

## JUSTICE DYNAMICS IN THE USMAN TURKEY

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**Abstract:** *The Ottoman court was a legacy of the Bani Seljuq dynasty, which was militant based on multi-sectarian Islamic Sharia. However, after the period of Sultan Salim I (1511-1520). Basically, legal products must not be in conflict with Islamic Shari'ah and must be examined first by Syaik al-Islam before laws and laws are enacted. With a literature study comparing with the descriptive analysis approach, it was found that the Ottoman Turks slowly underwent renewal that led to the elimination of Islamic sharia in civil and criminal terms while a small part of civil law is still maintained through the codification of law in the majallah al-Ahkam al-Adliyah.*

**Keywords:** *Dynamics, Ottoman Turkey, Justice*

### A. Introduction

#### A glimpse of the history of Ottoman Turkey

The Ottoman name was taken and given to their first ancestor, Sultan Osman bin Sauji bin Orthogol bin Sulaiman Syah bin Kia Alp. The Bani Ottoman lineage continued with the al-Ghaz al-Turkmani tribe, which inhabited the Kurdistan region. The Turks are a nomadic nation. The excesses of Mongol aggression led by Geng Khan Khan to Iraq and Asia Minor, the grandfather of Osman, Sulaiman, migrated with his tribe. They migrated to the coast of the Mediterranean Sea in Anatolia. They live side by side with Muslim Arabs who inhabit the Southern Anatolia region. A harmonious interaction exists between them so that gradually they begin to embrace Islam.

Under the command of Erthogol, the Turkish tribe who inhabited Anatolia, approximately 400 families, served and allied themselves with the Seljuq Rum army. They helped Sultan Alaudin II, who was at war with Byzantium. Alaudin II was able to defeat Byzantium with the help of Erthogol and his troops. The Sultan also gave him a gift in the form of a plot of land that bordered Byzantium. Turkish tribes continued to foster their new territory and chose the city of Shukud as the capital. They were also given the authority to conquer territories under Byzantine rule. In 699 AH / 1299 AD, Orthogol died. His son, Osman, continued his leadership. It was this Osman who was considered the forerunner of the founding of the Ottoman Turks. His services to the Seljuqs Rum were immense by conquering Byzantine fortresses. In 1300 AD Sultan Alaudin II was killed by Mongolian soldiers who attacked Seljuq Rum. The Seljuq Kingdom was divided into small kingdoms.

Osman also declared himself to be a sovereign who was fully sovereign. With strong military support, it became a stronghold for small kingdoms from the aggression of the Mongols. They indirectly recognized Osman's sovereignty as the supreme ruler. In subsequent developments, the Ottoman Turks went through several periods of leadership. No less than 37 sultans who led since the first establishment in 1299 AD to 1922 AD Even his power was spread out, covering the plains of Europe, Egypt, North Africa, Asia to Persia, the Indian Ocean to the Black Sea. Three continents became the domain of the Ottoman Empire.

### B. METHODOLOGY

By conducting a library study, the writer makes a comparison of sources with a descriptive analysis approach. Beginning with the collection of data from the literature and analysis of the author's sources, it drew a historiographical conclusion on the Ottoman period court which was divided into several periods and changes both in the structure and legal material applied in the Ottoman Empire court.

### C. RESULT AND DISCUSSION

#### Ottoman Justice

The Ottoman Empire in its early years did not adhere to any of the schools. In the next phase the Ottoman rulers promulgated the Hanafi school of law as an official school in terms of fatwas and justice. The development of Islamic law during the Ottoman period, from Sultan Uthman I bin Erthogol to the death of Salim I bin Bayazid II, has not been codified and perfectly systemized. That is why the Ottoman government, at the time of Sultan Sulaiman I bin Salim I, tried to make a breakthrough in the field of law, namely by coding it (Akgündüz, 2004).

The embryo of the codification and revival of Islamic law began with the leadership of Sulaiman Al-Qanuni. The success of the expedition and the development of da'wah to the plains of Europe was also followed by a desire to uphold Islamic law in his territory. Sulaiman Al-Qanuni wants to gather Islamic law and put it into positive law that applies in all Turkish regions. At the beginning of the 16th century, the atmosphere of religious life in Turkey, influenced by the religious scholars of the school. In applying the law, the Turkish people refer to the Hanafi school and become the official school of the country (Halaçoğlu, 1991).

