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“De-provincializing the Syariah:
Muslim Activists and Legal Reforms in Malaysia”

By: Syed Muhd Khairudin Aljunied, Ph.D.
(National University of Singapore, Singapore)

Abstract

This paper examines the active roles played by Muslim activists in agitating for the expansion of the functions of syariah (Muslim legal and ethical code) within a given country’s constitution and in society at large. Using the Angkatan Belia Islam Malaysia (ABIM) - the largest Muslim youth movement in Malaysia – as an illustrative case study, the paper examines a process which I term as “deprovincializing the syariah” by Muslim activists, which connotes an endeavour to reformulate and reassert the position of the syariah to cover all aspects of the country’s laws. Building upon recent works on Islamic activism and drawing from various strands of social movement theory, this essay attempts to conceptualize and explain the various tactics which Muslim movements such as ABIM had adopted to make the case for the syariah to wield a wider influence in the public domain. Among the tactics which will be discussed are institutional subversion, ideological collaboration, dramatic contention and discursive persuasion, all of which have been utilized by Muslim activists since the advent of global Islamic resurgence in the 1970s.

Introduction

It is now widely accepted that one of the most significant developments in the present time is the loud calls for the implementation of the syariah in many Muslim majority countries. In Indonesia, Nigeria, Sudan, Pakistan, Egypt, Iran and the once “secular” Turkish state, advocates of the syariah have become more and more visible and influential. Taking on a variety of strategies to push for the implementation of Islamic legal and ethical code so as to regular the personal bearing of Muslims and their social conduct, these syariah-minded activists contend that the existing legal frameworks that they had inherited from the colonial

era have kept Muslims bound to systems and ideologies that are foreign to the spirit of Islam. The syariah, then, is but one, if not, the most important means by which the Muslim self could be restored and preserved. Indeed, it is regarded by the most vehement of believers as a launchpad by which a complete change in the lives of ordinary Muslims could be accomplished in the path to reconstitute an ideal Muslim social order.¹

This essay examines the dynamics and impact of what I would term as “syariah activism” – a form of contentious struggle that seeks to reassert the Islamic legal and ethical code into becoming a frame of reference that would guide the daily actions, practises and discourses of Muslims and non-Muslims. My gaze is directed towards a setting that is somewhat relatively neglected in the expanding literature on the topic: Malaysia. Home to close to 20 million Muslims of varying ideological and linguistic backgrounds and a major player in the Muslim world, since the 1970s, Malaysia has witnessed endeavours by Islamic groups to implement the syariah as part and parcel of these groups’ dream to create an “Islamic state”.²

The attempts by the local PAS (Parti Islam Semalaysia) government to impose hudud laws in Kelantan in the early 1990s marked as one of the most pivotal moment in the history of syariah activism in the country.³ This experiment of a total implementation of the syariah along with others that would soon follow had invited responses from politicians in the ruling party UMNO (United Malays’ National Organization) to initiate reforms that would give more prominence to the syariah in the public sphere. Since both rival parties have been in the race in displaying their credentials as the “true defenders and enforcers” of Islamic laws and precepts in Malaysia, much ink has been spent by scholars and analysts in delineating the underlying reasons and effects of such overtures. Little surprise then that preceding observers have paid scant attention to the roles of civil society actors and their resolve to bring the syariah to the forefront of legal and social reforms in Malaysia. Where consideration is ever given, the approach has always been descriptive rather than analytic, if not, prescriptive rather than theoretical and conceptually nuanced.⁴

In moving away from the inordinate attention given to PAS-UMNO rivalry in syariah activism and filling the much needed reflexive and theoretical gaps in the literature, this essay directs its angle vision to the roles of the Angkatan Belia Islam Semalaysia (ABIM), a civil society organization that has delved deeply in syariah activism since its founding in 1971. Priding itself with a membership of more than 65,000 youths, all of whom are below the age of 40, and maintaining branches in several Muslim majority and minority countries, ABIM has produced globally recognised Muslim personas in the likes of the former Deputy Prime Minister of Malaysia, Anwar Ibrahim and the Muslim philosopher-historian Professor Osman Bakar. ABIM has also developed the reputation, both locally and internationally, of

¹ The literature of syariah activism in Muslim countries is too vast to be listed here. The most current and theoretically engaging volume is as follows: Robert W. Hefner, *Shari’a Politics: Islamic Law and Society in the Modern World* (Bloomington: Indiana University Press, 2011).

² Hussin Mutalib, *Islam in Malaysia: From Revivalism to Islamic State?* (Singapore: Singapore University Press, 1993).

³ Maria Luisa Seda-Poulin, “Islamization and Legal Reform in Malaysia: The Hudud Controversy of 1992”, in *Southeast Asian Affairs* (Singapore: Institute of Southeast Asian Studies, 1993), pp. 114 - 141.

⁴ See for examples: Mohammad Hashim Kamali, *Islamic Law in Malaysia: Issues and Developments* (Kuala Lumpur: Ilmiah Publisher, 2000).

being part of the Muslim counter-public sphere that appeals to Islam as an axis of difference and as a tool of reformation. The movement's outright challenge and reformation of secular systems that are ensconced in Malaysia and continued agitation for more room for the Islamization of the state and society in the last four decades has earned it the rather hyperbolic label of serving "as a transmission line for fundamentalist political ideology."⁵

Much like the Ikhwanul Muslimin in Egypt and Sudan and the Jamaat-e-Islami in Pakistan, ABIM activists has spent much of their energies to circulate Islamic counter-discourses and "formulate oppositional interpretations of their identities, interests and needs."⁶ Among such counter-discourses and oppositional interpretations are those that relate to the syariah. This essay develops the argument that one of ABIM's main thrusts has been to deprovincialize the syariah through the use of tactical repertoires so as to elevate the syariah from the marginal position that it has been since the coming of colonialism in modern Malaysia to one that would address almost all aspects of life. I use the term "deprovincializing syariah" to refer to a process by which the Islamic legal and ethical code is being redefined, repackaged and represented in such a manner that departs from its parochial mould of covering specific areas of family and property laws. It is a process that runs parallel with what Jose Casanova has termed as the "deprivatization of religion", a turning point in modern history that began in earnest in the 1970s by which religions or aspects of religiosity assert and attain a wider public significance in modern-day societies.⁷ Dissatisfied with the fact that divine laws and injunctions have been provincialized to deal with only specific areas of Muslim life, Muslim movements such as ABIM seek to expand the scope and reach of the syariah to include criminal, business and other civil issues and litigations that have been placed under the jurisdiction of secular courts in modern nation-states.

