

The Conceptions of *Sharia* and Citizenship in Indonesia and Malaysia

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Abstract

Indonesia and Malaysia offer comparative perspectives concerning the relationship between loyalties to the Muslim umma, local ethnicity, and the modern nation-state, and how interpretations of the sharia and modern constitution, laws, politics, and policies intersect in multiple and changing ways. This article seeks to compare and contrast some of the contemporary discourses on sharia and citizenship as demonstrated by Indonesian and Malaysian scholars, politicians, and activists. Both Indonesian and Malaysian constitutions were born out of the modern notion of citizenship that recognizes religious diversity. On the one hand, the Constitution of Indonesia does not specify Islam as the state religion, but the government promotes official religions. On the other hand, the Constitution of Malaysia makes it explicit that Islam is the state religion while recognizing religious diversity. The Indonesian government does not conflate particular ethnicity with Islam, whereas Malaysia integrates Islam and Malay ethnicity amidst Malaysian religious and ethnic plurality. Both cases prevent us from categorizing each case as either an Islamic legal conservatism or a modern legal liberalism. These two cases resist the binary opposition between sharia conservatism deemed against citizenship and modern legal liberalism deemed against religious laws. There are ambiguities, contradictions, as well as compromises and integration between conflicting ideas and systems concerning Islam and citizenship.

Keywords

Sharia, citizenship, the constitution of Indonesia, the constitution of Malaysia, ethnicity, legal conservatism, legal liberalism

Intisari

Indonesia dan Malaysia menawarkan perspektif perbandingan mengenai hubungan antara kesetiaan kepada umat Islam, kesukuan lokal dan negara-bangsa modern, dan bagaimana tafsiran syariah dan konstitusi modern, hukum, politik dan kebijakan saling interaksi

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dalam cara yang beragam dan senantiasa berubah. Artikel ini berupaya membandingkan wacana kontemporer tentang syariah dan kewarganegaraan yang diusung oleh cendekiawan, politisi dan aktivis di Indonesia dan Malaysia. Konstitusi Indonesia dan Malaysia keduanya lahir dari gagasan modern tentang kewarganegaraan yang mengakui keragaman agama. Pada satu sisi, Konstitusi Indonesia tidak menjadikan Islam sebagai agama negara, tetapi pemerintah mempromosikan agama-agama resmi yang diakui oleh negara. Pada sisi lain, Konstitusi Malaysia secara jelas menyatakan Islam sebagai agama negara sambil mengakui keragaman agama. Pemerintah Indonesia tidak menggabungkan kesukuan tertentu dengan Islam, tetapi Malaysia mengintegrasikan Islam dan Melayu di tengah keragaman agama dan suku. Kedua kasus ini tidak bisa dikategorikan satu pihak sebagai konservatisme hukum Islam dan pihak lain sebagai liberalisme hukum modern. Keduanya tidak bisa disimpan dalam oposisi biner antara konservatisme syariah yang menolak kewarganegaraan dan liberalisme hukum modern yang menentang hukum agama. Dalam kasus Indonesia dan Malaysia ini, terdapat ambiguitas, kontradiksi, kompromi dan integrasi antara ide-ide dan sistem yang bertentangan mengenai Islam dan kewarganegaraan.

Katakunci

Syariah, kewarganegaraan, konstitusi Indonesia, konstitusi Malaysia, suku-bangsa, konservatisme hukum, liberalism hukum

Introduction

Indonesia and Malaysia offer comparative perspectives concerning the relationship between loyalties to the Muslim *umma*, local ethnicity, and the modern nation-state and regarding how interpretations of the sharia and modern constitution, laws, politics, and policies intersect in multiple and changing ways. This paper seeks to compare and contrast some of the contemporary discourses on shari'a and citizenship as demonstrated by Indonesian and Malaysian scholars, politicians, and activists. Both Indonesian and Malaysian constitutions were born out of modern notions of citizenship that recognizes religious diversity. The Constitution of Indonesia does not specify Islam as the state religion but the government promotes six official religions, whereas the Constitution of Malaysia makes it explicit Islam as the state religion while recognizing religious diversity. Indonesia does not conflate particular ethnicity with Islam, whereas Malaysia integrates Islam and Malay ethnicity amidst Malaysian religious and ethnic plurality.

