whose policy is to safeguard and improve the welfare of its citizens. The considerations which influence policy and legislation must be the welfare of the inhabitants. ...Singapore is a welfare state and its legislation is designed to improve the welfare of all its citizens, whether they are Chinese, Indians or Malays or whether they are Christians, Muslims or Buddhists... (Ahmad, 1964.5: 11-12)

Ahmad Ibrahim's concept of 'welfare', as might be surmised from the terms 'welfare of all citizens', included both Muslims and non-Muslims. But '*maslahah*' of his usage exhibited same orientation; rather than the specialist discussions centred on interpretation of Islamic law and discussions involving Muslims in particular. For Ahmad Ibrahim, 'Islamic legislation' was a framework to provide the welfare for the Muslim fellows in the ethnically and religiously plural society.

There has recently been a tendency in Singapore among Muslims to demand that Government should not interfere in matters affecting Muslims and that Muslims should be allowed to follow their own practices and laws. It is difficult to know what the self-appointed champions of the Muslim way of life really desire... Such a demand is clearly absurd and dangerous in a State where Muslims are a small minority and where it is necessary in the context of not only Singapore but of Malaysia to create a

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<sup>18</sup> *Maslahah* is a concept that can be deduced from Islamic law, and means public welfare. It has become the basis for legal scholars politically sidestepping a strictly speculative conclusion. The concept of *maslahah* served as the basis for wide-ranging reforms in Islamic law in Southeast Asian Muslim intellectual currents from mid-20<sup>th</sup> century on. Thereafter (after mid-twentieth century), general recognition of *maslahah* as one goal of *Shariah* expanded, and questions began to be asked how *maslahah* would affect legal decisions (Feener, 2007: 49-50).

national consciousness transcending racial and religious groups...(Ahmad, 1964.5: 11-12)

In short, Islamic law in Singapore was conceived and realized as something compatible with the Women's Charter and as a model for equal rights for men and women. It was a system akin to the modern judiciary within an administrative framework. It may be that what Ahmad Ibrahim created in pursuing legal equality under the law was not simply an institution for registering marriage and divorce, but a modern judicial framework for Muslims.

### Conclusion

The Muslim family law reform in decolonizing period was essentially the legislation for women. It is worth pointing that Muslim family law reform in Singapore modelled on that in Malay states as well as Muslim countries like Egypt, Pakistan and secular India which introduced family law reforms in the 1950s also. However, the most influential model was the Women's Charter as it was the counterpart in terms of family legislation.

In the 1950s, where the future course of legislative reform was not so clear, both Che Zahara and Shirin Fozdar demanded unified reform law for women. Their allegations were similar but left one point. While Fozdar thought that the prohibition of polygamy should be applied irrespective of religion, Che Zahara refuted this and asserted that cause of high divorce rate were not polygamous marriages. Rather than advocated for 'one man one wife bill', Che Zahara supported the establishment of a Muslim court to control Muslim divorce. But in anyway, it seems certain that the discourses both by Che Zahara and Shirin Fozdar attracted public attention to the divorce trend of Muslims and prepared ground for establishment of first *Shariah* Court in Singaporean history.

In 1960s, criticisms of the administration of the *Shariah* court and Kathis, and the Muslim Ordinance surfaced. These criticisms were strongly conscious for contents of the Women's Charter. Initially supported the legislation, Ahmad Lutfi's attitude stiffened when he realized that its provisions 'essentially' changed the marital rights of Muslims and follow the Women's Charter. His expressed allegation for 'women's rights' stopped to appear after the debate with Che Zahara, and coincidentally with this, he began to emphasize the responsibilities of men. This change evidences the fact

that Ahmad Lutfi wrote his essays in reaction to issue of the times. His emphasis on men's responsibilities mirrored his understanding that he had to recognize women's rights in the rhetoric of Islam in competence with the one outlined in the Women's Charter.

Ahmad Ibrahim took a moderate course. He advocated for provisions that the quest for similar provisions as in the Women's Charter was a universal trend that already introduced in Muslim countries in the Middle East and South East. Thus, he adopted the similar reforms in the framework of Muslim legislation without hesitation. In reacting to criticism, Ahmad Ibrahim repeatedly stated the concept 'modern society', arguing that the interpretation of Muslim law had to be in line with the times and condition of the society. For him, as 'welfare' was a borderless concept that should be appreciated in a plural and modern society, the control of divorce through legislation was a means of providing welfare of his fellow Muslims.

The framework for Muslim law was developed coincidentally with that of non-Muslim fellow. As energetic debates above indicate, the border between 'Muslim' and 'non-Muslims' was not previously fixed or just an inheritance of colonial rule but was very controversial and by such controversy the framework reached a balance: a balance of different quests to become equal to others and to be different from others, quests came together with living in a multi-ethnic society.

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