

**ON THE QUESTION OF KITAB JAWI'S
ORIGINALITY: ANALYSIS ON AL-FATANI'S
NAHJ AL-RAGHIBIN ON ESSENTIALS OF SALE
CONTRACT**

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Abstract

Some scholars of Malay classics believe that Malay traditional religious books or *Kitab Jawi*, being a mere translation from Arabic sources, have little practical purposes outside the realm of beliefs, rituals, and family. Considering current commercial development, especially in Islamic banking and finance, the above claims need some qualifications, especially considering no further studies have been conducted to support their conclusion. This is especially so to determine the extent of the remarks made by the authors of *Kitab Jawi* in their texts whether merely a literal translation of the Arabic texts or containing some new and specific contributions worthwhile investigating. It is therefore the aim of this article to analyse the contents of these *Kitab Jawi* and compared them with the Arabic sources that they claimed to refer to. It is hoped that this analysis should provide an understanding of these *Kitab Jawi* can be considered original in respect of discussion and elaboration of translated texts. The analysis will focus on Shaykh Dawud's work of *Nahj al-Raghibin* with special reference to the essentials of the sale contract. The selection of the subject of the sale contract is to demonstrate that the authors of

Kitab Jawi had some appreciation on the trade and business prevailing during their compilation. The article argues that *Nahj* is not simply a translation of the Arabic texts, but it is an academic exercise, which consists of selecting, rearranging, and supplementing and presenting ideas and concepts of law.

Keywords: *Jawi* literature; Islamic legal writings; Islamic contracts.

Khulasah

Sebilangan sarjana kesusasteraan lama Melayu percaya bahawa buku-buku agama tradisional Melayu atau Kitab Jawi hanya merupakan terjemahan dari sumber-sumber Arab yang mempunyai sedikit tujuan praktikal selain dari bidang akidah, ibadah dan kekeluargaan. Melihat kepada perkembangan komersial semasa terutamanya dalam perbankan dan kewangan Islam, tanggapan di atas perlu dikaji semula, terutama apabila didapati tidak banyak kajian lanjutan dilakukan untuk menyokong kesimpulan sarjana berkenaan. Ini terutama untuk menentukan sejauh mana penulisan yang dibuat oleh pengarang Kitab Jawi dalam teks mereka, sama ada hanya terjemahan literal dari teks Arab atau mengandungi beberapa sumbangan baru dan khusus yang patut dikaji. Oleh itu, tujuan artikel ini adalah untuk menganalisis kandungan Kitab Jawi dan membandingkannya dengan sumber bahasa Arab yang telah dirujuk. Diharapkan analisis ini dapat memberikan pemahaman bahawa Kitab Jawi sebenarnya adalah satu bentuk sumbangan asli penulisan dari aspek perbincangan and penjelasan kepada teks Arab. Analisis akan difokuskan terhadap karya Syeikh Dawud *Nahj al-Raghibin* dengan merujuk khusus kepada rukun-rukun kontrak jual beli. Pemilihan tajuk kontrak jual beli untuk menunjukkan bahawa pengarang Kitab Jawi mempunyai kesedaran terhadap perdagangan dan perniagaan yang berlaku ketika itu. Artikel ini

membuat kesimpulan menyatakan bahawa *Nahj* bukan sekadar terjemahan teks Arab tetapi suatu bentuk usaha akademik, yang terdiri dari pemilihan, penyusunan dan penambahan serta penyampaian idea dan konsep hukum.

Kata kunci: Kitab Jawi; penulisan perundangan Islam; Fiqh al-Muamalat.

