

**THE IMPACT OF THE SHAFI'I SCHOOL IN THE  
IMPLEMENTATION OF LAWS DURING THE REIGN  
OF SULTAN ZAINAL ABIDIN III IN  
TERENGGANU, MALAYSIA**

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**ABSTRACT**

*Sultan Zainal Abidin III was a Sultan who ruled over Terengganu in the early 20th century. He had established an Islamic government system that led to his reign being the most glorious in the recorded history of the Malay Peninsula. This article's main objective is to identify the application of the Shafi'i code in various aspects of law, especially in the Rules of Court, during his reign. The research found that the laws applied during his rule had many similarities with the Shafi'i school of thought. The implementation*

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*of Rules of Court is seen to have been influenced by the ideas of major scholars of the Shafi'i school such as al-Mawardi, al-Ansari, al-Sharbini and al-Ghazali. This shows that the implementation of laws in Terengganu had a strong basis and had organised procedures, indicative of a judicial system operating smoothly and fairly.*

**Keywords:** *Shafi'i school, Implementation of Laws, Sultan Zainal Abidin III, Terengganu.*

## **DAMPAK MAZHAB SHAFI'I DALAM PELAKSANAAN UNDANG-UNDANG PADA ZAMAN PEMERINTAHAN SULTAN ZAINAL ABIDIN III DI TERENGGANU, MALAYSIA**

### **ABSTRAK**

*Sultan Zainal Abidin III memerintah Terengganu pada awal abad ke-20. Baginda telah memantapkan sebuah sistem kerajaan Islam hingga menjadikan pemerintahan baginda yang paling gemilang dalam catatan sejarah Semenanjung Tanah Melayu. Tujuan utama makalah ini ialah untuk mengenalpasti penerimapkanaan kod Syafii dalam pelbagai aspek undang-undang, terutama dalam Kaedah Mahkamah, pada zaman baginda. Penyelidikan ini mendapati bahawa undang-undang yang diterimapkakai pada zaman pemerintahan baginda mempunyai banyak persamaan dengan mazhab Syafii. Pelaksanaan Kaedah Mahkamah dilihat telah dipengaruhi oleh idea ulama utama mazhab Syafii seperti al-Mawardi, al-Ansari, al-Sharbini dan al-Ghazali. Ini menunjukkan bahawa pelaksanaan undang-undang di Terengganu mempunyai dasar yang kuat dan tatacara yang teratur, satu ciri sebuah sistem kehakiman yang beroperasi dengan lancar dan adil.*

**Kata kunci:** mazhab Syafii, pelaksanaan undang-undang, Sultan Zainal Abidin III, Terengganu.

## INTRODUCTION

This article is undertaken from three perspectives, viz. history, thinking and laws. From the perspective of history, the discussion focusses on Sultan Zainal Abidin III, an early 20th century ruler and administrator in Terengganu. He had implemented a legal framework based on Islamic teachings.

From the perspective of thought, it considers the application of the Shafi'i school of thought in the establishment of laws in Terengganu during that era. The questions discussed are whether the application was something that was forced, happened on its own, or was planned. Another question pertains to whether the influence of the Shafi'i school related exclusively to aspects of worship, rulings and scholarly work.

Meanwhile, the laws are the best evidence of the implementation of Islam in Terengganu at that time. Several aspects of law that came under the study showed how the implementation of Islam then was not merely rhetorical but was a practicable legal system in the context of the local communities.

This study relates to a period of history 200 years old, which certainly requires primary sources to ensure that the facts given are accurate. Amongst them are documents kept at the National Archives of Malaysia, National Archives Terengganu branch, National Museum, Terengganu State Museum and also the manuscripts kept in the National Library of Malaysia.

In addition to the primary sources mentioned above, this article also utilises secondary sources referring to earlier written works, mostly in the form of books old as well as recent. Moreover other historical documents, books, journals, magazines, manuscripts and other written material are used as additional reference for this article.

This study also tries to gauge the influence of the Shafi'i school in the implementation of laws during the reign of Sultan Zainal Abidin III, as well as to identify the sources of reference used in the laws, despite the lack of any clear citation. The effect of the Shafi'i school is measured by using a qualitative method identifying the references and modification of these laws.

## SULTAN ZAINAL ABIDIN III AS THE PILLAR OF GOVERNMENT

Sultan Zainal Abidin III is considered to be a sultan who successfully led Terengganu to the peak of its glory. He is one of the three sultans who are frequently mentioned in the history of Terengganu sultanate. Two other Sultans mentioned are Sultan Mansur Syah I, who ruled from mid to late 18th century, and Sultan Baginda Umar, who ruled during a major part of the 19th century. Sultan Zainal Abidin III ruled from the last part of the 19th century to the beginning of the 20th century.<sup>1</sup>

The Sultan, who was the pride of the Terengganu people, is considered by most historians as having had admirable characteristics as a ruler. One of his distinctive features was his reputation as a leader who loved knowledge. Allen<sup>2</sup> describes him as a,

“...studious young man... read widely, especially but by no means exclusively, in Islamic theology and thought deeply.”

His Majesty who ascended the throne at the tender age of 18, is further considered by Allen<sup>3</sup> to be an individual with traits most befitting a ruler. These characteristics were rarely noticed in other kings by British officers, who found his characteristics to be different from what they would have liked.

In addition, His Majesty had extensive experience in various disciplines of knowledge and had many teachers. Muhammad<sup>4</sup> interviewed the former Chief Kadhi of Terengganu, Datuk Purba Diraja who said that the teachers of Sultan Zainal Abidin III were Sayyid Zain (Zainal Abidin) bin Muhammad, Sayyid Abdullah bin Muhammad, Sayyid

<sup>1</sup> Muhammad Abu Bakar. 1991. *Ulama Terengganu Suatu Sorotan (A Review on Terengganu Muslim Scholars (Ulemas))*, Kuala Terengganu: Utusan Publications & Distributors and Terengganu Collection Committee.

