

MALAY-MUSLIM WOMEN RIGHT IN DEEP SOUTH OF THAILAND UNDER THE MUSLIM FAMILY LAW AND LAW OF INHERITANCE CODE, 1946

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ABSTRACT

Recently there are some criticisms have been made by reporters regarding the rights of and the status the Malay-Muslim women in the Deep south. Thus this paper attempts to explore, highlight and discuss the legal provisions as stated in Muslim Family Law and Law of Inheritance Code, 1946. Reference shall be made to the decided cases by the Provincial Courts (PCs) and the Muslim Religious Committee Councils (MRCCs) in Patani and Narathiwat provinces. This is because these two institutions are considered as main institutions that play a major role in implementing and enforcing Islamic law and Islamic family law particularly in relation to marriage, divorce, distribution of inheritance, Zakat, endowment and monitoring Halal food in the for the Malay-Muslims speaking areas. The study finds that the rights of the Malay-Muslim women in the four provinces as stated the Code, 1946 are protected in accordance with the objectives of Islamic Law.

Keywords: Muslim women, Thai legislation, Provincial Courts, Muslim Religious Committee Councils.

1. Introduction

Though there are no official figures of the number of Muslims in Thailand, estimates indicate it to about 3 million, forming 4.9 percent of the 68 million (in 2019) of the population.¹ The Malay-Muslims are concentrated in the four major provinces like Patani, Narathiwat (Menara), Yala (Jala) and Satul. They are living primarily in the area near the Northern part of the Malay Peninsula. Moreover, the Muslims in those four provinces in the south are not an immigrant community, but they are indigenous inhabitants. They are categorized as “Malay-Muslim communities professing religion of Islam”. Being a non-Muslim country in the region, Thailand does have law governing specifically to the needs of Malay-Muslim women. There are several legislations that govern the rights of Malay-Muslim women those areas. But the writer will focus on the “Act on the Application of Islamic Family Law and Law of Inheritance (AIFLA), 1945” and “the Muslim Family Law and Law of Inheritance Code 1946”.

¹ Thanet Aphonrnsuvan, (nd.,) *History and Politics of the Muslims in Thailand*, Thammasart University Press, p.5.

Through the study, the author finds that there are several ways that wives may apply for dissolution of their marriage under part V of the MFLALIC, 1946 that deals specifically with the dissolution of marriage after solemnization of their marriage. They are as follows:

2. Right of Malay-Muslim women to seek for a conditional divorce

The MFLALIC, 1946 refers a conditional divorce as *ta'liq*. Article 92(4) of the MFLALIC, 1946 which provides to the effect that:

“Besides a husband being able to divorce his wife, *talaq* may take effect when he has *phit than bon talaq* which has been given to him by his wife.”

The code 1946 uses the word “*phit*” to indicate breaking a tie between husband and wife,² whereas the word “*than bon*” means a promise of good behavior.³ It can be translated as an act of breaching the marriage agreement made by husband after solemnization of marriage. In Islamic family law *ta'liq* expression contains vows not to beating the wife. If such vows are broken, the wife, in those four provinces has a right to choose either to apply for dissolution of marriage by court order or by Muslim Religious Committee Council Order in respective provinces. The common procedures of dissolution marriage in the Malay-Muslims areas are discussed below:

2.1 The Procedures

First step:

A married woman will make a complaint to the *imam* in her respective village; the *imam* will receive verbal complaints from a married woman on behalf of the Muslim Religious Committee Council (MRCC) and take the married woman with two reliable witnesses to the office of the

MRCC for further action.⁴

Second step:

The committee at the Muslim Religious Committee Council (MRCC) will make the necessary investigations as to why the complaint is made and whether the parties have made necessary efforts to bring about reconciliation.

Third step:

In cases where the committee is satisfied with the answers given by the wife, the committee will ask the married woman to produce the original marriage certificate to make sure that the

husband has read the *ta'liq* agreement.⁵

Fourth step:

² So Setha Putra, *New Model Thai-English Dictionary*, (Bangkok: Thai Wattana Phanich, 1999) 269.

³ *Ibid.*, at 194.

⁴ See Narathiwat Muslim Religious Committee Council, *Ta'liq Agreement Rule*, No: 2 / 2524 (1981).