Because of the contentious nature of any efforts to "deprovincialize the syariah", such a venture would inevitably necessitate negotiations with, and in most instances, conflicts with, key actors in society whose interests and interpretations of laws and of morality have been conditioned by norms that may run contrary to those that are propagated by syariah activists. In the context of Malaysia, syariah activists, have first and foremost, been entangled in contestations with ruling regimes. The main *raison d'être* of the Malaysian state as defined by the constitution is to ensure the protection of equal and yet unique rights of Muslims and non-Muslims, while upholding of a strict division between the sacred and profane. Syariah activists contest such functions of the state. They called for more restrictions to be placed upon the non-Muslims especially in areas related to evangelical work and conversions out of Islam. The state is thus placed in the uneasy position of acquiescing to the demands of syariah activists, who are influential persons in society, while having to defend the constitutional guarantees to protect the freedom of religion in the country.

The second key societal actors that syariah activists have had to contend with are secularized intellectuals and civil society groups. These are groups and individuals who

⁵ Angel M. Rabasa, *The Muslim World after 9/11* (Santa Monica: RAND, 2004), p. 388.

⁶ Nancy Fraser, "Rethinking the public sphere: A contribution to the critique of actually existing democracy, in Craig Calhoun (ed.), *Habermas and the public sphere* (Cambridge: MIT Press, 1992), p. 123.

⁷ Jose Casanova, *Public Religions in the Modern World* (Chicago: Chicago University Press, 1984).

regard the process of deprovincializing the syariah as running contrary the exigencies of modern life whereby religion should be a private and personal matter that does not inform private morality. Syariah activists are locked in a position by which they would have to reason out, intellectually, the rationale for the expansion of the scope of the syariah and to rival with other civil society groups in winning the hearts and minds of the general public.

Indeed, syariah activists must also grapple with the task of shaping of the sensibilities of the informed masses, the ordinary yet well-read layman on the street who may all too often consider the efforts of deprovincializing the syariah as either impractical or undesirable or as an exercise of futility. This is especially so in Malaysia where the non-Muslims form nearly 40% of the total population. Their skepticism towards the implementation of the syariah and towards Islam in general is by product of the experience of marginality within a nation-state that promotes Malay supremacy.⁸

Viewed from this perspective, ABIM's struggle to deprovincialize the syariah is therefore fraught with multiple barriers and challenges that may hamper their project of reformation. Drawing from various strands within social movement theory and scholar works on global Islamic activism, in the pages that follow, I will show that ABIM had negotiated their way through these obstacles through the use of tactical repertoires, that is, an entire range of tactics to propagate tenaciously for the deprovincialization of the syariah. Tactical repertoires are "established ways in which pairs of actors make and receive claims bearing on each other's interests."⁹ They are, as social movement theorists have it, periodic, predictable and serve as "toolkits" that are often used by movement activists to further the contentious aims.¹⁰

Four main tactics could be identified in that regard, foremost being *institutional subversion*. This tactic involves movement activists' strategic entry into state bodies and political parties to discretely or openly further the agenda of expanding the functions of syariah in Malaysia. While infiltrating into state and political bodies provided ABIM members with necessary political influence needed for the deprovincializing of the syariah, there are limits to how far politicians could gain backing of intellectuals and other social activists who are proposing for new reforms in the legal framework of the country. ABIM therefore adopted the tactic of *ideological collaboration* with as many independent thinkers and non-governmental organizations that shared their aspirations of deprovincializing the syariah. The third tactic that follows from this is *dramatic contention*, which comes in the form of public demonstrations and protests that were sometimes organized with other civil society groups. This tactic is usually used as and when the first two seems inadequate or do not appear to achieve public attention which a given issue required. Above all, the following page will describe and explain the tactic of *discursive persuasion*. By this, I mean the organizing

⁸ See for example: Richard Baxtrom, *Houses in Motion: The Experience of Place and the Problem of Belief in Urban Malaysia* (California: Stanford University Press, 2008).

⁹ Charles Tilly, "Contentious Repertoires in Great Britain, 1758-1834", in Mark Traugott (ed.), *Repertoires and Cycles of Collective Action* (Durham: Duke University Press, 1995), p. 43.

¹⁰ Verta Taylor and Nella van Dyke, "'Get up, Stand Up': Tactical Repertoires of Social Movements", in David A. Snow, Sarah A. Soule and Hanspeter Kriesi (eds.), *The Blackwell Companion to Social Movements* (Oxford: Blackwell, 2007) p. 266.

seminars, lectures as well as the publishing newsletters, opinions and online articles to explain the rationale for syariah reforms among the masses, both Muslims and non-Muslims.

It should be stressed here that these tactics were consistently utilized by ABIM throughout its four decades of existence. ABIM was, of course, not alone in campaigning for the deprovincialization of the syariah in Malaysia for there existed other groups that worked in tandem towards that end. The cumulative outcome of ABIM's tactics and the other collectives that moved along the movement's line of struggle was that it fortified the existing provisions involving the syariah in the Malaysian constitution. Such tactics also brought about new reforms to the Malaysian constitution particular in areas involving Muslims and Islamic affairs. Further, the employment of these tactics over the years gave rise to conflicts between secular and religious courts and other affiliated personalities and institutions, with ABIM supporting the latter's claim for more autonomy and interference in legal matters affecting Muslims and sometimes non-Muslims in Malaysia. Did ABIM derive any inspiration for successful models and thinkers from overseas in the course of employing these tactics to deprovincialize the syariah within the Malaysian context? Were there resistance from the secular intellectuals towards ABIM's syariah activism and how intense were such opposition? Were there any shifts in public reception towards ABIM's efforts through the years? More importantly, what changes in the Malaysian constitution have come about as a result of ABIM's infiltration, collaboration contentious and persuasive tactics? Answering these and other related questions would enable us to comprehend how Muslim movements seek to elevate the status of the syariah in society and the strategies they employ to achieve that end. A deeper implication of this is that such a study will reveal the impact that legal dualism has had in a country where Muslims are predominant and where Islamic consciousness has been on the rise. And yet, before delving full into ABIM's tactics to deprovincialize of the syariah, I will outline, first, the provincialized place that the syariah had occupied in the Malaysian constitution and the wider context that fostered Muslim activist groups to agitate for radical change.