<sup>2</sup> Allen, J. V. 1968. Sultan Zainal Abidin III, Possessor of Terengganu and All Its District, in *Malaysia In History*, 12(1).

<sup>3</sup> *Ibid.*

<sup>4</sup> Muhammad Abu Bakar, *supra*, n. 1.

Abdul Rahman bin Muhammad al-Idrus (Tok Ku Paloh), Hj. Wan Abdullah bin Muhammad Amin (Tok Sheikh Duyong), Haji Wan Abdul Latif bin Abdullah (son of Tok Sheikh Duyong) and others.

His mastery of knowledge ranged over fundamentals of Islam from disciplines such as Tauhid, Fiqh and morals to mathematics, astronomy and geography. He was said to own tools for scientific experiment and also had a good atlas map.<sup>5</sup> Along with this knowledge, he was able to develop a noble character and personality, and was described him as follows:

“He possessed more dignity and seemed to be more at ease than the other sultans whom he had seen.”

His piety and unassuming nature earned him people's loyalty and respect. Further, he found it easy to befriend anyone and often mingled with the people in public. At the same time, he never missed his congregational prayers at the Abidin Mosque, which was next to his palace. In fact he was one of the Sultans who had done his pilgrimage.<sup>6</sup> Hence, the general observations on the Malay sultans that they were viewed as “holy” and having magical powers and that they stood aloof from the people are less accurate with regard to Sultan Zainal Abidin III. Amongst the major Muslim scholars who had played an important role in educating Sultan Zainal Abidin III was Tok Ku Paloh. The presence of a ruler under the tutelage of a noble Muslim scholar greatly assured and comforted his people. This was illustrated by Clifford (1961):<sup>7</sup>

“The sultan, who is himself one of Saiyid's pupils and has been bred up in his traditions, sets an example to his people by a strict observance of the letter of Muhammadan Law, and he does his utmost to enforce a like observance upon his pupils.”

In the tradition of the Terengganu Sultanate, any speech or directive issued by the king would be considered as law that must be

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<sup>5</sup> Clifford, Hugh. 1961. Expedition to Terengganu and Kelantan, JMBRAS.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

obeyed, which was not to be opposed. However, Sultan Zainal Abidin III did not use his powers indiscriminately. Clifford (1961)<sup>8</sup> supports this when he said that the Sultan was one who loved of justice:

“I am inclined to credit him with the love of justice and merciful disposition which are popularly ascribed to him.”

Even though legislative powers were placed under the Sultan, he chose not to be involved in decisions on sentences. Instead he left the task to certain qualified persons. He only delivered judgment in certain cases and that too with great reluctance. One of the officers delegated to carry out the task was Tengku Musa who was appointed as the Chief Officer of the Court and presided over trials in court assisted by Tuan Hitam and Che Abdul Rahim Endut.<sup>9</sup>

The Islamic laws applied at the time quoted several sources as their basis. Besides Qur’an and Hadith, books of Fiqh, especially of the Shafi‘i school, were used as sources of reference in the legal practice.<sup>10</sup>

According to Abu Bakar Abdullah (1986),<sup>11</sup> despite there not being any written text on Islamic laws other than the Rules of Court and the Terengganu Constitution in 1911, it is believed that books of Fiqh on Islamic laws under the Shafi‘i school of thought, such as *Minhaj al-Talibin* of Imam al-Nawawi, *Nihayah al-Muhtaj* of Al-Ramli, *Mughni al-Muhtaj* of Muhammad Khatib al-Sharbini and *al-Umm* of Imam al-Shafi‘i were used as legal texts.

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<sup>8</sup> *Ibid.*

<sup>9</sup> Sherppard, M 1949. A Short History of Trengganu, JMBRAS, Vol. XXII prt. 3, Jun, Republished in December 1983, Reprint no. 10, Kuala Lumpur.

<sup>10</sup> Mahmood Zuhdi Abd. Majid. 1997. *Pengantar Undang-Undang Islam di Malaysia (Introduction of Islamic Laws in Malaysia)*, Kuala Lumpur: University of Malaya.

<sup>11</sup> Abu Bakar Abdullah. 1986. *Ke Arah Pelaksanaan Undang-Undang Islam di Malaysia: Masalah dan Penyelesaiannya (Towards Implementing Islamic Laws In Malaysia: Issues and Solutions)*, Terengganu: Pustaka Damai.

## **SHAFI'I SCHOOL OF THOUGHT DURING THE REIGN OF SULTAN ZAINAL ABIDIN III**

Research has found that during the reign of Sultan Zainal Abidin III, the influence of the Shafi'i school was contributed to by historical factors as well as the origin of Islamisation in Terengganu itself. The spread of Islam throughout the Malay world especially in Terengganu was through the acceptance of Islam brought about by Muslim missionaries and scholars who were followers of the Shafi'i school. In addition to their written works, there was also the practice of *fatwa* issued by the muftis of Terengganu.

### **ACCEPTANCE OF ISLAM AND THE ARRIVAL OF MUSLIM MISSIONARIES**

The acceptance of Islam in Terengganu is very unique and special as the Islamisation of Terengganu was recorded on the *Batu Bersurat Terengganu* (the *Terengganu* Inscription Stone) which was discovered in 1902 at Kampung Buluh, Hulu Terengganu.<sup>12</sup>

Nonetheless, it is thought that the acceptance of Islam in Terengganu occurred earlier than the date on the *Terengganu* Inscription Stone, as by the date recorded on the inscription, Islam had firmly established in Terengganu. The date of declaration of Islam as written on the stone was Friday, 04 Rejab 702 A.H. (Shafie, 2003).<sup>13</sup> Prof. Syed Muhammad Naquib al-Attas (1970) stated that the date was equivalent to February 22, 1303 A.D.