The government system and the administration system of the court are based on Islamic law. The general justice unit cooperates with qadha 'which is part of the religious justice unit. In each work unit of the judiciary, especially the religious court, a police command is placed under the command of the qadha, also called subashi.

The implementation of worship during Sulaiman Al-Qanuni was very thick felt. He obliged his Muslim people to pray five times a day and fast during the month of Ramadan. For those who do not, it will be subject to fines and body sanctions. He also succeeded in translating the Koran into Turkish... The success of Sulaiman Al-Qanuni is inseparable from the role of his aides. Especially when Abdul Su'ud holds the position of mufti, he was the one who helped Sulaiman Al-Qanuni to make laws that contained the law and administration to be enforced in the territory of Turkey which was following Islamic Sharia. He tried to Islamize the rules adopted from Europe, although what he did was not optimal. The legal codification initiated by Sulaiman Al-Qanuni was not optimal because it collided with obstacles in the field, among others as a source of *Tsayri* 'Islam. There is a concern from the mujtahid in interpreting the sources of *tasyri* (legislation) '. If the result of the interpretation is wrong, it is not following Shariah demands, this is a barrier to codifying other factors. Muslims who are under the auspices of the Ottoman Empire are multi-schools. Freedom of jihad. Berijtihad for those who have qualified as mujtahid is a necessity. If the results of the ijthihad have been codified, it means that they no longer accept other ijthihad even though the change in law follows the changing times. The method used in the effort to codify the law is done in stages, namely establishing official schools of thought for the state. This began to be carried out by Sultan Salim I, who promulgated the Hanafi school of law as an official school for the country and had to be followed in deciding on cases and having an obligation. Preparation of one school of thought to anticipating the Khilafiyah and the majority of the population in Anatoliay with Hanafi schools. After uniting the schools for all regions in the Ottoman Empire. The next step is the preparation of a school which is valid in Ottoman Turkey. Efforts to formulate the Ottoman civil law, better known as Majallah Al-Ahkam Al-Adhliyah. Compile Islamic law from different schools. In addition to being affiliated with the Hanafi school of law in the drafting of the laws in force in Ottoman Turkey, it also adopted other schools that were more relevant to the conditions at the time. Adopt modern legislation. The last stage of the effort to formulate laws in Ottoman Turkey was to adopt current legislation following Islamic law, such as civil, commercial and criminal law (M. Meirison, 2019a).

#### Ottoman Justice Before Tanzimat

The Ottoman Empire was led by a sultan who possessed temporal or worldly powers and spiritual powers. As an earthly ruler used the title "sultan" and as the spiritual head of the Muslims used the title "caliph". Thus, the Ottoman kings had two forms of power, governing the state and the power of broadcasting and defending the religion of Islam. (Sali, 2019) However, it was not found in some literature, since when both positions were fixed and held by the Ottoman authorities.

In exercising both powers, the sultan was assisted by two high-ranking officials, Sadrazam for government affairs and the Shaykh al-Islam, for religious matters. Both did not have voting rights in the government, and they only carried out their duties on the Sultan's orders. When the sultan was unable to travel or traveled, Sadrazam replaced him in running his government.

Shaykh al-Islam in charge of the religious field, is assisted by the Askar-al-Rumali qadhi, who oversees the Judges of the European part of the Ottoman region, he oversees the judges of the Ottoman region of Asia and Egypt.

Shaykh al-Islam is a high-ranking official of the state. Aside from being a watchdog for the enactment of Islamic law, he also oversees the performance of the qadis in carrying out their duties. Likewise, if there is a strategic decision to be taken by the Ottoman authorities, the sultan will consult with Shaykh al-Islam and ask for consideration whether his decision is contrary to Islamic sharia or not. As for the forms of justice at this time, among others

*Al-Juz'iyat (ordinary or low court). The authority is to settle criminal and civil cases.*

*Mahkamah al-Isti'naf (appellate court). The authority is to examine and examine the applicable case.*

*The court of al-Tamyiz au al-Naqd wa al-Ibram (the high court). The authority is to record the qadis who were proven wrong in establishing the law.*

*Mahkamah al-Isti'naf al-Ulya (supreme court). This authority was directly under the supervision of the sultan.*

Although there are already judicial institutions at this time, in practice, it has not yet run optimally, because the intervention of the government is so active. Not only that, the justice system is also controlled by cronies and government officials; there is no visible separation between religious and government affairs.