Islam in the Malaysian Constitution and Muslim Resurgence

British consolidation of its hegemonic rule in Malaya in the 1920s gave birth to a system of "legal dualism" which meant that secular laws would predominate all legal matters in the colony, with the syariah covering specific aspects pertaining to Muslim life.¹¹ Under this new legal arrangement, each state in Malaya were allowed to enact their respective syariah laws in line with the *adat* (customs) of that society but covering only the areas of family laws, waqf (Islamic endowment), the structure and jurisdiction of syariah courts and Islam as a countrywide ideology. The *Majlis Ugama Islam* (Islamic religious councils), managed by a group of kathis (Muslim judges), ulamas (religious scholars) and muftis (expounder of Islamic laws), would advise the Kings in respective states on issues pertaining to the personal laws of Muslims. Because of this arrangement and largely due decades of inattention by both the Muslim and colonial elites in the running of Muslim affairs in general, the syariah's importance within the overall legal system of the country grew became increasingly inconsequential. Not only was the syariah in Malaya divorced from its ideal form

¹¹ Andrew Harding, "Sharia and National Law in Indonesia", in Jan Michiel Otto (ed.), *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (Leiden: Leiden University Press, 2010), p. 495.

of being a comprehensive legal and ethical code and not only was it provincialized to insignificant areas affecting Muslim in the colony, under British colonialism up until Malaysia's independence in August 1957, there was no proper management of syariah courts which were created, in the first place, to ensure that the laws that remained under Muslim purview were enforced. The legal scholar and activist, Ahmad Ibrahim, who was to play a major role in the reformation of the syariah describes it in the following manner:

“In contrast to the [to the civil courts], the Syariah [or spelled as syariah] courts were for a long time neglected and forgotten. There were no independent juridical and legal service for them and the judge and officers belonged to the general administrative service and were subject to the control of the Religious Councils and the religious departments. The judge of the Syariah High Courts did not have the independent status, remuneration and terms of service of the civil judges. The facilities for the Syariah Courts were far below those provided for the civil courts.”¹²

The problems of neglect and the lack of adequate resources were just the tip of a multitude of issues that would surface in the later years. In constructing the new constitution of Malaysia, the postcolonial leaders in the likes of Tengku Abdul Rahman upheld the colonial legal framework that ensured that the syariah was not the law of country or even the whole law for Muslims. Postcolonial leaders' conception of the syariah, therefore, was a “derivative discourse” which accepted the colonial notion that the secular law must prevail.¹³ Indeed, while Islam is entrenched in the constitution of Malaysia, the place of syariah within the country's legal code and practice have always been an ambiguous and contentious from the start.

Such ambiguities can be illustrated through the following examples. Article 3 (1) of the Malaysian constitution states that Islam is the official state religion and that laws could be created and enforced to punish Muslims who contravene Islamic precepts. Still, an exception was made in regard to crimes which came under the jurisdiction of the secular federal law. Article 11, in turn, provides freedom of religion in the country which states that: “Every person has the right to profess and practice his religion, and subject to Clause (4), to propagate it.” However, Clause (4) has it that states can restrict the propagation of any other religious doctrine or belief to Muslims. The maximum penalty for such offense is one year imprisonment and a RM3,000 fine.

The ambiguous nature of the constitution and the relative autonomy of the states also meant that every state in Malaysia could enact and revise its own syariah code, subject to approval by the federal government. Islamic laws therefore, as Constance Chevallier-Govers

¹² Ahmad Mohamed Ibrahim, *The Administration of Islamic Law in Malaysia* (Kuala Lumpur: Institute of Islamic Understanding, 2000), p. 194.

¹³ Partha Chatterjee, *Nationalist Thought and the Colonial World: A Derivative Discourse*, Minneapolis: University of Minnesota Press, 1993, pp. 36-53. See also: M.B. Hooker, “Fatawa in Malaysia 1960-1985”, *Arab Law Quarterly* 8, 2 (1993), p. 103-104.

observes, “are different from State to State. This lack of uniformity in shari’ah [or syariah] law is a consequence of the constitutional framework. The rules of shari’ah are set by various Sultans, who serve as head of the Islamic religion in the respective States.”¹⁴ Eidul Fitri (a day that marks the end of the fasting month), for example, was celebrated on different days by different states in 1982. Also, religious preachers who were outlawed, banned or suspended from preaching in one state could easily find a safe haven in another state.

Hence, until the 1970s, the syariah’s position both in theory and in practise remained marginal mainly because such ambiguities were never resolved and more so because of the secularized environment that existed in Malaysia then. Both the Malay Muslim elites and the society at large saw the syariah as largely symbolic, to be respected and held in high regard but not to be privileged above and beyond the secular laws. To be sure, while Islam did encroach into the public life of Malaysians in areas such as state ceremonies, government patronage of Islamic conferences and Quranic reading competitions as well as the use of public funds to set up Islamic institutions and to imbibe Islamic values in society, these gestures were seldom seen as intrusive by the non-Muslims and even brushed aside by many Muslims in the country. The change came upon the coming of Islamic resurgence or what is often referred to as the da’wah (missionary) movement.¹⁵

The 1970s and 1980s witnessed the emergence of Muslim movements agitating for the implementation of Syariah in Muslim countries. This was part of the global Islamic resurgence that affected the Muslim World in generally. During this period of religious effervescence, several Muslim majority countries went as far as to amend their constitutions in such a manner that syariah norms would determine the substance of state laws.¹⁶ One of the countries that would soon follow this trend of “syariatization” was Malaysia. Among the groups that advocated for the implementation of syariah in Malaysia was ABIM.