In this paper, I compare and contrast the relationship between the conceptions of *sharia* and citizenship in Indonesia and Malaysia. Both cases prevent us from categorizing each case as either an Islamic legal conservatism or a modern legal liberalism. It resists the binary opposition between sharia conservatism deemed against citizenship and modern legal liberalism deemed against religious laws.

There are ambiguities, contradictions, as well as compromises and integration between conflicting ideas and systems concerning Islam and citizenship. Different people and institutions have demonstrated diverse interpretations of sharia and citizenship and have produced eclectic, often contradictory legal discourses and policies. Colonial legacy, demography, forms of government, religious networks, and cultural politics and political culture contribute to such similarities and differences as well as persistence and change.

The Position of Islam and Worldly Laws in the Constitutions of Indonesia and Malaysia

The early debates concerning the position of Islam leading toward the birth of the nation-states of the Republic of Indonesia (proclaimed in 1945) and Federation of Malaya (proclaimed in 1957) suggest that each state was not meant to be an “Islamic state” in which Muslim leaders would be the only possible leader and Islamic law would be the primary source of the Constitution. Both states were post-colonial states adopting and adapting the European and internationalizing system of nation-states with their notions of citizenship and religious freedom, instead of the classical and medieval notions of the *dhimmi* (the protected “people of the book” minorities) or other forms. Yet, the Malaysian case presents some Islamist discourses where *dhimmitude* is an important point of reference, whereas the Indonesian case hardly shows such reference.

Indonesia was declared as being founded on the state’s philosophy called *Pancasila* with the first pillar being One Godhead (*Ketuhanan Yang Maha Esa*) with the seven words (stipulating that the State shall oblige Muslims to practice their shari’a) being proposed, then removed, and sometimes debated (Hosen 2005). Malaysia has one of its Constitution’s articles stating that Islam was to be the religion of state while recognizing the belief and practice of other religions. In Indonesia, the intentions of the founding fathers, including Sukarno, were quite clear: Indonesia shall not be a secular state in the sense of the complete separation of the religion and the state as perceived to have prevailed in the West, neither shall it be an Islamic State. In Malaysia, the intention of the founding fathers, including Tunku Abdul Rahman, was a “secular” state amidst the recognition of the special position of Islam in the rituals and ceremonies and the recognition of religious freedom (Fernando 2006). In both constitutions, there is neither a “secular state” nor an “Islamic state”. In the Malaysian Federal Constitution 1957, the word ‘secular’ does not occur, although references to Islam occur in twenty-four places and to sharia on three occasions. Other Islamic words such as *mufti*, *kadi*, and *kadi besar* also occur in the text (Kamali 2008). Still, there is no explicit and official statement indicating unambiguously the position of the sharia and its relationship with citizenship.

The law of Malaysia is mainly based on the common law legal system, as a result of the British colonization of Malaya, Sarawak, and North Borneo between the early nineteenth century to 1960s. The Constitution of Malaysia stipulates the responsibilities and rights of Malaysian citizens. Federal laws, which apply throughout the country, set out such matters of citizenship, defense, civil and

criminal law, trade, and education) whereas state laws address local government, sharia law and courts, state holidays and public works. In terms of citizenship, the Constitution states that to acquire it, three basic methods are recognized: by operation of law, by registration, and by naturalization, and by transfer (applicable to Singapore citizens). The requirements are the intention to reside permanently, having a good character, and having an elementary knowledge of the Malay language (or the English language, or any native language in the case of Sarawak) (Groves 1963). There is no specific religion stated as one of the requirements for Malaysian citizenship.