Introduction

Some scholars of Malay classics believe that Malay traditional religious books or *Kitab Jawi*,¹ being a mere translation from Arabic sources, have little practical purposes outside the realm of beliefs, rituals, and family. Snouck Hurgronje in his celebrated *Mekka in the Latter Part of the 19th Century* wrote: "If the commercial law of Islam were to be applied all serious business would become impossible".² Local researchers also echo a similar tone where it is claimed that *Kitab Jawi* speaks mainly about the abuse of worldly life and *'ibadah*, and only a few discuss economic affairs. For example, Mohd Nor Ngah finds only two references on material life in the *Kitab Jawi*: first in *al-Jawhar al-Mawhub* which emphasizes the Hadith of *Ihya' al-Mawat*, a concept that was very relevant to Malay Muslim peasant society, and second in *Fath al-Mutafakkirin* which stressed the importance of commerce through a Hadith on that particular topic.³

¹ *Kitab Jawi* is a Malay term to describe written works on the subject of Islamic studies in Malay language. The word *kitab* originates from the Arabic word *kitab*, while the term *Jawi* is a Malay word to describe Malay literature written in Arabic scripts. This Malay term will be used throughout this article.

² Hurgronje, *Mekka in the Latter Part of the 19th Century*, trans. by J.H. Mohahan (Leiden: E.J.Brill 1931) (Photomechanical Reprint 1970), 189.

³ Mohd Nor Ngah, *Kitab Jawi: Islamic Thought of Malay Muslim Scholars, Research Notes Discussion Papers No.33, 1982* (Singapore: ISEAS, 1983), 34-35. *Ihyat al-Mawat* is a technique of

In light of current commercial development especially in Islamic banking and finance, the above claims need some qualifications, especially considering no further studies have been conducted to support their conclusion. Ulrich Kratz when analysing the study of Malay classics maintains that Malay traditional literatures are not properly studied.⁴ Virginia Matheson and M.B. Hooker in their detailed analysis of the writers of Patani *Kitab Jawi* namely that of Shaykh Dawud bin 'Abd Allah al-Fatani, have arrived at a similar conclusion where no detailed study has yet been produced, despite the fact that some of *Kitab Jawi* authors were prolific writers.⁵ They both agree that before any remarks or comments can be made on these writings further studies are needed namely to work out much more closely with the existing texts and their Arabic sources. This is especially so to determine the extent of the passing remarks that the *Kitab Jawi* authors made in their texts whether they are merely a literal translation of the Arabic texts or contain some analysis worthwhile investigating.⁶

It is therefore the aim of this article to analyse the contents of these *Kitab Jawi* and compared them with the Arabic sources that they claimed to refer to. It is hoped that this analysis should provide an understanding as to what extent these *Kitab Jawi* can be considered original in

acquisition of ownership over land in Islamic law where land is acquired through the opening and cultivation or use of fertile land. In modern times, this technique is no longer suitable since uncultivated or unused land is now belonged to the state.

⁴ Kratz, "Traditional Malay Literature", in *Southeast Asian Languages and Literatures: A Bibliographical Guide to Burmese, Cambodian, Indonesian, Javanese, Malay, Minangkabau, Thai and Vietnamese*, ed. Kratz (London: Tauris Academic Series, IB Tauris Publishers 1996), 242-245.

⁵ Matheson and Hooker, "Jawi Literature in Patani: The Maintenance of an Islamic Tradition," *JMBRAS* 61(1) (1988), 1.

⁶ *Ibid.*, 42.

comparison to their Arabic sources. The analysis will focus on Shaykh Dawud's work of *Nahj al-Raghibin* with special reference to the essentials of the sale contract. Selection on the subject of the sale contract is mainly as a response to Hurgronje's above position but to a lesser degree to demonstrate that *Kitab Jawi* have some appreciation on the trade and business prevailing during their compilation.⁷ Before analysing Shaykh Dawud's *Nahj*, it is indispensable to summarize the general subject of *Kitab Jawi* in order to place the discussion in its proper context.

Mecca As Malay Early Intellectual and Spiritual Centre

For Malays, Mecca represents the focal point of spiritual and intellectual Islam. Many studies have shown the relationship between the Malays and Mecca from these two perspectives. Performance of *Hajj* by the Malay to Mecca began as early as the reception of Islam itself in the thirteenth century while religious scholarship started as early as the sixteenth century with the emergence of local writers and scholars, especially from that Aceh, Indonesia such as Hamzah al-Fansurī (died circa at the end of the sixteenth century or early seventeenth century), Shams al-Din of Pasai or Sumatrani (d.1630), Nur al-Din al-Raniri (d.1658) and 'Abd al-Ra'uf al-Sinkili or Shaykh Di Kuala (d.1693). More scholars of international or regional repute emerged later on in the eighteenth and nineteenth centuries such as Shaykh 'Abd al-Malik 'Abd Allah of Terengganu (d.1736), 'Abd al-Samad al-Palimbanī (died