Founded in 1971 by Malay youths in Malaysia who were greatly influenced by the *Ikhwān al-Muslimīn* (Muslim Brotherhood) in Egypt and, to a lesser extent, the *Jama’at Islami* in Pakistan, and yet, sensitive to the exigencies of their context while avoiding blind adoption of the methods and modes of thought inherent within movements outside Southeast Asia, ABIM’s main thrusts were to disseminate a proper understanding of Islam to the Malaysians, to bring about the creation of an Islamized society and to establish a Muslim polity in Malaysia.¹⁷ By the late 1980s, ABIM activism, along with other Muslim groups such as Darul Arqam, Jemaah Islah Malaysia (JIM) and Jemaah Tabligh, made the spirit of *dakwah* (the Islamic calling) a pervasive phenomenon throughout the rural and urban parts of Singapore, Malaysia and Indonesia.¹⁸

¹⁴ Constance Chevallier-Govers, *Shari’ah and Legal Pluralism in Malaysia* (Kuala Lumpur: IAIS Malaysia Monograph Series No. 2, 2010), p. 24.

¹⁵ Seda-Poulin, “Islamization and Legal Reform in Malaysia”, p. 231.

¹⁶ Nathan Brown, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf* (Cambridge: Cambridge University Press, 1997); Clark B. Lombardi, *State Law as Islamic Law in Modern Egypt: The Incorporation of the Shari’a into Egyptian Constitutional Law* (Leiden: Brill, 2006).

¹⁷ Abu Urwah, *Risalah Usrah* Vols. 1-3 (Kuala Lumpur: Pustaka Salam, 1989).

¹⁸ Robert W. Hefner, “Islam in the Era of Nation-States: Politics and Religious Renewal in Muslim Southeast Asia”, in Robert W. Hefner and Patricia Horvath (eds.), *Islam in the Era of Nation-States: Politics and Religious Renewal in Muslim Southeast Asia* (Honolulu: University of Hawai’i Press, 1997), pp. 3-47.

ABIM stood out among other Muslim activist groups for it had made the implementation of the syariah as one of its core component of its end goals. The movement advocated for a democratic and contextualised syariah. That is to say, while they regard the Quran, the Sunnah of Prophet and views of the ulama as authoritative sources for any understanding and formulation of the syariah, they however distanced themselves from models that have been implemented in Muslim countries in Africa, South Asia and the Middle East. A contextualized syariah thus is one that is sensitive to local Malay/Muslim practises while remaining true to the spirit and demands of Islamic legal and ethical code. This interpretation of the syariah is very much in keeping with the findings of studies done by John Esposito and Dalia Mogahed on data from a Gallup World Poll. Similar to many Islamic movements in modern nation-states, ABIM lent “strong support for Islam and democracy” just as they also “reveal widespread support for Sharia....they want neither a theocracy nor a secular democracy and would opt for a third model in which religious principles and democratic values coexist.”¹⁹ Or to put it in the words of ABIM’s President, Yusri Mohamad: “An Islamic Malaysia is not the anti-thesis to our desire to be a successful modern state. On the contrary, it is one of the ingredients that can successfully bind the various elements together.”²⁰

The entry of ABIM’s President, Anwar Ibrahim, into the ranks of UMNO in 1982 supercharged the process of introducing a contextualised syariah in the country’s laws and courts and the reinterpretation of the Malaysian constitution to be in keeping with the spirit of Islam. In 1988, for example, the Malaysian constitution was amended when a new clause, IA, was added to Article 21. The new amendment has it that the secular courts shall not have jurisdiction over subjects within the competence of the syariah courts and that decisions made by the syariah courts cannot be overturned by the secular courts.²¹ During the same period and in the two decades that followed, the syariah court systems in Malaysia had been thoroughly upgraded. New infrastructures such as buildings were built. More syariah court judges were employed and they received better pay and recognition.²²

ABIM’s activism which was soon replicated by other Islamic groups encouraged the ruling party UMNO to pursue its own Islamization programme to display the government’s commitment towards making Malaysia a hub for “syariah compliant” products and institutions. This was evidenced in the establishment of the International Islamic University, the Institute of Islamic Understanding (IKIM) and Islamic Missionary Foundation of Malaysia (YADIM) and the founding of Islamic banks as well as financial institutions. So methodical and thorough was this programme of Islamization that Malaysia was touted by

¹⁹ John L. Esposito and Dalia Mogahed, *Who Speaks for Islam: What a Billion Muslim Really Think* (New York: Gallup Press, 2007), p. 35 and 63.

²⁰ *Malaysiakini*, 21 July, 2007.

²¹ Kikue Hamayotsu, “Politics of Syariah Reform: The Making of the State Religio-Legal Apparatus” in Virginia Hooker and Norani Othman (eds.) *Malaysia: Islam, Society and Politics* (Singapore: Institute of Southeast Asian Studies, 2003), p. 61

²² Kim Ben Phar, *Islamic Statehood and Maqasid Al-Shariah in Malaysia: A Zero-Sum Game?* (Chiang Mai: Silkworm Books, 2009), p. 22

many Muslim countries as a model by which the demands of the syariah could be harmonized with that of modernity.²³

Together with these changes came more leeway for syariah courts to make independent decisions of its own in the light of the provisions of the Malaysian constitution. The increasing influence of the syariah courts could be seen in the case of the Lina Joy controversy which involves the conversion of a Muslim lady into Christianity and her struggle to be registered as a non-Muslim which was later on blocked by the syariah courts. We will return to this case later. Suffice is it to state here this case became the impetus for Muslim activists to agitate for further amendments to the constitutions to ensure that the rights of Muslims in the country were duly protected. On June 2013, it was proposed in parliament that the Syariah High Court will be given expansive powers to establish whether or not a given individual is a Muslim. The court can declare that a person is no longer a Muslim following the provisions of Section 51(3)(x) of the Administration of Islamic Laws (Federal Territories) Act.²⁴ A legal analyst view such changes as part and parcel of the state's strategies to appease Muslim activists just as it sought to fortify the position of the Malay rulers and Muslims through the use of the constitution.²⁵