On fundamental liberties, the Federation of Malaya's Constitution has several subject matters such as the prohibition of slavery and forced labor, protection against retrospective criminal laws and repeated trials, equality, prohibition of banishment, freedom of movement, freedom of speech, assembly and association, freedom of religion, rights in respect of education, and rights of property. Certain liberties are subject to constitutional qualifications such as that of equality, specific privileges being granted to Malays, freedom of religion, the States being permitted to control or restrict the propagation of any religious doctrine or belief among persons professing the Muslim religion, rights in respect of education, laws providing special financial aid for Muslim institutions being authorized (Groves 1963:270-271). Regarding equality, Malays will continue to enjoy, as before, special privileges, notably as to positions in public service, scholarships, and bursaries, and business licenses.

In terms of religion, Article 3 (1) states Islam as the religion of the Federation and preserves the right to practice other religions in peace and harmony. Islamic religious acts, observances, or ceremonies cannot be extended to Sabah or Sarawak as they can be extended to other States. The Constitutional provision allowing State law to restrict the propagation of any religious doctrine or belief among Muslims extended to the whole Federation; but the Borneo States may include provisions requiring a special majority, not being a majority greater than two-thirds of the total number of members of the Assembly, for the enactment of such legislation. According to a study, with the joining of the Borneo States, the significance of the constitutional proclamation of Islam as the religion of the Federation is reduced; for it is the official religion of only a part of the Federation, and the concept of religious pluralism has been strengthened (Groves 1963:271-272).

In the aftermath of the ethnic riots in 1969, Malaysian leaders formulated *Rukunegara*, the pillars of the state, although they did not put it in any part of the Constitution. The principles of citizenship were an attempt to forge solidarity among the peoples: 1) Belief in God, 2) Loyalty to the King and nation, 3) Upholding the Constitution, 4) Sovereignty of law, 5) Good behavior, and 6) courtesy and morality. It is not a legal document but an important policy document (Ponniah 2000:31-34). All state constitutions in the Malay States (nine out of the thirteen states) prescribe that the ruler of the state must be a Muslim. There is no formal announcement of the Islamization policy, but affirmative actions have taken place in the sphere of matrimonial law, divorce, guardianship, maintenance, child custody, inheritance, etc, for its Muslim citizens, and the law

also provides a structure of sharia courts, state councils of Muslim religion, Fatwa committees, the Islamic center, and the Islamic Religious Affairs Department. The government also established the International Islamic University Malaysia (IIUM), the International Institute of Islamic Thought and Civilization (ISTAC) and the Institute of Islamic Understanding Malaysia (IKIM). The Administration of Islamic Law Enactments in the various states penalizes offenses against Islam and deviationist teachings. Article 121A of the Federal Constitution protects the sharia Court against interference by the civil courts (Kamali 2008:237).

The Preamble of the 1945 Constitution of the Republic of Indonesia recognizes such terms as the Almighty God (*Allah Yang Maha Kuasa*), and the pillar of One Godhead (*Ketuhanan Yang Maha Esa*). One of the Articles stipulates it is the Unitary State of the Republic and it is based on law (*negara hukum*), without specifying what systems of law (while Malaysia mention the sharia laws and courts being one of the state's law jurisdiction, although still under the Federal laws in the event of conflict). The Dutch civil law, customary laws and aspects of Islamic law have become parts of the Indonesian legal pluralism.

On citizenship, the 1945 Constitution states that citizens shall be the people of Indonesia who are indigenous (*orang Indonesia asli*) and the peoples from other nations (*orang-orang bangsa lain*) legalized with laws. All citizens shall be equal before the law and governance and shall have the same responsibility for upholding the law and governance without exception. The Constitution states that every citizen has equal human rights, including the civil and legal rights, the right to life and job, to have family, and protection from violence and discrimination. In Chapter XA "Human Rights", Article 28E stipulates that every individual has the right to profess a religion and worship according to the religion, to choose education and teaching, to choose job and citizenship, to choose where to live and leave it and return. The Article also includes a clause stating that each individual has the right to freedom of belief, to express ideas and attitudes, according to their own conscience. On Chapter XI "religion", Article 29 states that the State shall be based on One Godhead and the State shall provide freedom for each citizen to profess a religion and to observe according to their religion and belief.