The date Islam was accepted in Terengganu is in line with the acceptance of Islam in several other locales in the region, such as Pasai

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<sup>12</sup> Engku Pangiran Anum. 1961. How the Terengganu Stone was Found, *Malay in History*, Vol. VII, September.

<sup>13</sup> Shafie b. Abu Bakar. 2003. *Terengganu Darul Iman: Sejarah Penerimaan, Perkembangan dan Perlaksanaan Syariat Islam* (Terengganu Darul Iman: History of the Acceptance, Spread and Implementation of Islamic Laws), in the *Working Paper of 2003 Convention in Commemoration of 700 years of Terengganu Inscription Stone*.

in 1282 A.D., which was closely linked to other Malay states on the East Coast. It is believed that Islamisation of Terengganu occurred during the same period as in Pasai, that is, towards the end of the 13th century.<sup>14</sup> Historically, Pasai at the time was one of the rapidly growing centres of Islamic propagation in the region. Muslim missionaries from various parts of the Arab Peninsula such as Mecca and Hadramaut, Yemen who arrived there were followers of the Shafi'i school.<sup>15</sup>

Hence the acceptance of Islam in Terengganu can be said to be related to the acceptance of Islam particularly in Pasai. This was because in the 13th century, Pasai was an important port for Muslim traders similar to Kuala Berang, which at the time was also a centre of trade and government in Terengganu, due to Hulu Terengganu being rich in natural resources such as gold and silver, forest resources, and various types of farm produce that could be traded.<sup>16</sup> In addition, there are old Pasai graves in Hulu Terengganu.

The acceptance of Islam in Terengganu, in addition to the abovementioned factors, was also influenced by the developments following the Huang Ch'ao rebellion (revolution) in Canton in 878 A.D.<sup>17</sup> Traders cum missionaries of Arabic and Persian descent who normally would have gone to China, now focused on Southeast Asia including Terengganu, and began to trade and preach there.

The change in the Muslim traders' focus had an impact on the countries of their residence, from the aspect of the spread of Islam. Amongst one of the earliest Muslim scholars in Terengganu was Sharif Muhammad al-Baghdadi who came from Mecca in the early 17th century.

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<sup>14</sup> *Ibid.*

<sup>15</sup> Amir Sharifuddin. 1995. *Pengaruh Mazhab Dalam Pengajian Fiqh dan Usul Fiqh Di Asia Tenggara (Influence of Madzhab (Sect) In the Study of Fiqh and Usul Fiqh in Southeast Asia)*, Working Paper at International Seminar on Islamic Studies in Southeast Asia, held on Jamadilakhir 27-30, 1416 A.H. equivalent to November 20-23, 1995.

<sup>16</sup> Wheatley, Paul. 1966, *The Golden Khersonese*, Kuala Lumpur: Pustaka Ilmu, University of Malaya.

<sup>17</sup> Syed Naquib al-Attas. 1969, *Preliminary Statement on a General Theory of the Islamisation of the Malay-Indonesia Archipelago*, Kuala Lumpur: Dewan Bahasa dan Pustaka.

This scholar stayed and taught in Hulu Terengganu while carrying out trading activities.<sup>18</sup>

The arrival of Sharif Muhammad al-Baghdadi occurred in the same period as other scholars in several Muslim settlements. It can be said that all scholars of the same period were followers of the Shafi'i school. They included Muhammad Azhari who was called Nuruddin, Shaikh Abu Khair b. Shaikh Ibn Hajar, and Shaikh Muhammad Jaylani b. Hassan b. Muhammad Hamid.<sup>19</sup>

Although it is not clear which school of thought was followed by Sharif Muhammad, the writer believes that he was among the scholars who followed the Shafi'i school. This is because many scholars named Sharif who came to preach and were responsible for spreading Islam could also be found in Brunei, the Sulu Archipelago and Mindanao. In Brunei, amongst the renowned Muslim missionaries was Sharif Ali, who originated from Taif. In Sulu, the Muslim missionaries who spread Islam were Sharif Hashim, Tuan Sharif Awlia and others, whereas in Mindanao it was Sharif Muhammad Kabungsuan. These were among the leading scholarly or Sufi preachers of Arab descent. In addition, they had substantial influence in the development of Muslim government and the spread of the Shafi'i school of thought.<sup>20</sup>

## **THE RISE OF THE MUSLIM SCHOLARS AND THEIR WORKS**

In Terengganu, there have been many Muslim scholars, whether local or foreign. They played a major role in spreading the religion through the

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<sup>18</sup> Muhammad Salih Hj. Awang. 1954. *Mengkaji Sejarah Terengganu (Studying the History of Terengganu)*, Singapore: Ahmadiyyah Press.

<sup>19</sup> Shafei Abu Bakar. 1976 and 1977. *Institusi Sheikh Abdul Malik b. Abdullah (Satu Corak Pengajian Tradisi Di Terengganu) dan Kitab-Kitab Padanya* (Sheikh Abdul Malik b. Abdullah Institution (A Pattern of Traditional Learning in Terengganu) and His Books, Bangi: National University of Malaysia.

<sup>20</sup> Abdul Rahman b. Abdullah. 2000. *Sejarah dan Tamadun Asia Tenggara Sebelum dan Sesudah Pengaruh Islam (History and Civilisation of Southeast Asia in Pre and Post Islamic Influence)*, Kuala Lumpur: Utusan Publications & Distributors Sdn. Bhd.

*pondok* (traditional Islamic learning centre) educational institution in Terengganu.

The writer observes that all scholars and teachers from the *pondok* education throughout Terengganu had their educational background in the Shafi'i's school of thought. This was because they were taught by scholars following Shafi'ites in Mecca, who originated from Pattani or other states within the region, or their students.