Even so, there existed a dissonance between what the Malaysian state and Muslim activists had done to deprovincialize syariah courts as against what a segment of Malaysian Muslims felt should be the actual functions of the syariah in society. In a recent opinion survey conducted in 2006, Patricia Martinez found that a majority of her Muslim respondents felt "that Shariah laws in Malaysia are not strict enough, and 57.3% want the hudud (Islamic criminal law) to be implemented. However, a majority, 63.3%, also opted for the Shariah to remain as it is under the Constitution in Malaysia (the other answer-option given to the question was, "The Shariah to replace the Constitution in Malaysia."²⁶ Such findings are revealing of two underlying developments, the first is that there is a growing receptiveness towards the implementation of the syariah on the part of ordinary Muslims. This frame of mind may have been an upshot of decades of Islamization sponsored by the state and driven by civil society actors such as ABIM. The second issue that emerged from this opinion survey is that Muslims in Malaysia now feel that there is still much to be done to ensure that the syariah is placed at the rightful position that it should be in. It is worthwhile then to examine how ABIM had contributed to making ordinary Muslims more predisposed to the syariah and the tactics Islamic activists employ to initiate changes in the legal framework and procedures of Malaysia.

ABIM's Tactical Repertoires

²³ Anna Spiegel, "Negotiating Women's Rights in a Translocal Space: Women's Organisations and Networking in Malaysia", in Gudrun Lachenmann and Petra Dannecker (eds.), *Negotiating development in Muslim societies: Gendered spaces and translocal connections* (Lanham: Lexington Books, 2008), p. 228.

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http://www.malaysianbar.org.my/legal/general_news/new_powers_for_syariah_court_with_proposed_amendments.html

²⁵ Vanitha Sundra Karean, "The Malaysian Constitution and its Identity Crisis: Secular or Theocratic?", *LAWASIA Journal*, 1 (2006), p. 50.

²⁶ "Malaysian Muslims Living with Diversity, *Malaysiakini*, August 2006, <http://www.malaysiakini.com/opinionfeatures/55899>"

1. *Institutional Subversion.*

One of the tactics that Muslim social movement activists employ to mediate, if not, influence state policies is by participating in government linked bodies to bring about social change and initiate reform in local societies. Muthiah Alagappa has described this as “the deep penetration and influence over the state by certain civil society actors.”²⁷ By this, he is referring to the creative ability of civil society actors to enter into various arms of the state apparatus and taking up strategic positions in state-linked bodies to gain access to a range of resources. Such a tactic would allow movement activists to push for mobilization efforts that were previously made impossible by the restrictions put in place by the reigning state.

It is important to mention here that ABIM members did not immediately delve into such a tactic until the movement had consolidated itself internally. In the 1970s, many ABIM members felt: “We do not have to wait for the government. Implement the syariah in ourselves until we are ready to influence the government.”²⁸ This stance changed a decade later when ABIM leadership saw that Muslim movements overseas were successful in implementing the syariah through subverting state institutions. ABIM members thus took several routes to realize this tactic. Some joined the UMNO party and used their clout to further the agenda of syariah activism as well as to ease the way for ABIM members as they became involved in many of its syariah related activities. The entry of Anwar Ibrahim, the third President of ABIM, into UMNO in 1982 is one example of institutional subversion. His decision to join the ruling party shocked many who saw him as a radical Muslim activist with the reputation of being anti-establishment. More crucially, Anwar’s decision to join UMNO encouraged many other members such as Sanusi Junid, Roslan Kassim, Kamaruddin Mohd Nor, Zambry Abdul Kadir, Fuad Hassan, Kamaruddin Jaafar and Fauzi Rahman to follow suit.

Granted that ABIM members would have to resign formally from the organization following their entry into political parties, and yet, the tactic of joining these institutions en masse laid the conditions for the enhancement of the Islamization and syariah agendas in Malaysia. Many older members of ABIM actually became senior politicians and formed their own political network that had a bearing on state policies pertaining to Islam. Although Anwar Ibrahim was eventually sacked from UMNO and formed his own opposition coalition, he and many ABIM members constructed an Islamized state bureaucracy that became “a privileged force, as they are not accountable to voters but have the backing of the law and receive support from a clamorous section of the Muslim civil society.”²⁹

The entry of ABIM members into political parties also paved the way for many of ABIM members who were themselves syariah trained lawyers to be employed in the state bureaucracies which included the syariah courts, state and federal courts, the Department of Islamic Development Malaysia (JAKIM), the Institute of Islamic Understanding (IKIM) and

²⁷ Alagappa, Muthiah, ‘Civil society and Political Change: An Analytical Framework’, in Muthiah Alagappa (ed.), *Civil society and Political Change in Asia: Expanding and Contracting Democratic Space* (Stanford: Stanford University Press, 2004), pp. p. 37.

²⁸ *Risalah*, August/September 1977, p. 23.

²⁹ Maznah Mohamad, “The Ascendance of Bureaucratic Islam and the Secularization of the Sharia in Malaysia”, *Pacific Affairs*, 83, 3 (2010), p. 1.

Islamic Missionary Foundation of Malaysia (YADIM) and many local universities and government linked corporations. While some ABIM members in these bodies tend to take a more judicious approach in arguing for the viability of expanding the scope of the syariah in the Malaysian context, other members such as Professor Razali Nawawi (former Dean at IIUM), Dr Siddiq Fadhil (Former Professor at Universiti Kebangsaan Malaysia and Principal Fellow at Malaysian Islamic Economics Foundation (YAPEIM), and Dr Yusri Mohamad (a Syariah trained lawyer) took on a more hardline approach calling for the hastening of the “Islamisation of Laws” in Malaysia.³⁰