The Indonesian Constitution does not have any statement that Islam is the official religion nor does it state that Islamic Law shall be the source for the Laws. Yet, Islamic Law has become one of the sources for the laws and regulations, and bylaws in different parts of Indonesia from 1945 to the present day. Of course, Dutch-influenced, local customary, and other laws and customs have interacted with Islamic laws and practices.

Conceptions of *Sharia* and Citizenship in Political Discourses

In the above official documents, the notion of citizenship, in particular, is not framed in terms of *dhimmitude* although discourses on *dar al-islam*, *dar al-harb*, and *dar al-'ahd* have been put forward in non-official publications and speeches. In some of the Muslim organizations' writings and speeches, Indonesia has been conceptualized as being *dar al-'ahd*, the House of Agreement (between different factions, Muslims and other religious communities). But, *dar al-'ahd* is framed as

neither a secular nor an Islamic state. The mainstream formulation has been that Indonesia is *Negara Pancasila*, a state based on the “official national ideology”, capable of satisfying all citizens of the new state and expressing several principles that would bind them together. However, those in power would tend to interpret and use it in conformity with their particular interests (Meuleman 2006:52).

In terms of ethnicity, Indonesia has no mention of a religion with a particular ethnicity in its formulation and enactment of citizenship. The Constitution does not state Javanese, which numbers around 40 percent of the 250 million population as being necessarily Islamic. Malaysia has Malayness as being associated with a special position against other races, particularly Chinese and Indians, and with Islam. As part of the colonial legacy, and preserved however endlessly debated, Islam and Malayness continue to be conflated and Article 153 of the Constitution states that a Malay is described as someone who habitually speaks Malay and is a Muslim. Of the 30 million population, about 57.8 percent are Malay (and Indian) Muslims. Malay citizens who convert out of Islam are no longer Malay under the law and hence forfeit the *bumiputera* (sons of the soil) privileges afforded to Malays under the constitution. The politics and culture in Malaysia has been largely and frequently framed in terms of the *bumiputera* and the non-*bumiputera*, even until the present day. Ethnic and religious pluralism in both sociological and normative terms has been the source of tension and conflict as well as cooperation, being shaped by pre-colonial and colonial experiences, and post-colonial interests and agendas (Embong 2001).

Although the Constitution has no statement on the concept of *dhimmi*, scholars and activists have discussed Malaysian citizenship in terms of the old concept. In a booklet entitled *Malaysia Adalah Sebuah Negara Islam, ahl al-dhimma* is translated as non-Muslims, *orang kafir* or unbelievers, and some references are made to the payment of *jizya* by non-Muslim, in light of the book *Al-Ahkam Al-Sultaniyya* by Al-Mawardi (Martinez 2001).

The Malaysian culture and politics of the *bumiputera* versus the non-*bumiputera* has its Indonesian parallel, the *pribumi* versus the non-*pribumi*, although the history and development vary. Quite similarly, in the post-colonial and contemporary discourses, the terms have their racial connotations: the *pribumi* has been associated with Muslims (Malays in the case of Malaysia, and multi-ethnic Muslims in the case of Indonesia) and the non-*pribumi* particularly with the Chinese deemed immigrants and a threat. Social-economic disparities and racial prejudices have persisted, partly as a colonial legacy and post-colonial attitudes and policies. The Dutch colonial administration divided their colonial population into the Europeans, Foreign Orientals (including Chinese, Indian, Arabs, and other non-Europeans), and the *Inlander*. The latter had been translated as “*pribumi*”. The New Order’s assimilationist politics for the sake of national unity and political order, despite the integration of Chinese elites in the national politics and marginalization of Chinese public and culture in the public arena, proves destructive to a national sense of freedom and justice. In the aftermath of the 1998’s racial riots, President B.J. Habibie issued a presidential instruction banning the use of *pribumi/non-pribumi* by public officials and allowed schools

to teach Mandarin (Husen 2017). President Abdurrahman Wahid further allowed Chinese languages and cultures in the public and Confucianism to revive itself and develop.