Emergence of Muslim scholars and intellectual tradition in Aceh occurred concurrently. Among the intellectuals and scholars in Terengganu who were followers of the Shafi'i school was Sharif Muhammad al-Baghdadi.<sup>21</sup> One of the descendants of Sharif Muhammad was his great grandson Abdul Malik b. Abdullah (1043 A.H.-1139 A.H./1633 A.D.-1726 A.D.). He was a student from Hulu Terengganu who had been to Java and Aceh and later continued his studies in Mecca.<sup>22</sup>

In Mecca, he studied various disciplines of Islamic knowledge, especially Tasawwuf, Fiqh and Usuluddin, from several teachers, among whom was Sheikh Ibrahim b. Hasan al-Kurani al-Shahrazuri al-Kurdi al-Shafi'i Abu 'Irfan, who followed the Shafi'i school, and Sheikh Abdul Rauf Singkel. The latter had studied under his teacher Sheikh Ibrahim several books of Fiqh which are famous in the Shafi'i school. Among them were *Daw al-Sham'ah* by Imam Jalaluddin al-Suyuti, *Minyah Ahl al-Wara'* written by Sheikh Ahmad, the teacher of Sheikh Ibrahim al-Kurani, *Minhaj al-Talibin* of Imam al-Nawawi, *al-Hawi* by al-Mawardi, *al-Nihayah* of Imam al-Ramli, *Fath al-Wahhab* by Abu Yahya Zakariyya al-Ansari, *Fath al-Qarib* written by Muhammad Abu Qasim al-Ghuzza, *al-Minhaj al-Qawim* by Ibn Hajar al-Haytami, *Tuhfah al-Muhtaj* and *Fath al-Qarib* of Muhammad al-Sharbini al-Khatib, *Muhalli* by Muhammad b. Ahmad b. Said b. Rawa and many others.<sup>23</sup>

On his return to his native homeland, Sheikh Abdul Malik persevered in spreading Islam, and opened a *pondok* educational centre when he moved to Pulau Manis, Kuala Terengganu. After he established Pulau Manis as the centre of learning, he became known as Tok Pulau Manis. Besides teaching at his school, he was appointed as the Terengganu

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<sup>21</sup> *Ibid.*

<sup>22</sup> Shafei Abu Bakar. 1984. *Sheikh Abdul Malik bin Abdullah dan Karangan-Karangannya* (Sheikh Abdul Malik bin Abdullah and his Essays), in *Pesaka II*, Kuala Terengganu: Terengganu Museum Board.

<sup>23</sup> *Ibid.*

*mufti* during the reign of Sultan Zainal Abidin I, who had moved his centre of government from Kuala Berang to Kuala Terengganu.<sup>24</sup>

In addition, he also produced several works in various disciplines of knowledge. Among his famous writings are *Hikam Melayu* in the science of Tasawwuf, and *Risalah Naql*, *Risalah Kayfiyyat al-Niyyah* and *Kitab Kifayah* in the subject of Fiqh (Abdul Kadir, 1996; Ismail Che Daud, 2001; Shafei Abu Bakar, 1984). *Risalah Naql* is a small booklet which specifically discusses the number of people praying a valid Jumaat prayer. According to Sheikh Abdul Malik, this booklet is an extract from the book called *Daw al-Syam'ah* written by Sheikh Jalal al-Din al-Suyuti, a famous scholar of the al-Shafi'i school. The booklet *Kayfiyyat al-Niyyah* is a piece of work in the form of manuscript in Malay, written in Jawi. This work is an excerpt from several books, including *Ihya' 'Ulum al-Din* of Imam al-Ghazali.<sup>25</sup>

Besides Sheikh Abdul Malik, another Muslim scholar of Terengganu who followed the Shafi'i school was Tok Ku Tuan Besar, whose real name was Syed Muhammad bin Zainal Abidin al-Idrus. Tok Ku was born in 1209 A.H./1795 A.D. and died in 1295 A.H/1878 A.D. The period of Tok Ku Tuan Besar was concurrent to the arrival of scholars and Muslim missionaries of Syed descendant from Hadramaut, Yemen in Terengganu.<sup>26</sup> Among his influential works in the field of Shafi'i Fiqh was *Sullam al-Tawfiq*. This book refers to the opinions of famous scholars of the Shafi'i school, such as al-Ramli, Ibn Hajar and al-Sharbini. On page 3 of the book, the author mentions the major Shafi'i books, such as kitab *al-Tuhfah* written by Ibn Hajar, *al-Nihayah* by al-Ramli and *Mughni al-Muhtaj* written by al-Khatib al-Sharbini.<sup>27</sup>

<sup>24</sup> Shafei Abu Bakar. 2006. *Identiti Keagamaan dan Tradisi Pengajian di Terengganu (Religious Identity and Learning Tradition in Terengganu)*, in Farid Mat Zain, Jaffary Awang and Rabitah Mohd Ghazali, *Nadwah Ulama Nusantara III: Ketokohan dan Pemikiran Ulama Melayu (The Third, Council of Muslim Scholars in Malay Archipelago: The Charismatic and Thoughts of Malay Muslim Scholars)*, Bangi: National University of Malaysia.

<sup>25</sup> Abdul Kadir, b., Hj. Muhammad, 1996. *Sejarah Penulisan Hukum Islam di Malaysia (History of the Written Islamic Law in Malaysia)*, Kuala Lumpur: Dewan Bahasa dan Pustaka.

<sup>26</sup> *Ibid*; Shafei Abu Bakar, *supra*, n. 24

<sup>27</sup> *Ibid*.

After the death of Tok Ku Tuan Besar, his religious legacy was carried on by his children such as Syed Mustafa, Syed Abdul Rahman (Tok Ku Paloh), Syed Abu Bakar and Syed Ahmad. While being responsible for religious education and propagation in the community, they also formed the backbone of the government at the time.<sup>28</sup> Among the descendants of Tok Ku Tuan Besar who played a major role during the reign of Sultan Zainal Abidin III was Tok Ku Paloh (1817-1917 A.D.). The Sultan too had studied under him. In the field of Fiqh, he is more inclined to Fiqh of the Shafi‘i school, as most of the books of Shafi‘i Fiqh were used as his reference.<sup>29</sup>

A statement of Tok Ku Paloh giving his answer on a Tauhid or Fiqh issue indicates that the Shafi‘i school was followed by the people of the state:<sup>30</sup>

“...whomsoever amongst men or women who uttered a word making them a *kafir* (infidel) and apostate, then under our Shafi‘ite school it is not enough for him to renew his faith by only reciting the *shahadah*...”