### **Tanzimat period**

According to tanzimat, language comes from nazhzhama-yunazhzhimu-tanzhiman which means to regulate, arrange, systematize, plan and inform. Tanzimat in Turkish, known as tanzimat al-Khairiye, is a renewal movement in Ottoman Turkey which was introduced in the bureaucratic system and government that covered the fields of human resources, administration, education, finance, trade, etc. This renewal was pioneered by the Ottoman King, sultan Mahmud II in the 19th century. Fairly fundamental reform in the field of government is to combine the two powers held by a sultan: potential as a worldly leader and as a spiritual leader of judicial power held by sadrazam (Grandvisier) transferred to the shaykh al-Islam (Saharuddin, Meirison, Chusna, & Mulazid, 2020).

Shaykh al-Islam is given the authority to deal with matters relating to shari'ah governed by the legal drafting council. This law was adopted from European countries. Among the adopted laws is al-Nizam al-Qadha al-Madani (civil justice law). With the implementation of this law, the al-nizhamiyah court came up consisting of qadha al-Madani (civil court) and qadha syar'i (religious court). This judicial dichotomy indicates the separation between religious affairs and world affairs. The realization of this renewal began with the announcement of the Gulhane charter (Khatt-I soyarif Gulhane) on November 3, 1839 AD, then followed up with the issuance of the Humayun charter in 1856 AD This movement occurred during the time of Sultan Abdul Majid (1839-186 AD) the son of Sultan Mahmud II. (A. Meirison, 2019)

The Gulhane Charter contains several forms of change during the Ottoman era, such as the occurrence of peace of life, assets of honor and citizens, regulations regarding tax collection and regulations regarding obligations, and length of military service. The main content of the Gulhane Charter is to openly try accused parties and be executed not before a formal court decision is issued. The charter also guarantees that private property can be freely used and may not be confiscated if the owner dies if the heirs are still available. Royal employees are paid according to their duties and positions. Based on this charter, there have been some renewals in various Ottoman Turkish social institutions. Among them in the field of civil law by the Al-Ahkam al-Adliyah Council and criminal law. While in the area of government, there is a system of deliberation and in the field of education, there is a separation between general education and religion, and the power

of general education is released from the authority of the ulema. Then in 1856 AD, Sultan Abdul Majid announced the entry into force of the Humayun charter, which aims to strengthen the Gulhane charter. During this period, the judge's guidelines for establishing the law were determined, namely the issuance of the dusturiyah law (Constitution). To avoid the passions and personal desires in developing the law. And also set the Supreme Court, which is an institution that was given the authority to dismiss the qadhi who committed acts that violated the law, because they were considered not carrying out their duties according to the provisions.

#### Post Tanzimat

At the end of the Ottoman period, the issue of justice grew more and more complicated. The source of law held is not only limited to Islamic law but is taken from Western (European) law. This is due to the European penetration of the Islamic world represented by the Ottoman Empire, giving rise to judicial institutions whose legal sources differ from each other, namely:

1. Mahkamah al-Thawaif or Qadha al-Milli, justice for a Group (religion). The source is from each religion.
2. Qadha al-Qanshuli, justice for foreign citizens with the source of the foreign law.
3. Criminal Court Qadha, sourced from European law.
4. Qadha of the al-Huquq Court, adjudicating civil cases.
5. Majlis al-Shar'iy al-Syarif decides the case of Muslims precisely the problem of the source family of Islamic fiqh.

Even in the judiciary, there have been many changes. At that time, there were ordinary courts, appeals, and supreme court. Thus qadha at this time is diverse. And this is the renewal achieved in the period before and after Tanzimat.

The reforms that were held during the Tanzimat did not entirely receive awards from Islamic community leaders, and even received criticism from Islamic scholars of the Ottoman Empire. The two charter issued by the Ottoman Empire as a basis for the renewal of Tanzimat upheld the Shari'a, but in practice, many adopted Western law, even violating it. Criticism was also directed at pro-Western Tanzimat figures, which allowed Western intervention in the internal problems of the Ottoman empire. In turn, the Ottoman Turks will experience destruction, both economically and powerfully. Mustafa Kemal al-Taturk was a significant figure in the nationalist movement. The West heavily influenced the idea of renewal. The real impact of religious-political thought.