⁷ Wijoyo in his studies of Shaykh Nawawi of Banten shows that the production of *Kitab Jawi* was mainly used in religious studies and therefore the styles used i.e. translation from the Arabic sources principally to establish authority and truth among students and fellow countrymen. See Wijoyo, "Shaykh Nawawi of Banten: Texts, Authority and The Gloss Tradition" (PhD thesis, University of Columbia, 1997).

circa 1789), Muhammad Arshad al-Banjari (d.1818), Shaykh Dawud al-Fatani (d.1847) and Nawawi al-Bantani (died circa 1888).⁸

For both pilgrims and students, a journey to the holy land was arduous and difficult. When they finally arrived in the Holy City, they had to stay there for several months or even years as a result of many factors but mainly because of the mode of transportation which depended on sailing ships and financial. The use of time spent by these pilgrims were varied, although most activities centred around education and religious devotion. Because of these circumstances, there was a colony of Malay community in Mecca from different parts of the Malay world. Students and teachers are said to be the heart of this community in the Holy City.

Hurgronje told us about the practice of religious studies performed by Malays in Mecca in the late nineteenth century. At first, students received instruction in their native language namely, Malay, Javanese and others from their countrymen already established themselves in Mecca before moving to a more advanced level in their studies. For this purpose and other practical reasons, students also received some training in Arabic as preparation for furthermore advanced studies in the *al-Haram* (mosque). Religious instruction was also given in native languages to the pilgrims who had no knowledge of Arabic for the necessary requirements to perform *Hajj*. Conforming and following the current development of that time religious studies were supplemented by published and printed books. This resulted in the need for religious books written in Malay. Previously books were copied by professional religious scribes who were believed to be

⁸ For further readings on this intellectual development see Mohd Redzuan Othman, "The Role of Makka Educated Malays in the Development of Early Islamic Scholarship and Education in Malaya," *Journal of Islamic Studies* 9(2) (1988), 147.

more reliable than printing machines. The establishment of the publishing house in the Muslim land at that time stimulated and expedited the publication of these Malay *Kitab Jawi*.⁹

All of the Malay scholars mentioned above had written Malay religious books for educational and religious purposes and their books were printed either in Istanbul, Egypt, Bombay, and later Mecca, or lithographed locally. In Egypt, these books were published by Mustafa al-Bab al-Halabi.¹⁰ Previous research shows that the earliest books or manuals written were about dogma and law. The intensification of printing Malay religious books or *Kitab Jawi* was due to the industrious works of Ahmad bin Muhammad Zayn al-Fatani who was appointed as supervisor and editor of the newly established government press in Mecca. He edited and reprinted many Malay books previously printed or otherwise. At the same time, he also published his own works. He was said to be responsible for the establishment of Maktabah Fataniyyah which published the famous *al-Fatawa al-Fataniyyah*. Md Sidin tells us that this press was the main supplier of materials to many *pondok* schools (religious seminary education centres) in Malaysia, Indonesia, Patani and Cambodia.¹¹

With the existence of affordable and relatively cheap writing materials, the teaching of religious subjects in Mecca as a whole relied mainly on books written by illustrious and leading scholars. Hurgronje noted that the

⁹ The publishing house or press is known to have been established or existed in Muslim land first in Istanbul in 1729 and 1784. Soon after that, the same was established in Syria and Egypt in 1822 (Bulâq Press). See Md Sidin Ahmad Ishak and Mohd Redzuan Othman, *The Malays in the Middle East: With A Bibliography of Malay Printed Works in the Middle East* (Kuala Lumpur: University Malaya Press, 2000), 59.

¹⁰ *Ibid.*, 63.