Other evidence demonstrating the strong adherence of Tok Ku Paloh to the Shafi‘i school includes, according to Muhammad Sallah al-Mufti, a statement by him during the reign of Sultan Sulaiman, expressing that the Shafi‘i school was a guide, bearing reference to “the writings of ulema of our school, Shafi‘i.”<sup>31</sup>

In Terengganu, there also appeared a Muslim scholar known as the “Tongue of Terengganu” or “Lidah Negeri Terengganu” popularly referred to as Tok Sheikh Duyung, his real name being Hj. Wan Abdullah b. Hj. Wan Mohammad Amin (1889). With his knowledge and charismatic leadership he was appointed as the mufti and expert advisor to three of the Terengganu sultans, viz. Sultan Omar, Sultan Ahmad Shah II and Sultan Zainal Abidin III.<sup>32</sup>

<sup>28</sup> Muhammad Abu Bakar, *supra*, n. 1.

<sup>29</sup> *Ibid.*

<sup>30</sup> MKM 60. Department of Malay Manuscript, National Library of Malaysia.

<sup>31</sup> The Minutes of Meeting no. 248/40, Chief Minister to Haji Salleh al-Mufti.

<sup>32</sup> Shafei Abu Bakar. 1991. Tok Pulau Manis and the Establishment of

Besides studying under his father, he also learnt under Sheikh Abdul Kadir Bukit Bayas and then sent by his father to Pattani to further his studies. He then went on to Mecca to learn in depth the sciences of Tasauf, Fiqh, Usuluddin, Tafseer and Hadith. While studying, he was very active in transcribing and translating religious books especially of the Shafi'i school, into Malay language. Amongst them were *Sirat al-Mustaqim*, *Tuhfah al-Muhtaj*, and *Fath al-Jawab* of Sheikh Ibn Hajar al-Haitami, *Minhaj al-Talibin* of Imam al-Nawawi, *al-Umm* of Imam al-Shafi'i and *Fatawa al-Kubra* by Ibn Hajar al-'Asqalani.<sup>33</sup>

## EDUCATION

The Muslim scholars throughout history have played a vital role in spreading Islam, through the tradition of *pondok* education as well as other avenues.<sup>34</sup> According to Shafei Abu Bakar,<sup>35</sup> there were five important stages in Islamic education in Terengganu, beginning with the acceptance of Islam through traders and Muslim missionaries from West Asia and scholars coming in the 17th century from states around the Malay Archipelago such as Pasai, Java and Champa. This stage formed the basis of the acceptance of Islam in Terengganu. It is believed that some religious texts produced by Shafi'ite scholars were in use at this stage, such as *Sirat al-Mustaqim* by Nuruddin al-Mustaqim and *Mir'ah al-Tullab* by Abdul Rauf Singkel.

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Islamic Education, in Muhammad Abu Bakar, *Ulama Terengganu Suatu Sorotan (A Review on Terengganu Muslim Scholars (Ulamas)*, Kuala Terengganu: Utusan Publications & Distributors and Terengganu Collection Committee.

<sup>33</sup> Muhammad Abu Bakar, *supra*, n. 1.

<sup>34</sup> Anwar Zainal Abidin. 2006. *Pendidikan Masyarakat Islam di Terengganu Sebelum Abad ke-20 Masihi (The Education of Islamic Community in Terengganu Before the 20th Century A.D.)*, in Farid Mat Zain, Jaffary Awang and Rabitah Mohd Ghazali, *Nadwah Ulama Nusantara III: Ketokohan dan Pemikiran Ulama Melayu (The Third, Council of Muslim Scholars in Malay Archipelago: The Charismatic and Thoughts of Malay Muslim Scholars)*, Bangi: National University of Malaysia.

<sup>35</sup> Shafei Abu Bakar, *supra*, n. 24.

The second stage marked the establishment of the educational system and books in Terengganu, by local and foreign scholars. Sharif Muhammad al-Baghdadi who came preaching to Terengganu held his classes in Hulu Terengganu. It is not certain what books he used to teach, however what is certain is that his descendant, Sheikh Abdul Malik Abdullah, was a prominent scholar in Terengganu who was of the Shafi'i school.<sup>36</sup>

But the most significant educational developments in Terengganu occurred in the period from the end of the 18th century to the early 20th century. During the reign of Sultan Zainal Abidin III (1881-1919 A.D.) there were many learning centres in the state including:

- (a) Sheikh Abdul Malik b. Abdullah learning institution, which moved from Hulu Terengganu to Pulau Manis, then shifted to Sungai Rengas and subsequently to Padang Midin, Kuala Terengganu;
- (b) Tuk Kali (Kadi) Pondok Learning at Sungai Rengas, Kuala Terengganu, from mid 19th century 1940s; Tuk Kali whose real name was Hj. Muhammad b. Hj. Abdul Malik, was the son of Hj. Abdul Malik b. Isa.
- (c) Hj. Abdul Hamid Pondok at Tebauk Village, Nerus, Kuala Terengganu from the end of the 19th century to mid 20th century;
- (d) Pondok Learning centres in Besut such as Pondok Hj. Hasan Besut at Gong Surau Village, Besut, Pondok Hj. Husain at Lampu Village, Besut, Pondok Hj. Muhammad b. Hj. Husain at Kuala Besut, Pondok Hj. 'Umar at Raja Village, Besut, Pondok Hj. Abas at Bukit Puteri, Besut and Pondok Hj. Wan Abdul Latif Jerteh at Besut, that were established around the end of 19th century to mid 20th century;
- (e) Hj. Mat Shafei Pondok at Losong, Kuala Terengganu from 1890s to mid 20th century;
- (f) Fakih Abdullah Pondok from 1940s to 1963;

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<sup>36</sup>

*Ibid.*

- (g) Hj. Zainal Abidin Pondok at Surau Gate, Dungun, from 1958 to 1970.