Another group of ABIM members who were not in favour of joining UMNO gravitated towards the opposition party, PAS. These former members in the likes of the late Ustaz Fadzil Nor (former Presiden of PAS), Abdul Hadi Awang (former Chairman of ABIM Terengganu), Mohamad Sabu, Ustaz Abdul Ghani Shamsudin, Husam Musa, Tuan Ibrahim Tuan Man, Ustaz Abu Bakar Chik Ustaz Muhammad Mustafa, Ustaz Mohd Daud Iraqi, among many others, were aggressive in pushing for the implementation of *budud* laws in the Northern Malay States, particularly in Kelantan. For this group of former ABIM members, matters relating to the syariah required the transcending of political differences and affiliations. For that reason, these politicians still maintained links with the ABIM even though they were active in opposition politics and knowing full well that ABIM was in support of UMNO for nearly two decades since the 1980s. All in all, due to their activism along with ABIM members in UMNO and other state bodies, a few changes in the Malaysian laws had taken into effect since the 1970s. Among which was the repealing of the Horse Racing Act (1965), Gambling Ordinance (1953), Lottery Ordinance (1952) and The Pawn Act (1981).³¹ Till date, ABIM and former ABIM members are now part of the whole coterie of state and state-linked institutions, making the Islamization laws in the country and in the constitution an irreversible one.³²

2. Ideological Collaboration

The second tactic that to be considered here is “ideological collaboration”. This is a type of collaboration which resulted to the coming together of different groups and personalities under a common umbrella to work and agitate towards the achievement of ideological goals. Such initiatives are often ephemeral and event-based but they can be potent enough to push for changes in the realms of societal and legal reforms. ABIM operationalized this in the cause of the syariah in two ways. They established, first and foremost, alliances with intellectuals in society who were particularly predisposed to the idea of augmenting the importance of the syariah in society and in the Malaysian constitution. The two personalities which ABIM built alliances with was Professor Ahmad Ibrahim and Professor Abdul Aziz Bari.

³⁰ *Risalah*, 3, 11 (October 1986), p. 6.

³¹ *Risalah*, 3, 1983, p. 12.

³² Saliha Hassan, “Islamic non-governmental organisations”, in Meredith L. Weiss and Saliha Hassan (eds.), *Social Movements in Malaysia* (London: Routledge, 2003), pp. 105-107.

Both personalities were university dons specializing the areas of constitutional laws. Ahmad Ibrahim was the Dean of the Faculty of Law at the University of Malaya before he was appointed as the Sheikh and Dean of the Kulliyah of Laws at the International Islamic University of Malaysia (IIUM). There, Ahmad Ibrahim became increasingly involved in the project of Islamization of legal curriculum in the academe and also in the transformation of policies regarding the syariah in Malaysia. Many of Ahmad Ibrahim's students became lawyers, judges and government officials, some of which, were ABIM members. Abdul Aziz Bari, in turn, was a protégé of Ahmad Ibrahim. After having studied under Ahmad Ibrahim, he pursued higher studies, writing a PhD thesis on the place of the Malay rulers under the Malaysian constitution.

These men, along with other luminaries such as the Dr. Abdul Halim El-Muhammady (Vice-President of Wadah Pencerdasan Umat Malaysia) and Musa Awang (Vice-President Persatuan Peguam Syarie Malaysia), were public intellectuals in the sense that they were active in public life and sought to bring their ideas about Islam's constitutional supremacy to the minds of policymakers, academics and the masses. They advocated that it was the state's duty to elevate the position of syariah in the country and this should be achieved by way of amendments to the constitution as well as through public education.³³ ABIM leadership leveraged on the sway of these public intellectuals over policymakers and the public by providing these intellectuals with the necessary avenues and aid for them to amplify their calls that Islamic laws must never be superseded by secular laws.

More to the point, ABIM's sixth president, Razali Nawawi was the Dean of the Faculty of Law when Ahmad Ibrahim was appointed a Full Professor there. Razali gave Ahmad Ibrahim the full support he needed to further the syariah advocacy agenda. He also rode about Ahmad Ibrahim's stature by making him the patron of ABIM's "Clinic Shariah and Laws" which was launched in March 1988. The clinic was established to help needy persons to overcome any legal problems and questions that there had from the perspective of syariah. Ahmad Ibrahim, in his launching of the clinic, mentioned that: "Islamic laws are the best of laws for us. Even though all systems of laws aim to establish justice, the reality is such that because Islamic laws originates from revelation, these laws are most suited for mankind and should be given priority above all other laws."³⁴

The second form of ideological collaboration was with other non-governmental organizations in Malaysia. ABIM was the anchor group behind the Organizations for the Defence of Islam (PEMBELA: *Pertubuhan-pertubuhan Pembela Islam*) and the Allied Coordinating Committee of Islamic Non-Governmental Organizations (ACCIN). PEMBELA was formed in 2006 and it consisted of over seventy Muslim NGOs in Malaysia. PEMBELA was formed upon resolutions passed in a meeting convened by ACCIN which consisted of fourteen largest Muslim NGOs. ACCIN was initially formed to oppose the founding of an Interfaith Commission (IFC), purported to be an instrument of secular forces in society to weaken the influence of syariah courts and religious affairs department. The organizers however felt that a more larger movement such as PEMBELA was needed to

³³ Johan Savaranmuttu, "Malaysia: Multicultural Society, Islamic State or What?" in Michael Heng Siam-Heng and Ten Chin Liew (eds.), *State and Secularism: Perspectives from Asia* (New Jersey: World Scientific, 2010), p. 289.

³⁴ *Risalah*, 9, November/December 1988.

arrest the challenges coming factions within the Malaysian Muslim and non-Muslim community that were bent on “liberalising” the constitution.³⁵

The origins of PEMBELA could also be traced to the controversial court cases of Moorthy Maniam and the Lina Joy. Moorthy, a famed mountaineer who became one of the few Malaysians who had scaled Mount Everest, was ruled by the High Court in accordance to Article 121 (1A) to be a Muslim upon his death.³⁶ He was buried according to Muslim rites. This decision was contested by Moorthy’s widow, S. Kaliasammal, who claimed that her late husband was never a Muslim. As for the Lina Joy case, Azlina Jailani’s (or Lina Joy) appeal to the National Registration Department to remove the word “Islam” from her national identity card was ruled out by the Federal Court for reasons that approvals could only be given by the *syariah* court because it involved matters relating to apostasy.