¹¹ *Ibid.*, 61-62.

method of teaching of Mecca professors in *al-Haram* was through three ways (1) using the same commentaries and glosses, (2) using a particular text with different glosses, the best of which was chosen, and (3) based on the glosses wrote a new compilation.¹² But with reference to Malay classics, one more method can be added which is the translation of the Arabic commentaries into the native language. The aims of this translation, according to Matheson and Hooker, were to "simplify and to explain, and not to dazzle with intellectual precocity". Because of this, they argue that assessment of the intellectual achievement of these writings is only possible through the authors' lectures in the classes and their advice and answers given to their students. They further view that the intellectual achievement of these writers is large because these *kitab*s carried their names.¹³

In the past, anonymity was a characteristic of Malay literature.¹⁴ Nevertheless, translation is indeed not an easy task especially dealing with technical terminologies and concepts such as the law or *fiqh* and even more so on the complex subject of dogma and mysticism. In the past, religious knowledge was taught mainly through oral tradition. Hence the process to transfer oral literary to written literature was an original attempt of Malay literatures. For this reason, some scholars such as Syed Muhammad Naquib al-Attas argue that the rise of Malay literature is the result of the influence of Islamic religious scholarship. This argument has been strongly augmented by other local scholars such as Ismail Hamid and Zamakhsyari Dhofier.¹⁵

¹² Hurgronje, *Mekka in the Latter Part of the 19th Century*, 189.

¹³ Matheson and Hooker, "Jawi Literature in Patani: The Maintenance of an Islamic Tradition," 19.

¹⁴ Indonesia vi- Literatures in EI2.

¹⁵ Ismail Hamid, *The Malay Islamic Hikayat* (Bangi: Penerbit UKM, 1983), 37-38; Dhofier, "Traditional Islamic Education in the Malay

Russell Jones disagrees with this conclusion for the reason of lacking scientific evidence. He argues that Malay literature already existed before Islam by referring to the Hinduized tradition of Malay writings. Nevertheless, he agrees that Islam and Arabic script together with the use of paper had a close association with the use of the Malay language.¹⁶ It is also worthwhile to quote Roelof Roolvink's observation on the style of Malay writing which he classified into at least five groups, *kitab* (i.e. *kitab Jawi*) literature being one of them. He concluded that "*kitab* literature is very extensive, technical, and written for and studied by a certain group, the religiously minded and in particular the theologians and teachers of religion. The language is Malay, but Malay which was characterised by a multitude of technical terms and showed the influence of Arabic both in syntax and in vocabulary".¹⁷ In our view, translations of these *kitab*s may be and despite all the arguments for and against them, they were indeed important to Malay culture and religious identity. This is because for the first time works of the Malay scholars were studied, cited, and referred to by the Malays, in a similar fashion it was done in Arabic works, in the field of Islamic dogma, law and mysticism.

The Purpose of Malay *Kitab Jawi*

It is not known when the Malay *Jawi* script employed by these *Kitab Jawis* first appeared. The first known

Archipelago: Its Contribution to the Integration of the Malay World," *Indonesia Circle* 53 (November) (1990) 21.

¹⁶ Jones, "The Origins of the Malay Manuscript Tradition", in *Cultural Contact and Textual Interpretation*, eds. Grijns, C.D. & Robson, S.O. (Dordrecht: Foris Publication, 1986), 127 and 139. For further reading on the use of paper in Islamic writings and its influence on knowledge in Medieval Islam see Buksh, *Islamic Studies* (Lahore: Sind Sagar Academy, 1926), 105-118.

¹⁷ Indonesia vi- Literatures in EI2.

inscription of *Jawi* was Batu Bersurat of Terengganu dated in 1303.¹⁸ There were also gravestones inscribed with *Jawi* writing in Sumatera and Jawa. But certainly, the Malay *Kitab Jawis* writers used the script and popularized it throughout the Southeast Asian archipelago including Java as the language of the court and Islam.¹⁹

Hurgronje believed that most of these works were mere translations from Arabic sources. He even noted, quite strongly, the general fashion of Islamic works as:

"If one should ask, what in the world can induce a learned man in such circumstances to add a new collection of glosses to the many existing ones? The answer will be that it is their desire to bring the understanding of the traditional materials nearer to their contemporaries by considering their pedagogic needs, but in fact, they also wished to perpetuate their names as authors."²⁰