As a whole, from this writer's observation and research, the Fiqh and Usul al-Fiqh books in classical Malay or Arabic that were used and taught at the learning centres especially the traditional learning institutions (pondoks) were based on the Shafi'i school.<sup>37</sup> It was also the norm that the texts taught at the traditional learning centres used books that had been studied by their teachers previously, during their education in traditional learning centres in Malaya or elsewhere such as Pattani, Mecca and India.<sup>38</sup>

The texts and syllabus of Fiqh taught in the learning centres founded by Sheikh Abdul Malik could not be ascertained. Nonetheless, his books such as *Risalah Naql*, *Risalah Kayfiyyat al-Niyyah* and *Kitab Kifayah*, have been extracted from Shafi'i texts. These were used by him as texts in his teaching in addition to other works. These three books of Fiqh are believed to have been popular in Terengganu during his time, and deal with rules concerning aspects of worship in the practice of the community.<sup>39</sup> The books of Sheikh Abdul Malik were continued to be taught by his descendants.

The institutions founded by Sheikh Abdul Malik played a major role in the development of other educational institutions in Terengganu. Among them was the Sungai Rengas Pondok established by his great-grandson Hj. Abdul Malik b. Isa, also called Tok Kali (Syafei Abu Bakar, 1991), and the Tuan Guru Hj. Husain Pondok at Lampu Village, Besut which was opened in 1905 - 1917. Tuan Guru Hj. Husain was a student of Hj. Abdul Malik b. Isa.<sup>40</sup>

<sup>37</sup> Anwar Zainal Abidin, *supra*, n. 34.

<sup>38</sup> Wan Aribah bt. Wan Hassan. 2004. *Peranan Pendidikan Islam Dalam Melahirkan Para Pendidik: Suatu Kajian Khusus Di Daerah Besut Pada Tahun 1872-1937 (The Role of Islamic Education in Producing the Educator: A Specific Study in Besut in 1872-1937)*, Masters Degree Dissertation of History and Civilisation, Kuala Lumpur: University of Malaya.

<sup>39</sup> Shafei Abu Bakar, *supra*, n. 24.

<sup>40</sup> Mahmud b. Mamat. 1984. "Pondok di Besut: Satu Tinjauan Tentang Asal Usul Kemunculannya" ("A Traditional Learning Centre (Pondok) in Besut: A Review on Its Origins"), in Abdullah Zakaria b. Ghazali

## PRACTICE OF FATWA

Other than educational factors, the influence of the Shafi'i school of thought could also be seen in the practice of fatwa in Terengganu, issued by the mufti appointed by the Sultan. Usually, the fiqh books of the Shafi'i school were used as references for the fatwa issued, as evident from an answer provided by the mufti of Terengganu to a query from the Singapore Islamic Association. In their letter, the Singapore Islamic Association had asked about the jurisdiction of the kadhi. In answering, the mufti had collected the views of the Shafi'i school from the books of *Asna al-Matalib Sharh Rawd al-Talib Sheikh al-Islam Abu Yahya Zakariyya al-Ansari* (Trg. State Secretary 90/1336, "request for a fatwa of the mufti about a matter relating to the syariah Muhammadiyah").

Based on the above, it can be concluded that from the acceptance of Islam to the reign of Sultan Zainal Abidin III, the influence of the Shafi'i school had been significant in the tradition of education and the fatwas, as a direct result of the presence of Shafi'i scholars. This led to the legal system of the time resorting to Shafi'i fiqh as a source of reference in the implementation of laws in Terengganu.

## INFLUENCE OF THE SHAFI'I SCHOOL IN THE LEGAL SYSTEM DURING THE ERA OF SULTAN ZAINAL ABIDIN III

Before the arrival of the British colonialists to Terengganu and other states, Islamic laws together with the customary laws served as the fundamental law of the region. Some of the Islamic laws were applied directly from the Quran, while the rest was adopted from the translation of Shafi'i books of Fiqh. This is evidenced through the acknowledgement of the English representative regarding how the Sultan delivered judgments. He would first seek a judgment that could be found in the Quran. The English representative<sup>41</sup> wrote that:

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(ed.), *Terengganu, Then and Now*, Kuala Lumpur: University of Malaya History Society.

<sup>41</sup> CO 273/351, *Journal of The British Agent*, Oct. 2, 1909, desp. 345, p. 288.

“The practice of the courts in deciding cases is to search the Koran and its commentaries for law...”

With reference to Terengganu state laws from 1335 A.H. to 1342 A.H. or 1916 A.D. to 1923 A.D., there were about 40 laws which were approved and enforced. The earliest law was the Rules of Conduct of Court. From the list, only 11 laws were enforced during the reign of Sultan Zainal Abidin III. In addition, only a few laws were included in the categories of Shariah laws while the rest were civil laws.<sup>42</sup>

However, based on the study of the Malay Manuscript Catalogue in France compiled by the National Library of Malaysia (NLM), there existed a copy of Law of Terengganu which touched on almost all aspects of law, similar to laws in other Malay states.<sup>43</sup> The laws have Seven Chapters and 12 clauses and cover all aspects of law including crimes such as murder, adultery, gambling, theft, family laws, inheritance laws, contract laws including loans and debts, evidentiary laws, forest clearing laws and also compensation and its rules.<sup>44</sup>

The books of Fiqh of the Shafi'i school are considered to be the most authoritative source of law utilised at the time. The book *Minhaj al-Talibin* written by Imam Nawawi became the main reference source and was of substantial influence on the Sultan and scholars.<sup>45</sup> Before the rule of Sultan Zainal Abidin III, death penalty was the sentence for the commission of murder (*qatl*). However, the sentence was not implemented, being replaced by *diat* penalty and imprisonment, if the offender did not commit a murder that necessitates death sentence by way of retaliation (*qisas*). The sum of *diat* determined at that time was \$1200 and half of that amount was claimed by the Judge.<sup>46</sup>

A study of the records reveals that most of the sentences were converted to fines or prison terms. According to the Humprey report,

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<sup>42</sup> Chief Minister Office File 740/1343, *Undang-Undang Kerajaan dijilid (Government Laws Binded)*.