Indonesian political parties such as Golkar, PDIP, PAN, and PKS have expressed their official and non-official statements on the relationship between Islam and citizenship. Generally speaking, they all recognize Indonesian as their citizenship and loyalty to their homeland (*tanah air*) as a crucial part of their vision and programs. Being Muslim, for them, thus showing loyalty to the *umma*, meant not in contravening with being a citizen of the Republic of Indonesia. However, they differ and change over time in terms of specific ideas, discourses, and policies concerning issues and subject matters about Islam, Muslims, sharia, democracy, citizenship, and other social, economic, and political issues. For example, as a political party long associated with secular nationalism and Sukarno, Partai Demokrasi Indonesia Perjuangan (PDIP) has sought to make alliances with Islamist parties and Islamic civil society, particularly the Nahdlatul Ulama. The creation of Baitul Muslimin Indonesia (BAMUSI) has been seen as a way of debunking the perception that the party is at odds with Islam. For the PDIP, however, Islamic law should not be formalized in the form of laws and regulations but can be interpreted as being primarily moral and substantive and to be enacted in the framework of Indonesian nationalism and the state's philosophy of Pancasila, such as demonstrated through the BAMUSI's concern with the people's welfare in the villages (Sa'di 1999). For this party, in theory, loyalty to the nation is greater than loyalty to Islam or any other religion, but these multiple loyalties should not be in contradiction if Islamic law was approached as moral law and spiritual guidance rather than formal laws and regulations. The notion of modern, democratic citizenship is above and foremost in both form and substance.

The Party of Justice and Prosperity (*Partai Keadilan Sejahtera* [PKS]) has its vision: a missionary (*da'wa*) party promoting Islam as the solution to the life of the nation and the state. For the party, Islamic teachings and values serve as the transformative force in the process of development of the Muslim *umma* and the nation in all the domains of life. Islam as both a norm and a system can and should be the source for creating a civil society (*masyarakat madani*) in Indonesia. The party has one of its mission: to pursue communication and cooperation with all other elements of the Muslim *umma* in the creation of Islamic solidarity (*ukhuwah Islamiyyah*) and the unity of the Muslim *umma* (*wihdah al-ummah*) and with all other elements of the nation in sustaining togetherness in realizing reform agenda.

Partly in a response to many Muslim groups who sought to revive the Piagam Jakarta "with the obligation that Muslims should implement their sharia", and those who sought to keep the chapter without the phrase, during the debate in the House of Representatives in 2000, the party's leaders, such as Hidayat Nur Wahid, made references to the Constitution of Madina, *Piagam Madinah*, attributed to the Prophet Muhammad during his religio-political rule. Along with other politicians, Hidayat Nur Wahid proposed the revision of the article: "the State shall be based on Oneness of God with the obligation that each religious community implements their religion," in accordance with the *Piagam Madinah* when the existing religious

communities coexisted under the leadership of the Prophet. He proposed “*Piagam Jakarta* in the light of the *Piagam Madinah*”. He said that the obligation for each religious community to observe and implement their own religion is in accordance with the Quran 42:13; 4:59; and 5:41-47). Nur Wahid proposed a “constitution that is just and democratic” (cited in Rahmat 2008:52).