⁵ See Borang Pengaduan *Ta'liq* (*Ta'liq Complaint Form*).

The committee thereupon will ask the married woman to fill in a *ta'liq* complaint form⁶ and the witnesses must complete a witness examination form.⁷ The committee will thereupon examine the validity of the marriage certificate and make several inquiries as to why the complaint is lodged, and whether the parties have gone through reconciliation before the *imam* or any other Muslim religious institutions in the province.

In most cases, the committee receives the complaint from the wife that she is reluctant to live with her husband. If the committee is satisfied with the answers given by the wife to their queries, the committee will accept the complaint and will explain the procedures that are

necessary for divorce by *talaq*.⁸

Fifth step:

The committee will serve notice on the husband by informing the husband that on a certain date his wife has made a complaint to the MRCC that he has deserted her for more than four months, and he is required to make a counter claim in person at the office of the MRCC.

In the event where the husband fails to appear before the MRCC, the committee will presume that the husband has already agreed with the wife's complaint. The committee then will fix the date for the hearing, and the wife must be present before the committee with two reliable witnesses who know the circumstances of the case and the committee will ask the wife to recite

a sworn statement.⁹ After the sworn statement has been recorded, the committee will issue the *ta'liq* divorce certificate to the wife.¹⁰ However, if the married woman is not satisfied with the decisions of the committee, she may file a suit at the provincial courts.¹¹

2.2 Cases study on conditional divorce

⁶ See *ibid*.

⁷ See Borang Periksa Saksi (Witness Examination Form).

⁸ Haji Abdul Hamid Bin Haji Saleh, A former Vice-President of the Narathiwat Muslim Religious Council, acting Head of *Ta'liq* Complaint Committee for the Narathiwat Religious Council, Interviewed by author, 28th August 2001.

⁹ *Ibid*.

¹⁰ In this certificate, the committee will confirm that the divorce has been affected based on the complaint received based on *lafz ta'liq* accompanied by two trustworthy witnesses and stating the *iddah* commencement date. See Surat Keterangan Terjatuh talaq dengan *ta'liq* daripada suami (The Certificate of talaq by *ta'liq from husband*) issued by Yala Muslim Religious Committee Council, No: 0700.

¹¹ See Decided cases of Mdm Rungrat Yong Setar V Suaphol Yong Setar, The Narathiwat Provincial Court, Civil Suit No: 46 / B.E. 2544 (2001); Latipah Malee v Yusoh Malee, Patani Provincial Court, Civil Suit No : 571 / B.E. 2542 (1999).

In this section the author try to highlight case law that had been decided by the Muslim Religious Council and cases that had been decided by the Provincial courts in the Malay-Muslim areas of Patani and Narathiwat. Although the decision of the Muslim Religious Committee Council has no legal enforcement moreover, the certificate of divorce that had been issued by the Muslim Religious Committee Council is invalid unless the wives have to file second legal suit at the

Provincial courts. In the case of *Nuriyah v Ma'ri Peng Che Leh*,¹² in which the wife, Nuriyah, had applied to the Patani Provincial Court to confirm a divorce by *ta'liq* under article 92 (4) of the MFLALIC,1964. She claimed that the husband had pronounced a *ta'liq* before *imam* and he had failed to comply with it by willfully deserted her for a period of six months. The court then ruled in her favour on the ground that he had not given any maintenance to his wife and his children.

The learned Patani provincial *Dato' Yuthitham* judge, Dato' Apirat Mad Said held that the wife was entitled to obtain sufficient maintenance, and since the husband had failed to give enough maintenance to his wife for more than four months or more, she was also entitled to obtain divorce in accordance with the *ta'liq* agreement.

In the case of *Hama v Pishoh Molo*,¹³ the respondent alleged that her husband had deserted her and her children for over one year. The learned *Dato' Yuthitham* ordered the marriage to be dissolved. In the Narathiwat Provincial Court case of *Siri Nipha Che Senik v Isma-ae Muda*,¹⁴ the learned *Dato' Yuthitham* was of the view that since the husband has deserted his wife for over one year and had failed to provide maintenance for her and her children as an ordinary spouse, the court had a strong reason to terminate the marriage.