<sup>43</sup> MKM 60. Department of Malay Manuscript, National Library of Malaysia.

<sup>44</sup> Laws of Terengganu, Malay Manuscript Catalogue in France (KMMP).

<sup>45</sup> Heather Sutherland. 1980. “Transformation of the Terengganu Legal Order,” in the Journal of Southeast Asian Studies, Vol. II, No. 1.

<sup>46</sup> *Ibid.*

Islamic laws which entailed killing in retaliation as the sentence were rarely implemented as it was hard to accurately convict someone based on guilt.<sup>47</sup> For example, in the case of *Public Prosecutor (police) vs. Abdulah Senik*,<sup>48</sup> the accused was charged and found to be guilty of killing Said bin Salleh but the court had sentenced him to life imprisonment and hard labour.<sup>49</sup> Prior to sentencing, the committee had asked the opinion of Mufti Haji Wan Sulaiman. In this case, the mufti gave his opinion based on a discussion on the crime of killing (*al-qatl*) in a Shafi‘i book of Fiqh. In his written opinion, he said:<sup>50</sup>

“...that in a killing with bad intention, intending to take the life of the victim, the killer deserves the appropriate punishment (to be killed in return) but based on there being a complaint that the killer did not commit the killing, then this creates a doubt which will be able to forestall the sentence of *qisas* (killing in retaliation).”

The note written by the mufti above is seen to be in line with the view of Imam al-Nawawi (1308 A.H.) who said that compensatory killing of a killer will not happen unless in a situation where it is deliberate, when an individual had deliberately committed the murder and targeted the victim, using a tool commonly used in a killing such as a sharp tool or heavy object. Hence if there was no intention to commit the killing, or targeting the victim was unintentional, then this killing was called manslaughter, i.e. killing without intent or accidental death.

In addition, “*khalwat*” (seclusion) laws were one of the laws declared during the time of Sultan Zainal Abidin III. These laws were called the “Laws to forbid those who commit *khalwat*.” Carrying the signature of Mufti Muhammad Salleh who was a mufti at the time, this law is dated 16/7/1335 A.H. (1916 A.D.). In connection with the issue of *khalwat*, the government was entitled the right to provide such laws. This was aimed at checking those activities which may spoil the purity of

<sup>47</sup> *The Bucknill Commission Report* 1918.

<sup>48</sup> Kemaman Special Court No. 6/1352.

<sup>49</sup> Ittifak (Consensus) of State Secretary Council Meeting, No. 184/52.

<sup>50</sup> Mufti’s minutes: State Secretary, No. 157/5.

Islam and the society's virtues. These laws could be categorised under the Islamic laws of *ta'zir* (preventive laws).<sup>51</sup>

Imam al-Mawardi (1989), a prominent scholar of the Shafi'i school in the 5<sup>th</sup> century Hijrah, elaborated that *khalwat* related to relationships between men and women which could be subject to *ta'zir* action. He listed in detail the form of offence and the sentence that was appropriate. Hence the punishment for such offences generally is in line with the verdict of the Shafi'i school except for marginal differences, as it is assigned to the discretion of the ruler. During the reign of Sultan Zainal Abidin III, those who committed the offence could under the abovementioned laws, be imprisoned for not more than three months or fined not more than RM200.<sup>52</sup>

The execution of the sentence above is based on the decision of the mufti, to whom all criminal problems were submitted prior to sentencing. In making his decision, the mufti sought the views of scholars in the Shafi'i books of Fiqh.

Laws of the Shafi'i school have also been applied in the Terengganu Rules of Court. These laws contain 13 chapters, and a closing chapter covering duties of officers and staff of the court, punishment and fines as well as court expenses. In each chapter there are interrelated clauses.<sup>53</sup> Among Rules of Court that are seen to be in line with the Shafi'i school is Chapter One on the department of judiciary. This chapter has 16 clauses that discuss the functions and authority of a judge. Clause No. 1 sets out the responsibilities of the judge when a case is brought before him, as follows:

“A judge commences when a *mudda'i* (*plaintiff*) or *mudda'a 'alayh* (*defendant*) comes to see him, and will instruct the *mustantiq* (verifier of facts of the accusation made by the *mudda'i* and *mudda'a 'alayh*); then he will examine both of them, and instruct the *Katib* (Registrar/recorder in court) to record the accusation and the answer...”

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<sup>51</sup> TRG/State Secretary, 58/1335. “To make laws preventing *khalwat*.”

<sup>52</sup> *Ibid.*

<sup>53</sup> Terengganu Rules of Court, National Archives of Malaysia.

The judge is entitled to order the *mustantiq* to examine the complaint made by the *mudda'i* (*plaintiff*) carefully before a complaint is received for the trial process. This can be seen to be in line with the opinion of Imam al-Mawardi who said that a complaint is considered valid if certain conditions are fulfilled, which include making a firm oral complaint that is clearly understandable with regard to the meaning of the accusation or claim. Hence, a verbal announcement using terms such as “In my estimation” or “I assume” would not be acceptable.