Among the Muhammadiyah leaders, scholars, and activists, there is variation in the discourses concerning sharia and citizenship despite the broad agreement that emphasizes their organizational identity (as *warga* Muhammadiyah), the sense of belonging to the Islamic *umma* and their Indonesian patriotism (exemplified in their views of *watan* and *qawm*) and national citizenship, without contradiction. Indonesia is referred to as the State of Pancasila, the state’s ideology for all Indonesians in their national life. Indonesian citizenship is conceived of as one of the multiple loyalties that could be hierarchical, equal, different, or inter-connected, depending on one’s perspectives. Organizationally and individually, discourses on citizenship have emerged in response to the diverse, often conflicting ideologies in contemporary Indonesia. There is the concept of *umma fadhila*, the outstanding, virtuous society, or “*khairu umma*”, “the best society”, where there is justice and prosperity. According to Haedar Nasir, the “true Islamic society” or the *khairu umma* is a society based on the teachings of Islam (the Quran 3:110), a civilized society that respects human rights (the Quran 17:70), keeps relations with God and other human beings (the Quran 3:112) and upholds equality and prosperity for all humankind (cited in Fahrudin 2006:149).

Citizenship refers to commitment on the contractual basis for performing one’s responsibility. The Muhammadiyah’s leaders and members do not promote the creation of an Islamic State, but they believe that citizens have to be critical of the government, global capitalism and other forms of practices deemed injustices as the effects of globalization. They have the responsibility for supporting and criticizing the government in terms of the implementation of Islamic values in society. According to the leaders, responsible citizens should demonstrate readiness to face problems in the state and the nation. They have to be critical and use their voting rights to elect their leaders. Citizens should have a control capacity and criticize the violations of human rights, and to respect and to be tolerant toward diversity, and to struggle against discrimination, parochialism, and chauvinism (Fahrudin 2006:150). Citizens have equal rights to education, economic empowerment, security, and defense. Citizenship also should mean equality before the law. It also means loyalty to the state and the nation, not the regime as such, without being critical (Fahrudin 2006:151-153).

The Nahdlatul Ulama (NU)’s conceptions of the shari’a and citizenship are not radically different from the Muhammadiyah in terms of their continued support for the Unitary State of the Republic of Indonesia and the Pancasila state. Specific discourses center around the localization of Islam labeled as “*pribumisasi Islam*”, which was promoted by Abdurrahman Wahid, and more recently the Archipelagic Islam, “*Islam Nusantara*”. The Ahmad Siddiq’s formulation of *ukhuwwa islamiyya*, *ukhuwwa wataniyya*, and *ukhuwwah insaniyya* (Islamic, nationalist-patriotic, and human brotherhoods), that has been reiterated by the contemporary

leaders, shows their commitment to promote and defend Indonesian Islam deemed unique and special in relation to other, particularly Arab, “fundamentalist”, and “liberal”, expressions of Islam. Said Agil Siradj, for instance, said that building a strong democratic nation requires good quality citizenship. Participation in development in all fields of life through deliberation (*musyawara*). Citizenship also means that the state apparatus should set as examples in upholding the law, distribute the economy, and provide the people’s welfare and security. Citizenship (*muwatana*) and nationalism are closely related. Hence, “civic nationalism” should be implemented in the essence and substance, not in the label. An Islamic conception of *muwatana*, he said, emphasizes the values of human progress such as capability, professionalism, ethos, ethics, and character, all the more important than just the labeling. The teachings of Islam do not detail the affairs of politics. Islamic identity is not important because the NU promotes civic values such as diversity, justice, equality, prosperity and human dignity, and blessing for all humanity (Sakri 2015).

For the Salafis, who seek to emulate the original three generations of Muslims and a return to the true Islam, Islam is more global than local, more universal than particular. The Wahdah Islamiyyah, founded in 1988 by some students at Hasanuddin University in Makassar, South Sulawesi, after disconnection with the Muhammadiyah that accepted the Pancasila’s sole ideology during the Soeharto’s era, and influenced by the transnational Muslim Brotherhood, sees itself as a “nationally oriented Islamic movement”, not radically different from the Muhammadiyah and the Nadhlatul Ulama. This movement also embraced the concept of “*wasathiyah*”, moderation, which, according to its leader Muhammad Zaitun Rasmin, was neither “extreme left”, by which he meant liberalism, and communism or “extreme right”, which denotes the Islamic State (ISIS) and Jamaah Islamiyah. By “*wasathiyah*”, the group also meant defending the unity of the Indonesian Republic and, according to most of the leaders and members, upholding Pancasila. It also supported “middle-road democracy”, between “authoritarianism” and “chaos”. It still rejects the Shia and the Ahmadiya as heretic groups and foreign to Islam, but may accept them as citizens, and the rest of the organizations as Islamic and Indonesian (Chaplin 2016).