Muslim writers might argue against this statement. Muhammad Abdul Rauf, although not in response to Hurgronje, suggested that the aims of *Kitab Jawi* were to

¹⁸ The date is given by Syed Muhammad Naquib al-Attas, *The Correct Date of the Terengganu Inscription* (Kuala Lumpur: Jabatan Muzium Negara Malaysia, 1970). Ahmat Adam however recently gives the year 1308AD as the actual date of the Terengganu Inscription. See Ahmat Adam, *Batu Bersurat Terengganu: Betulkah Apa Yang Dibaca Selama Ini?* (Petaling Jaya: SIRD, 2017). For a review of both views see Ahmad Hidayat Buang, "Ulasan Buku Ahmat Adam," *Jurnal Usuluddin* 46(1) (2018), 165-166.

¹⁹ For a detailed discussion on this subject see Jones, et.al., "Malaysia", in *South-East Asia Languages and Literatures: A Select Guide*, eds. Herbert, P. & Milner, A. (Scotland: Kiscadale Publications, n.d.) 103. For the Arabic influence in the Malay language see Russell Jones's article on Indonesia iii – languages in EI2 & Skinner, "The Influence of Arabic Upon Modern Malay", *Intisari* 2(1) (n.d.), 34-47.

²⁰ Hurgronje, *Mekka in the Latter Part of the 19th Century*, 189.

curb unIslamic practices and to spread the unadulterated ideas and ideas of Islam. He argued that scholars who wrote these *kitab*s were in constant communication with their fellow countrymen regarding religious matters brought to their attention through the annual *Hajj*.²¹ Zamakhsyari Dhofier also shares the same view where he argues the writing of *Kitab Jawi* through the establishment of a learning centre or *pondok* is an essential contribution to the Islamisation process in the Malay world. Without written tradition, as he further argues, the teaching of the first missionaries of Islam of the thirteenth century on religious duties and responsibilities would be forgotten and lost.²²

Matheson and Hooker follow Hurgronje's argument, but they appear more objective to the sincere intention of these *Kitab Jawi* writers, as they prepared those *Jawi* translations from Arabic for the use of Malay students in their own language.²³ A similar impression is also raised by A.H. Johns. With specific reference to Shaykh Dawud's translation, he views that "the writings do not add up much more than a few elementary textbooks. Such information in itself is hard of earth-shaking importance. Yet the role of such books in maintaining the pulse of religious teaching is crucial to the life of Islam in these remote regions".²⁴ Roolvinks in his article on Shaykh Dawud suggested that the readers of these *Kitab Jawis* were public and not necessarily students, but in doing so

²¹ Rauf, "Islamic Education in Malaya", *Intisari* 1(1), (n.d.), 21.

²² Dhofier, "Traditional Islamic Education in the Malay Archipelago: Its Contribution to the Integration of the Malay World," 20.

²³ Matheson and Hooker, "Jawi Literature in Patani: The Maintenance of an Islamic Tradition," 18.

²⁴ Johns, "From Coastal Settlement to Islamic Schools and City: Islamization in Sumatra, the Malay Peninsula and Java," *Hamard Islamicus* 4(4) (1981), 20.

the readers must have some familiarity to a certain degree with the structure of the Arabic language.

Recent research, however, provides further evidence that some of these writings originally contained depth analysis. Matheson and Hooker with reference to *al-Fatawa al-Fataniyyah* written by Muhammad Zayn al-Fatani, suggest that the application of Arabic sources to local circumstances in fatwa was done to the very highest level of sophistication.²⁵ The advanced state of analysis of these *fatwas* is similar to another translated work on *fatwa* called *Muhimmat al-Nafa'is fi Bayan As'ilah al-Hadith*. The *fatwa* was specifically issued to address questions from the natives of Southeast Asia and was written originally in Arabic by Shaykh Dahlan, a Shafi'ite Meccan Mufti, but the texts were translated into Malay.²⁶

Recent writing still follows a similar line of Hurgronje's argument but certainly with qualification. Iik Arifin Mansurnoor for example suggests that the main concern of these *Kitab Jawi* was not original research and scholarly work, but the provision of simple and intermediate texts. But he previously states that these translations were the foundation for the development of public interest in Islamic teachings²⁷ in Malay Muslim world.