Adeherence to the Shafi'i school can also be seen in the second clause. It upholds that when a judge receives a complaint, he is entitled to call the accused, and issue a summons (*Surat Mahdhar*). The summons is aimed at forcing the accused to respond to the complaint. The clause is as follows (Clause 2, Chapter 1, Terengganu Rules of Court, National Archives of Malaysia):

“...when the judge has received a complaint against the accused then the defendant *mudda'a 'alayh* (*defendant*) will be required, and the judge shall instruct the *Katib* to write a letter to summon him that is called the *Mahdhar* letter, carrying the stamp and signature of the judge; this will be handed thereafter to the police for delivery to the person summoned, in particular if a witness is required.”

Two documents that needed to be explained to both the accused and the complainant were the *Mahdhar* letter and the Certificate Letter. Both these terms were mentioned by al-Mawardi (1971). *Mahdhar* is a statement or record (*hikayah al-hal*) of a situation pertaining to what transpired between both parties, whether in respect of a claim, confession, breach, evidence or oath. Whereas Certificate is the execution of all orders which had been decided by the *qadi* (judge) that carries his signature.

Among other enactments or laws that reflect Shafi'i influences is the appointment of an inspector of witnesses in court. In Clause 5, Chapter 1 of the Terengganu Rules of Court, it is provided that the judge was allowed to appoint two persons to act as examiners of witnesses provided by the *mudda'i* (*plaintiff*) and *mudda'a 'alayh* (*defendant*).

These provisions were in line with the position the Shafi'i school. Examination of witnesses, the conductor of which is called *muzakki* in

Arabic, is *sunnah* according to Imam al-Shafi'i (1393 A.H.). This is because the examination is aimed at verifying the character of a witness with regard to his being fair or *fasiq*. In addition, the examination of the witness must be done by an upright person himself.

In Clause 12 of the same provision, the place of trial is mentioned. The text states:

“With regard to location of the *mushawarah* (trial) for the judge, for judgment on any matter that relates to *khusumah* (dispute), the proceedings must necessarily be held in court; no other location would be allowed under any circumstances.”

The provisions in the text above is seen as being in line with the verdict of Imam al-Shafi'i (1393 A.H.) who had stated that it is *makruh* (reprehensible) for trials to be conducted in mosques. Meanwhile, in the schools Hanafi, Maliki and Hanbali, trial in a mosque is allowed as it is in accordance with the practice of the Prophet p.b.u.h., who had conducted trials in the mosque.<sup>54</sup> In cases of *hudud* too, Imam al-Shafi'i had decreed that it was *makruh* to execute them in mosques, based on a hadith narrated by Mu'az that the Prophet p.b.u.h. had said:<sup>55</sup>

“Distance your mosques from children, the insane, raising your voice, disputes, carrying out *hudud*, brandishing weapons, and trading.”

Hence, the government accordingly had provided a suitable location to carry out trials, termed 'court'. The court, according to al-Mawardi (1971),<sup>56</sup> is an exclusive location with special characteristics as compared to others. In addition, the court should be built on a higher place to enable the public to know it, and should have certain amenities;

<sup>54</sup> Wahbah al-Zuhayli. 1984, *al-Fiqh al-Islami wa Adillatuh*, Beirut: Dar al-Fikr.

<sup>55</sup> Al-Mawardi. 1971. *Adab al-Qadi*, Muhyi Hilal al-Sarkhan (ed.), 2 Constituents, Baghdad: Ihya' Turath al-Islami.

<sup>56</sup> *Ibid.*

it should be protected from heat and cold, and have ventilation, providing comfort to the judge when performing his duty.

The influence of the Shafi'i school can also be seen in the provisions of land law in Terengganu during the reign of Sultan Zainal Abidin III, in whose period rules of forest clearance were established. This is a piece of law consisting of five clauses, the most important condition in which relate to the persons who intend to clear forest and open new agriculture plots. As an example, Clause 3 refers to revocation of the award of land to a person in the event he fails to develop half of the land given within a period of one year from the date of the letter of consent/grant. It is stated in the text of the provisions that:<sup>57</sup>

“If within a period of one year from the date of the certificate letter, half of the forest allowed is not cleared, then the letter of consent to clear will be cancelled.”

In the Shafi'i school, reviving a plot of land could be a basis for establishing ownership over such land even without the consent of the ruler. According to the Shafi'i school, the period allowed to revive the land would be according to *'urf*.<sup>58</sup> In the text above, clearing the land was allowed for a period of one year, indicating the influence of the Shafi'i school which did not extend the time to three years as prevalent in the other schools. The period of three years is based on the practice of Sayyidina 'Umar ibn al-Khattab r.a.

## CONCLUSION

Based on the discussion above, the influence of the Shafi'i school of thought can be clearly seen in the implementation of laws in Terengganu.

<sup>57</sup> TRG/State Secretary 202/37.

<sup>58</sup> Al-Nawawi, Muhy al-Din Abu Zakariyya b. Sharf. 1308 A.H., *Minhaj al-Talibin wa 'Umdah al-Muftin fi al-Fiqh*, Egypt: al-Matba'ah al-Maymaniyyah. al-Sharbini al-Khatib, No date, *al-Iqna'*, Penang: Maktabah wa Matba'ah Dar al-Ma'arif, vol. 2; Zakariyya al-Ansari (no date), *Fath al-Wahhab bi Syarh al-Minhaj*, Jeddah: al-Haramayn li al-Taba'ah wa Nasyr wa Tawzi'.

Although only a part of the cases are referred to in this article, they provide sufficient indication that judgments were based on references to works of the Shafi'i school. In the implementation of the Rules of Court, many similarities can be found with the rules stated in books of Imam al-Shafi'i and Imam al-Mawardi. This is also true with regard to issues related to other areas of law, such as land law. These are seen to be in line with the views of other Shafi'i scholars such as al-Nawawi, Zakariyya al-Ansari, al-Sharbini al-Khatib. In addition, the discussion above reveals that implementation of laws in Terengganu had a clear source as well as organised procedures, indicating a legal system that operated with fairness and justice.