In Malaysia, Mahathir Mohammad declared “Bangsa Melayu” in 1991 that would cultivate an inclusive national citizenship, with equal rights for all citizens, regardless of ethnicity. But, the tension remains: Malays remain concerned about their special position and special rights enshrined in the Constitution. Malaysian citizenship remains between both the civic and the ethnic (Guan 2013).

Datuk Seri Najib Tun Razak, then deputy prime minister, the leader of the United Malays National Organization (UMNO), understood the concept of Malaysia’s citizenship as being based on a social contract and consensus among the races when Malays proclaimed their independence. That concept has been translated into the Federal Government which states specific details concerning the rights and position of the Malays and those of the non-Malays, he contended, in response to the revived ideas of Malayan Union and Malaysian Malaysia (Hasan 2006). The debate reemerged when the public questioned the contract social which

gave Malays the special status as being only the leaders of UMNO, the Malaysian Chinese Association (MCA), and the Malaysian Indian Congress (MIC), not the people through a referendum. Malay privileges, for them, should remain intact, making references to the early days of independence.

PAS continues to promote its Islamization agenda but with pragmatic politics. Different leaders and activities propose the idea of Islamic State, but they seek to emphasize its compatibility with democracy, clean governance, human rights, and justice. For Abdul Hadi Awang, a Madina and Al-Azhar graduate who assumed the position of PAS deputy president and unofficial ideologue, the Islamic state would accommodate non-Muslims. Awang said that Malays should not be entitled to special rights and privileges and he condemned ethnic chauvinism of the UMNO-lead Barisan Nasional. But, Awang and PAS found it difficult to reconcile its demands for the implementation of the Shari'a law, including the *hudud* criminal law, with their accommodative politics toward non-Malays and non-Muslims (Liow 2004). For Nasharuddin Mat Isa, another deputy president, PAS sought to re-imagine or even re-brand the party. They wanted to make the party more relevant to multi-ethnic, multi-cultural, and multi-religious Malaysia. They believe in democracy. They needed to be realistic because "Malaysia is not an overwhelmingly Muslim-majority country" (Case and Chin-Tong 2006).

Although Malaysia was meant to be a "secular" in the beginning, regarding it as an Islamic state has become popular among many, albeit for different meanings and purposes. For example, Ustaz Engku Omar Amiruddin Engku Ali from Majlis Ulama ISMA (MUIS) said that Islam is the state's ideology and an Islamic state is a state based on the ideology of Islam. In Malaysia, Islam is the religion of the Federation and this should become the basis for all the laws and regulations. The Prophet Muhammad practiced this when he got rid of the Jews who challenged Islam as the basis of the Islamic State of Medina. The Caliph Umar practiced this through the *dhimma*: The People of the Book (*ahl al-kitab*) should not make their *shirk* public. They should show their symbol of a cross and other things from their scripture in the paths of the Muslims. They should not use the bell except softly. They cannot raise their voice in their churches when Muslims were present. If they violated these requirements, their *dhimma* status would be annulled. Therefore, Engku Ali maintained that people should understand their responsibilities as citizens to protect Islam as the basis of the State without confusing it with the issue of religious freedom (Engku Ali 2017).