PEMBELA led by ABIM, however, felt that the court decisions were not enough to resolve what it saw as a growing problem in the Muslim community in Malaysia and slow yet progressive encroachment of secularism into Muslim life and laws. On 29 September 2007, PEMBELA submitted a memorandum which was signed by 701,822 Muslims to the *Yang diPertuan Agong* and the Prime Minister to protests against all attempts to diminish the place of Islam in the constitution in the light of the two above mentioned cases.

PEMBELA defended the existence of the Article 121 in the constitution and contended that the authority of the *shariah* courts should be upheld above and beyond the federal courts. In taking such an ideological stance, PEMBELA received support from hundreds of Muslim professionals and lawyers who too feared that these apostasy cases might encourage more conversions out of Islam. More importantly, ABIM’s dominant role in steering PEMBELA and the ACCIN was apparent to many. ABIM’s President, Yusri Mohamad, was PEMBELA’s coordinating chairman and also the spokesperson for the two collectives. Ahmad Fauzi, a noted analyst of Malaysian Islam, surmised:

“By championing Malay rights and the legal sanctity of Islam, ABIM has successfully entrenched itself as a powerful voice for Islamist civil society. Insofar as acting as a pressure group to the political and legal establishment, ABIM’s efforts have borne fruit. As shown in the Moorthy Maniam aka Muhammad Abdullah and Lina Joy cases, court verdicts have generally been consonant with PEMBELA’s stance. Prime Minister Abdullah and his fellow Muslim cabinet ministers have many times insisted that Article 121 (1A) will neither be reviewed nor abrogated. In January 2006, when all nine non-Muslim cabinet ministers — all of them leaders of BN component parties — unexpectedly presented Abdullah with a memorandum requesting a re-examination of Article 121 (1A), the Prime Minister was quick to show his displeasure such that the memorandum was swiftly withdrawn. Similarly, urgings that the government and enlightened Muslims reconsider the abandoned IFC proposal have fallen on deaf ears.”³⁷

³⁵ *Malaysiakini*, July 13, 2006.

³⁶ “The Moorthy Maniam Case: Compassion and Justice Missing”, *Aliran Monthly* 25, 11–12 (2005), pp. 2–6.

³⁷ Ahmad Fauzi Abdul Hamid, “Islamist Realignment and the rebranding of the Muslim of the Muslim Youth Movement of Malaysia”, *Contemporary Southeast Asia* 30, 2 (2008), p. 231.

3. Dramatic Contention

No analysis of any Muslim movements' tactics to deprovincialize the syariah would be complete without a reference to dramatic contention, which is employed in moments when the two above-mentioned tactics proved to have been relatively ineffectual in attracting public and media attention. Dramatic contention involves the use of religious placards, roadblocks, mass prayers, chants, the burning of pictures and flags as well as the utilization of policing agencies to make the demands of Muslim movement activists heard. It is dramatic in that claims, anxieties and/or ultimatums would be couched, oftentimes, in high-sounding and pejorative language and performed in a so radical a manner that would attract public and media attention. In case of ABIM, dramatic contention would not only raise awareness about why the syariah should be defended but also as a means to rebutt any attempts to discount the validity of Islamic laws in resolving and regulating issues within the Muslim community.

Due to constraints of space, I am unable to present a full exposition of the dramatic contention which ABIM have been involved in the last four decades. A few recent examples are somewhat illustrative of this tactic used by ABIM. One of which involved the lodging of police reports by ABIM against other civil society groups. 11 reports were filed against the Joint Action Group for Gender Equality (JAG).³⁸ The group had earlier on demanded a repeal of the syariah criminal law, which it felt, was encroaching into the lives of ordinary Malaysians. ABIM's use of the police to deal with the JAG is dramatic because it had couched JAG's views and standpoint as not only as offensive to the sensitivities of the Muslims but also as a transgression against the constitution which ensures the protection of Muslim laws, religion and rights.

In another incident, ABIM along with PAS Youth, UMNO Youth and the Malaysian Shari'a Lawyers Association (PGSM) filed 50 criminal complaints against the Sisters of Islam (SIS), a feminist organization, which had continuously expressed its strong opposition against the growing influence of the syariah in laws and in the Malaysian constitution.³⁹ Such use of police agencies was certainly an unprecedented move made by a Muslim civil society actor in Malaysia against other civil society groups. But the effects of these tactics were certainly felt by all sections of the Malaysian population.

In a similar vein, ABIM urged the government and the general public to take actions against senior politicians who made wild statements against the syariah and its place within the constitution. On October 2012, ABIM voiced its regrets and shock towards Dato' Seri Chua Soi Lek, a politician from the Malaysian Chinese Alliance (MCA), who stated in public that countries which have implemented the hudud laws are usually those that are rife with corruption. ABIM called upon all Muslims to categorically condemn Chua Soi Lek's statements and to not vote for him during the 2013 elections. ABIM portrayed such

³⁸ *Malaysiakini*, 9 October 2009.

³⁹ Amanda Whiting, "Secularism, the Islamic State and the Malaysian Legal Profession", *Asian Journal of Comparative Law*, 5, 1 (2010), p. 6.

declarations by a senior politician as “biadab (rude)” and “melampaui batas (transgressing limits).⁴⁰

Another example of dramatic contention for the purposes of the syariah could be seen during the height of Lina Joy issue. ABIM organized a mass reading of prayers and made speeches outside the High Court while waiting for rulings regarding Lina’s appeal to be passed. Together with more than 200 activists, many of whom were seen weeping for Lina with the hope that she would revert back to Islam, the event was staged precisely for the purpose of generating public awareness and, perhaps more fundamentally, to obtain support from the Muslim public towards the agenda of upholding the syariah as enshrined in the Malaysian constitution.⁴¹

4. Discursive Persuasion

Finally, ABIM’s project of deprovincializing would not be been made possible without the recourse to the use of discursive persuasion. Charles J. Stewart, Craig Allen Smith and Robert E. Denton (Jr) in their classic study have argued that persuasion “is pervasive in social movements” and is a tactic that is used to fortify support from members within the movements and also to change the attitudes of groups that are either neutral or against particular movements.⁴²

Acutely aware that the learned segment of Malaysian population could only be won over through reasoned dialogue, explanation and debate, ABIM sought to reach out to this specific group via discourses that would appeal to their minds, hearts and consciences, an effort, which the movement termed as *al-ghazwatul fikr* (war of the intellect).⁴³ ABIM leaders and members saw that persuasion must be done discursively, inter alia, through conferences, seminars, public lectures, print and online publications so as to provide clear and extensive explanation on why the syariah ought to be defended in the constitution, grafted into the substance of the country’s laws and applied in the day-to-day running of the state and society.