From the above decided cases it shows that a wife has to show to the court that she has willfully been deserted by her husband. The above court's judgments were justified by the Narathiwat

Provincial Court case of *Mdm Rungrat Yong Setar v Suaphol Yong Setar*,¹⁵ the wife brought an application to confirm the *ta'liq* agreement as the husband had deserted her more for than six months. The Narathiwat Muslim Religious Committee Council (NMRCC) decided in favour of the applicant. The applicant then applied to the Narathiwat Provincial Court (NPC) for the confirmation of divorce by *ta'liq* as her husband had assaulted her physically and did not provide maintenance to her and her three children for more than one year.

The learned *Dato' Yuthitham* of the Narathiwat Provincial Court (NPC), Dato' Abdullah Tuan Meden, held that since the parties were both Muslims living in the southern four border

¹² Patani Provincial Court, Civil Suit No: 787 / B.E. 2542 (1999).

¹³ Patani Provincial Court, Civil Suit No: 761 / B.E. 2542 (1999).

¹⁴ Narathiwat Provincial Court, Civil Suit No: 14 / B.E. 2544 (2001).

¹⁵ Narathiwat Provincial Court, Civil Suit No: 46 / B.E. 2544 (2001).

provinces of Thailand and were married according to Islamic law and registered their marriage at the Narathiwat District Officer Office (NDOO), the court in this case confirmed divorce by *ta'liq* as requested by the applicant. In these two cases, it is observed that the Patani Provincial Court (PPC) applied the provisions of the MFLALIC, 1946 whereas the Narathiwat Provincial Court (NPC), *Dato' Yuthitham* did not apply the provisions of the MFLALIC, 1946.

In some cases, the author had noticed that the learned *Dato' Yuthitham* applies the Thai Civil and Commercial Law Code 1934, book V to dissolve a marriage by *talaq*. However, according to this law, a wife must prove to the court that she has been deserted by her husband

continuously for one year or more¹⁶ whereas under the MFLALIC, 1941 it depends on *ta'liq* pronouncement-*lafz al-Ta'liq* normally after four months the court may order the marriage to be dissolved by *ta'liq*.

In the case of *Mariyea Tayi' @ Manea v Hama Tayi'*,¹⁷ a wife requested her marriage to be dissolved based on *lafz al-Ta'liq* which was attached to the marriage certificate (No: 20/2543). The Yala Muslim Religious Committee Council (YMRCC) had confirmed the applicant's claim and granted the divorce to the applicant. The applicant later filed a suit at the Yala Provincial Court by alleging that her husband had deserted her and her children for over two years. The learned *Dato' Yuthitham* had granted the dissolution of the marriage by referring to article 1516 (5) of Thai Civil and Commercial Law Code 1934, book v. However, this approach is contrary to the article 92 (4) of the MFLALIC, 1946 and article 3 of the act of the application of Islamic law in Patani, Narathiwat, Yala, and Satul, B.E. 2489 (1946).

2.3 Muslim women right to maintenance during marriage subsistence

The MFLALIC, 1946 clearly states the husband's liability to maintain his wife. Article 63 of the MFLALIC, 1946 provides, *inter alia*, that it is the duty of a husband to maintain his wife by providing her with accommodation, clothing, and food as is reasonable having regard to his means. This law provides that the obligation of the husband to maintain his wife is absolute. Article 63 (1) of the MFLALIC, 1946 has listed a wife's maintenance to include all those things which are necessary for the wife's daily life including food, clothes and lodging. Regarding food, it should be paid in consonance with the social status of the husband.

2.4 Case study on wife maintenance during marriage subsistence

In the case of *Raja Najmin Bin Raja Mahmud v Nor Hasmani*,¹⁸ the applicant, Raja Najmin Bin Raja Mahmud, a Malaysian citizen, born in Kelantan, Pasir Putih. She came to Narathiwat Muslim Religious Committee Council (NMRCC) and requested the council to dissolve her

¹⁶ See Thai Civil and Commercial Law Code 1934, book V, article 1516 (5).

¹⁷ Yala Provincial Court, Civil Suit No: 215 / B.E. 2544 (2001).