#### Legal Codification

The follow-up to the efforts to codify the law during the Ottoman Empire was motivated by the advancement of Islamic culture, the rapid pace of knowledge that gave birth to scholars and priests of the schools who were scattered in various regions. In turn, they raised ta'asub bi al-madzhab, weakened efforts to do jihad, and stagnated in doing jihad. Besides, there are also differences in establishing the law because the schools used are different so that there is no difference in legal status on the same issue in the judiciary.

The Ottoman Turkish government ordered the formation of a committee tasked with gathering sharia law provisions' for events that occurred in connection with muamalat law. It determines to hold on to the Hanafi schools without ignoring the opinions of other schools, which are more in line with the current conditions. Then seven ulama 'fiqh were appointed to make Islamic civil law, which does not contain *ikhtilaf* (dissent), contain opinions that are more persuasive, more credible, and easy to learn. This scholar completed his work for seven years. By giving birth to the regulation "*majallah al-Ahkam al-Adhiyah*. Promulgated on 26 Sa'ban 1293 H, and ordered all courts in the Ottoman Empire to carry it out. (M. Meirison, 2019b)

This law contains 1851 articles divided into a preamble and 16 explanations. The preamble contains the definition of the science of fiqh and its distribution, as well as an explanation of the principles of fiqiyah. Mu'amalah chapters are distinguished in each chapter and consists of 16 books.

With the issuance of Ottoman Turkish government law, the law became a guide for judges in courts in the Ottoman territories. This general (decisive) civil law code was the first to be adopted from the provisions of Islamic law and originated from the Hanafi school of thought in addition to other

opinions that were more suited to the conditions at the time. there were some narrowings in the broad horizons of Islam when Sultan Salim I (1494-1520) determined that the official school of the state was the Hanafi school of thought and several things related to it such as:

Judges are led to follow one of the opinions recognized or approved by the Hanafi school of thought;

The authority of judges is limited to specific fields, such as marriage and inheritance.

Another policy that was more shocking to the judiciary occurred during the reign of Sulaiman I (around 1550). He named by giving the judges a visit so that they would not examine parties suspected of deviations but were accompanied by valid evidence, even though the examination process it is the essential part for judges to reveal whether or not an act is alleged. That can affect the development of Islamic law. But on the other hand, it turns out that such a situation can be an inspiration that can breathe fresh air for reformers to make significant breakthroughs, namely by making various changes to the material of Islamic law that later became known as Kanun Name (A. Meirison, 2019).

His grandiose concept turned out to be only a "mirage," only the mind and shadow remained. Because in practice, the rules of Islamic law are marginalized from life. In subsequent developments, many provisions of Islamic law were modified, even completely replaced with new requirements, such as the issue of fines imposed improperly, but based on the ability of the convicted. Similarly, the *had* law (Penalty Law) was replaced with a *warning penalty* (Ta'zir). Furthermore, the judges only have the duty to foster morals as the authorities wish. Many of the issues handled by the judges were left to the sub-division or the police chief. The problems of trade and industry are left to muhtasib (Economic and Moral/Ethic Police). The Hamayun Charter discusses the difficulties of Christian and other non-Muslim communities to be allowed to carry out building renewals, religious symbols, and some form of ritual they need (Quataert, 2005).

Those Christian communities and other non-Muslims are allowed to make essential updates they need. Including public facilities such as hospitals, funerals, language, religious, and national discrimination were abolished, and non-Muslims no longer pay Jizyah as stated in the Koran and Hadith (M. Meirison, 2019c). Christians are not forced to embrace Islam and military service. Every Muslim and non-Muslim people have the right to become employees and play a role in government so that non-Muslim societies have colored the Ottoman government in the last days and the collapse of the Empire, which has been more than 500 years old this. Foreign banks began to open, and mu'amalah with usury is no longer prohibited as what was in the past. While foreign nations may own land and investment in an unlimited amount to make the Jews flock to occupy Palestinian land. Although then the regulation of Jewish migration was made and tightened, but the Jewish exodus can no longer be blocked because it is supported by Western countries such as Britain, France, and Russia. The apostates of Islam and homosexuals are no longer sentenced to death, as stated in the Qur'an and the Hadith and the strong opinions of the scholars of the school. Not only that, until there non-Muslim groups at that time began to flood the Ottoman parliament, which was then stopped its activities by Sultan Abdul Hamid because it disrupted the performance of the government to make economic, political, and military improvements (Deringil, 2011).