ABIM had discursively persuaded the Malaysian learned public through some distinctive approaches. The first is by way of explaining that syariah laws are not in total contradiction with the main spirit of secular laws. Rather, by deprovincializing the syariah to cover other aspects of laws such as criminal and business laws, ABIM argued that that social justice (*keadilan sosial*) and the common good (*maslahat*) of all Malaysian would be more comprehensively safeguarded. In this, ABIM drew upon the works of leading scholars in the sciences of *Usul Fiqh* (Principles of Islamic Jurisprudence) Islamic such as Imam Syafii, Imam Shatibi and Said Ramadan Al-Buti to develop the argument that the syariah is far superior than the secular laws in that it ensures the protection of beliefs, human life, intellect,

⁴⁰ <http://www.abim.org.my/v1/index.php/arkib-abim/35-fashion/312-polemik-hudud-abim-gesa-kerajaan-kenakan-tindakan-ke-atas-dato-chua-soi-lek>

⁴¹ See full video here: <http://www.youtube.com/watch?v=8bJ7oyjT3q0>

⁴² Charles J. Stewart, Craig Allen Smith and Robert E. Denton Jr, *Persuasion and Social Movements* (Prospect Heights: Waveland Press, 2007), p 22.

⁴³ *Risalah*, August/September 1977, p. 6.

descent and wealth. This more comprehensive coverage of issues affected Muslim and non-Muslim lives, according to ABIM, could not be readily found in secular laws. Moreover, the syariah would guarantee that the evils of alcoholism and other intoxicants would be annihilated through strict laws regarding consumption.⁴⁴

The other way of persuading the learned public was to dispel misconceptions and fears among non-Muslims in regard to the syariah, particularly towards hudud laws. Non-Muslims in Malaysia, such as Christian groups, regarded Islamic laws as oppressive and impractical for non-Muslims in the country as evidenced in a small booklet written by Reverend Dr Paul Tan Chee entitled “The Islamization of Malaysian Laws.”⁴⁵ ABIM countered this by referring to successful models in history and contemporaneously in some Muslim majority countries such as Sudan.⁴⁶ Through seminars and publications, ABIM intellectuals argued that Islam had spread rapidly even with the implementation of hudud during the time of Muhammad and the centuries that followed. The point was to ensure that fairness prevails and that such rulings are carried the most humanistic ways possible.⁴⁷

Finally, ABIM repeatedly stress that the implementation of syariah and of hudud should not be the sole agenda of Muslims per se nor should it be abruptly enforced in Malaysia. Rather, in view of the fact that there are non-Muslims in Malaysia and that there are many Muslims who made not be aware of the spirit and the workings of the syariah, ABIM and other Islamic activists groups in the country urged the government, both at the state and federal levels, as well as Muslim activists groups and intellectuals to take on a gradualist approach in implementing Islamic laws and ethical code. The syariah and hudud, from this perspective, was not to be a “Muslim agenda” but a “collective agenda (agenda bersama)” to be realized in stages through dialogue and consultation.⁴⁸

Conclusion

ABIM’s syariah activism and the tactical repertoires have brought about perplexing outcomes. On the one hand, the movement’s relentless strive to deprovincialize the syariah accounted for landmark changes in the Malaysian constitution, giving more room for the syariah courts to have a bearing upon issues relating to criminal and business laws, domains that were once seen as outside the ambit of the syariah within a secular state. It was also through the agency of ABIM and its activists who have taken up so many positions in state and non-state institutions that encouraged other Muslim activists to be more belligerent than they were previously about the syariah. Indeed, just recently in July 2013, the Perak Mufti Harussani Zakaria who is a former graduate of ABIM’s training programme during his youth, made headlines when he proposed that Articles 3, 5 and 11 of the Malaysian Constitution which pertain to religion, liberty and freedom should be amended to ensure

⁴⁴ *Risalah*, 3 (1983), pp. 20-23 and *Risalah*, 2 (1984), p. 17

⁴⁵ See: *Islamization of Malaysian Laws* (Kuala Lumpur: Catholic Research Centre, n.d.).

⁴⁶ *Risalah*, 3 (1983), p. 18.

⁴⁷ *Risalah*, August/September 1977, p. 5 and 23 and *Risalah*, January 1989, pp. 21-23

⁴⁸ *Sinar Harian*, 30 September, 2011.

that Muslim minors with parents who have converted out of Islam be protected by law to remain as Muslims.⁴⁹

Viewed from the other side of the looking glass, ABIM's syariah activism has made many segments of the Malaysian population anxious about the violations of their own rights and the freedom of religion as the threat of "creeping syariah" looms large in their minds. Both reactions to the growing influence of the syariah in Malaysia have attracted the attention of many scholars although the tactics and strategies, which Islamic activists have utilized, continue to be an oversight. This essay has brought to the surface the variety of tactical repertoires, which Muslim movements such as ABIM has employed in the most creative and, sometimes, astute manner. It would not be wrong then to surmise that the syariah and its proponents would play greater roles in the structuring of Muslim lives in countries such as Malaysia. This rapid expansion of the syariah in the public domain, as the sociologist Bryan Turner aptly argues, "has to be understood as an example of a deepening religious consciousness among urban, socially mobile and educated Muslims."⁵⁰ Among these emerging group of Muslims are those that affiliate themselves to Muslim movements who have and will continuously take it upon themselves to be at the vanguard of the process of making the syariah supreme.

⁴⁹ *The Star*, 28 July 2013.

⁵⁰ Bryan S. Turner and Kamaludeen Mohamed Nasir, *The Sociology of Islam: Collected Essays of Bryan S. Turner* (Burlington: Ashgate, 2013), p. 284.