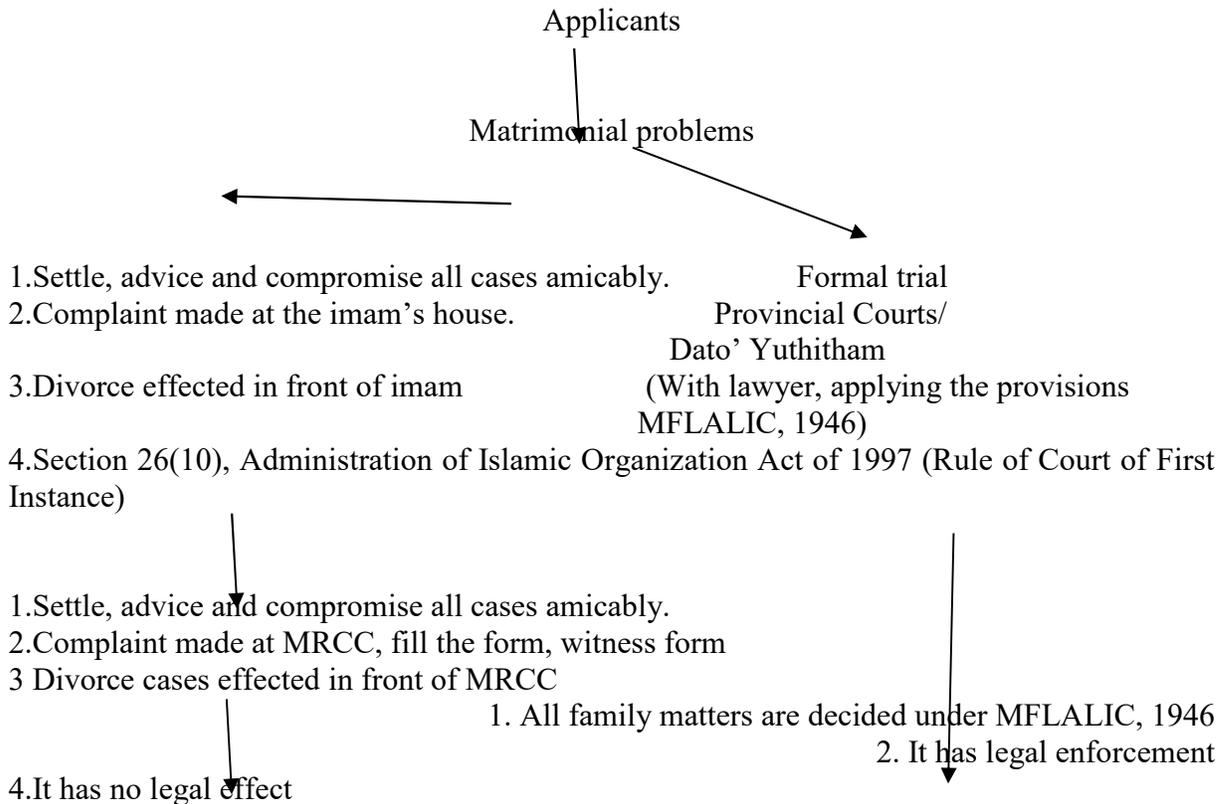
¹⁸ Narathiwat Muslim Religious Committee Council (No citation).

marriage by *faskh* claiming that her husband was unable to pay her maintenance for a period of three months and twenty-four days. The applicant gave a sworn statement to the Narathiwat Muslim Religious Committee Council (NMRCC) that she was always obedient to her husband. He also failed to pay a deferred dowry which amounted to RM 300.00. Two witnesses were called, they were Raja Mahmud Bin Raja Mamat and Haji Abu Bakar Bin Che Loh. After the committee was satisfied with the witnesses, the committee asked the applicant to pronounce *lafz faskh*.

In *Piah Binti Abdul Rauf v Syed Abdullah Bin Syed Ahmad*,¹⁹ the committee of the Narathiwat Muslim Religious Council (NMRC) ordered divorce by *ta'liq* since the husband had not given her maintenance contrary to the terms of the *talaq* pronounced by him. From the above cases, it can be seen the grounds or basis for divorce by *ta'liq* in those four provinces are based on the failure to give maintenance.