But for *Sisters in Islam*, Malaysia is not an Islamic State and the interpretation and implementation of the *sharia* should be in accordance with the ideas and practices of human rights and equal citizenship. As stated on their website, they "promote an understanding of Islam that recognizes the principles of justice, equality, freedom, and dignity within a democratic nation-state." They are critical of racial segregation and discrimination and provide legal advice on matters related to various problems such as child marriage, polygamy, domestic violence, *hijab*, criminal laws or *hudud*, and fundamental liberties. For them, Islam, human rights, secularism do not have to be contradictory. In all their concerns, *Sisters in Islam* prioritizing Malaysian citizens over only Malay or Muslim concerns many groups as it could violate universal human rights and Islamic principles.

The delicate balance between modern constitutionalism and Islamic teachings has been threatened by the increasing Islamist legalism (Hamid 2009). Now, some voices and movements are pushing toward Islamization of the laws in Malaysia, but other voices are resisting the Islamist tendency.

Abdullah Badawi's concept of civilizational Islam (*Islam Hadhari*) eclectically articulates religious desires and secular agenda with its modern notion of piety, good governance, and protection of the rights of minority groups and women (Ali 2011). The Prime Minister Najib Abdul Razak promoted "1Malaysia", aimed to emphasize unity in diversity without necessarily neglecting the special place of Islam and Malayness in the state and the nation. One of the official websites states that 1Malaysia is built based on the Federal Institution, the Constitution, *Rukunegara*, *Wawasan 2020* (Vision 2020), the National Mission, and their vision on unity and togetherness. The concept combines the ideas of integration in all fields of life and emphasizes the interests of national integration regardless of racial backgrounds and religions for the sake of prosperity for all, a concept that is enduring and important for Malaysians to understand and embrace.

According to a public survey conducted by the Merdeka Center, non-Malays are increasingly appreciative of the multi-ethnic initiatives by Najib, in particular, the "One Malaysia" concept (Hamayotsu 2012). Yet, one Malaysia is a goal, not necessarily the practice. There are competing ideas of citizenship, including those between the "common" national citizenship and "regional" citizenship. Malaysians seek a "deep horizontal comradeship" between the subjects, but civil society often raises regional citizenship such as those in Sabah in opposition to any nationwide and shared citizenship. There is also a power struggle between the *bumiputeras*, the Malay Muslims and the non-Malay non-Muslims, such as between Malays and Christians and animists in Sabah and Sarawak (Sadiq 1999).

Conclusion

In theory, a state with an official religion or a state with godly nationalism can recognize the political equality of all its citizens as long as the religion itself embraces some relevant sort of equality for everyone (Feldman 2002). But, liberal theories oppose the idea that specific ethnic or national groups should be given a permanent political identity or constitutional status (Kymlicka 1995). In practice, Malaysian laws recognize the equality of citizens, but they give privileges and affirmative action to the Malays in the context of their underdevelopment in contrast to the Chinese race considered non-indigenous yet better-off. Indonesian laws state equal citizenship, but some laws and policies are potentially and in many cases discriminatory against particular religious and gender minorities. Theory and practice do not always go hand in hand.

The old concept of the *dhimmi* has been referred to in some circles in Malaysia and the concept of the Prophetic Constitution of Medina is also used in the discourses in Indonesia. But, these old concepts are references that different people use and interpret in different ways and for different purposes. Islamist and secular orientations continue to prevail and struggle for more influence in society. But, the "middle paths" between *sharia* conservatism and modern law liberalism are the norm rather than the exception. For most Malaysians and Indonesians, *sharia* and equal citizenship are at least in theory no contradiction.

Notes

¹ See www.sistersinislam.org.my

² See <http://www.lmalaysia.com.my/>

³ In other contexts, such as those among the progressive Egyptian scholars, the modern concepts of *muwatinun* or citizens are conceptualized as being different from the old concept of *dhimmiyun*, the protected peoples. Liberal practices of religious freedom and secularism may actually make a greater difference and polarization. See Fahmi Huwaydi, *Muwatinun la Dhimmiyun* (Cairo: Dar al-Shuruq, 1985); Saba Mahmood, *Religious Difference in A Secular Age: A Minority Report* (Princeton and Oxford: Princeton University Press, 2016).

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