#### **Tasyri' After Tanzimat**

At the end of the Ottoman period, the problem of justice increased, and the source of law held was not only limited to Islamic shariah, but also taken from non-Islamic shari'a sources, and at this time many judicial institutions emerged with different legal sources, that is: *Mahkamah al-Thawaif or Qadha al-Milli*, namely justice for a group (religion), the source of each religion

1. *Qadha al-Qanshuli*, namely justice for foreign citizens with the source of the foreign law.
2. *Criminal Court Qadha* that adoption from sourced from European law.
3. *Qadha of the al-Huquq Court (Ahwal al-Madaniyah)*, which is trying a civil case, sourced from *Majallah al-Ahkam al-Adliyah*.
4. *The Shariah Council 'al-Sharif*, which is deciding matters of the Islamic Ummah specifically for family matters (*Ahwal al-Syakhsiyah*), is based on Islamic Fiqh

### Codification of Civil Law

The codification of the law began with the formation of a committee chaired by Ahmad Judat Pasya, consisting of 7 (seven) ulemas. The committee formed in 1869 was more popularly known as the Majallah Association Committee, whose main purpose was to codify the civil law of the Hanafi Jurisprudence and compile a *muamalah* (transaction) book that did not contain ikhtilaf (dissent) (Aykan & Ergene, 2019, p. 211).

The union was able to complete its task for 7 (seven) years (1869-1876). The result of his hard work was to produce a Code of Civil Law called Majallah al-Ahkam al-'Adliyah. The book of law consists of the Muqaddimah section, 16 books, and 1651 chapters. The content contained in the Muqaddimah itself consists of over 100 articles containing general principles (al-qawaid al-kuliyah). While the contents contained in the 16 books are: al-ba'i, ijarah, kafalah, rahn, trust, grant, syirkah, wakalah, shulh, ibra', hawalah, syuf'ah, the law of events, proof, lawsuit, judgment, confession, evidence and oath (Hamid, 1979).

The emergence of Kemal Ataturk as the ruler of Turkey turned out to bring significant changes to the government structure and the prevailing legal system. In the construction of government, there was a shift in values with the abolition of the Khilafah system, replaced by a secular republican system. Likewise, with the legislation system that is based on Islamic law, al-Ahkam al-Adliyah Magazine and al-Ahwal Al-Syakhshiyah (Family Law), which was codified in 1326 Hijriyah and has been applied to all Ottoman territories, in total frozen and replaced with fully adopted and Swiss laws. Thus, the existence of Islamic law, which has been crystallized and has become a culture in the lives of Muslim societies is no longer useful. This situation at the same time affected the development of the judiciary because judges who were supposed to be the last bastion in upholding Islamic law and having an essential role in performing jihad in court were meaningless. (Quraishi & Kamali, 2000).

### D. CONCLUSION

The Ottoman court was divided into three periods, the first period being the classical period, which purely applied Islamic law governing all aspects of people's lives and the policies of the sultans. In the following period, after the conquest of Constantinople (1453), the structure of the judiciary became increasingly apparent, led by the Chief Justice or Shaykh al-Islam, the founding of the Millet court to try civil and criminal cases that occurred in non-Muslim circles. In the following period, there was a period of degradation of Islamic law by the crisis of leadership. Corruption is everywhere, and judges are traded, corrupt governors have confiscated many waqf assets. Many fatwas are not following Islamic law, such as taxed marriages, muamalah (transaction) with usury that occurred after foreign banks began to penetrate the Ottoman Turkish economy. Foreign influence and pressure are inevitable due to extraterritorial agreement (Imtiyaz al-ajnabiyah) which has been used as a tool to pressure the Ottoman Turkish government from various aspects, including in the field of justice.

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