2.5 Muslim Religious Committee Council and Provincial Courts Procedural Application

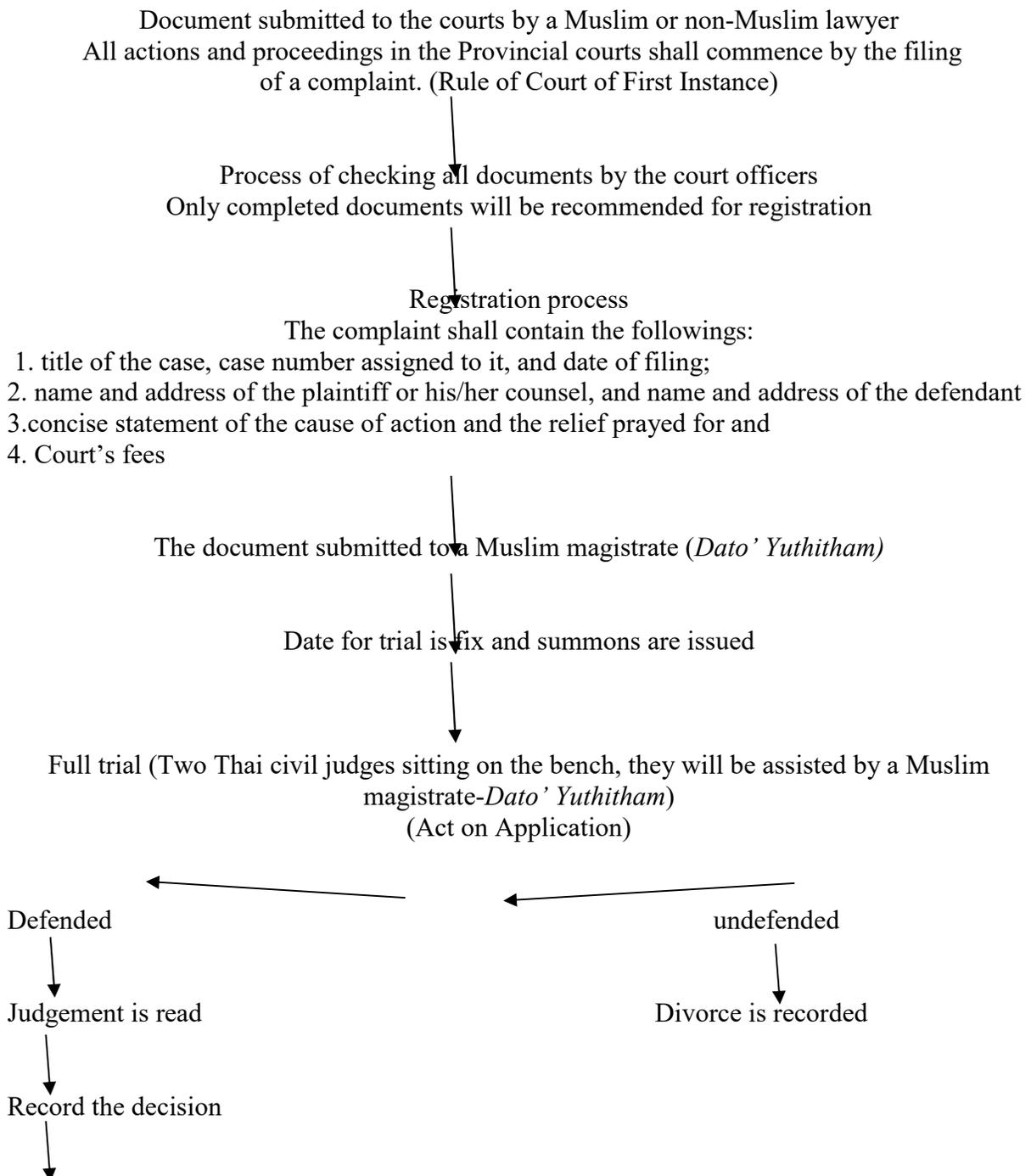
Diagram I: Illustrates the Process of Applying for a Muslim Divorce in the Southern Four Border Provinces of Thailand



¹⁹ Narathiwat Muslim Religious Committee Council, *Ta'liq* Case No: 40 / B.E. 2530 (1989).

As soon as a divorce application is submitted to the provincial courts, the court registrar at the provincial courts will check the documents. After completed documents have been submitted and registered, the court will decide on the date of the trial and issue summons. The process in the provincial courts in the southern border provinces of Thailand can be seen in diagram II below:

▲ **Diagram II:** Illustrates Divorce Application Process at the Provincial Courts



Written Judgement recorded



Case closed

2.6 General Explanation and Observation on Procedures

As it was stated in Art. 3 of the Application of Islamic Family in Malay-Muslim areas that a decision of the provincial court is final. However, an appeal can be made to court of appeal at the regional court 9 at the Songkhla province. The appeal can be made on the question of facts but not on question of laws. There are no provisions provided under the MFLALIC, 1946 either for the registration of *talaq* or regarding the procedures of such divorce. A wife may not even know she has been divorced until she is informed by another party. In a case study conducted in Thailand, it has been found that every application for divorce that was filed in the provincial courts in these four provinces was filled by a wife, because husbands can simply pronounce *talaq* without having to petition the court for divorce. And for registration purpose, the Thai Civil and Commercial Law Code 1934, book V will be applied irrespective of whether they are

²⁰ Muslims or Buddhists. This is because of unavailability of the registry office for Muslim Marriage and Divorce. The usual practice is that the application for divorce and married must be made at the office of the district officer.

In the case of Muslim applicants, all applications for *talaq* must be first presented to the local

²¹ *imam* in his or her residence. After the *imam* has received the application, the applicant must

²² fill in the divorce application form at the Muslim Religious Committee Council. The committee will then ask the couple to come before the committee accompanied by the *imam*. The committee will endeavour to effect reconciliation. If the committee is satisfied that the marriage has irretrievably broken-down, the committee will ask the husband to pronounce

²³ *talaq*. ²⁴ The committee will issue a certificate of divorce by recording the nature of the

²⁰ See Thai Civil and Commercial Law Code 1934, book V. Article 1514 of the code 1934, book V provides *inter alia* that divorce may be affected only by mutual consent or by judgment of the court.

²¹ See Section 26(10), Administration of Islamic Organization Act of 1997. It provides that the Provincial Commission is only to issue the letter of recommendation on Muslim marriage and divorce but not to register marriage and divorce.

²² See Application form for divorce (A 1 for male & A 2 for female) issued by Narathiwat Muslim Religious Committee Council.

²³ Haji Abdul Samad Dosamad, a conciliatory committee member at Narathiwat Muslim Religious Committee Council, Narathiwat, Interview by the author, 28th August 2001.

²⁴ See Divorce Certificate.

pronouncement of *talaq*. A certified copy will be kept at the Muslim Religious Committee Council for reference. If

3. Conclusion and Recommendations

The MFLALIC, 1946 clearly protects the Malay-Muslim women right according to the objectives of Islamic law. Though, the code has not been brought to parliament for debating and approval. However, by virtue of the Act on the Application of Islamic Family Law and Law of Inheritance, 1945, the code, 1941 is frequently used as a reference by the *Dato' Yuthithams* as well as the Thai civil judges in the Provincial Courts of Patani, Narathiwat, Yala and Satun in deciding matrimonial disputes among the Muslims in the Deep south.

The selected legal provisions as discussed above provide shows that rights for Malay-Muslim women to have a divorce or judicial divorce from the provincial courts as well as to make a claim on their respective rights in terms of matrimonial property, areas of maintenance, jointly acquired property and custody of children in the four provinces are clearly stated.

Geographically speaking, the Malay-Muslims women who are living outside those provinces are deprived of their rights but their rights are protected under Thai civil and commercial law. Therefore, the author would like to suggest firstly that the application of Islamic family and law of inheritance must be extended to whole country as a subsidiary law for Muslim in Thailand. Secondly, being a piece of Islamic law in Thailand. The government must play a major role in implementing and enforcing Islamic Family Law gradually. Thirdly, project for revision the contents of Islamic law shall carry out in near future. In other words, the reforms the contents of the code should be given priority before its application. The suggestions that have been highlighted in this paper may offer some rooms for future amendments and improvements toward the implementation of Islamic law in Thailand.

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