²⁵ Matheson and Hooker, "Jawi Literature in Patani: The Maintenance of an Islamic Tradition," 5.

²⁶ The text was translated by al-Shaykh 'Abd al-Salam bin Idris al-Ashi and published in Mecca by Matba'ah al-Turki al-Majdiyyah al-'Uthmaniyyah in 1331H. This *fatwa* was reprinted in 1997 by INIS Jakarta and edited by Nico Kaptein. See also Ahmad Hidayat Buang (ed.), 2004. *Fatwa di Malaysia* (Kuala Lumpur: Department of Syariah and Law, University of Malaya, 2004), 5.

²⁷ Iik Arifin Mansurnoor, "Contemporary European Views of the Jawah: Brunei and the Malays in the Nineteenth and Early Twentieth Centuries," *Journal of Islamic Studies* 9(2) (1998), 188.

Subject and Style of Writing of Malay *Kitab Jawi*

On the subject of these books of Malay *kitab*, Hurgronje suggested that they follow closely the threefold branch of Islamic knowledge namely *Kalam*, *Fiqh* and *Tasawwuf*. But *fiqh* or law dominates all writings in terms of comprehensiveness and length. It also represents the most important subject; Islamic science *par excellence* and every student needs to master it.²⁸ However, the first *Jawi* work was on the subject of theology entitled *Bad' Khalq al-Samawat wa al-'Ard* (On the Creation of Heaven and Earth) translated by Nur d-Din al-Raniri in 1639. The first book on the law was also by the same author entitled *al-Sirat al-Mustaqim* written in 1634.²⁹ This manual deals exclusively with topics of rituals but sources used to compile this work were numerous consisting of *Minhaj al-Talibin*, *Manhaj al-Tullab*, *Fath al-Wahhab*, *Mukhtasar Fatwa li Ibn Hajar*, *'Umdah al-Salik* and *al-Anwar li A'mal al-Abrar*.

'Abd al-Ra'uf al-Sinkili, later on, wrote a *fiqh* manual entitled *Mir'at al-Tullab fi Sahl Ma'rifah Ahkam al-Shari'ah* that dealt with pecuniary transactions. This manual is therefore different from al-Raniri's *al-Sirat*. The third major work on *fiqh* was produced by Muhammad Arshad bin 'Abd Allah al-Banjari under the title *Sabil al-Muhtadin li Tafaqquh Amr al-Din*. This work was similar to al-Raniri in respect of content where it dealt specifically with rituals. Mohd Nor Ngah tells us the reason for this similarity as people in Banjarmasin, Borneo, where

²⁸ van Brunessen, Martin, "Kitab Kuning: Books in Arabic Script Used in the Pesantren Milieu," *Bijdragen*, 146 (2-3) (1990), 229.

²⁹ Omar Awang provides some information on the dates and contents of these *kitab Jawi* on the subject of *fiqh*. Omar Awang, "The Major Arabic Sources Which Determined the Structure of Islamic Thought in the Malay Archipelago Before the Nineteenth Century A.D. in the Field of Law, Theology and Sufism," in *Islamika*, ed. Lutfi Ibrahim (Kuala Lumpur: Jabatan Pengajian Islam, University Malaya, 1981) 82.

Muhammad Arshad wrote his *Sabil al-Muhtadin*, found it difficult to understand al-Raniri's *al-Sirat* because it contained Acehnese words.³⁰ Although the contents of both works were similar, Muhammad Arshad used later Shafi'i's sources such as *Mughni al-Muhtaj*, *Tuhfat al-Muhtaj* and *Nihayat al-Muhtaj*. Wan Muhammad Saghir suggests that both al-Raniri and Banjari's works on rituals as above were complemented by Shaykh Dawud through his *Bughyat al-Tullab*. On the style of writing, Hurgronje said that:

"A Malay Kitab is a work derived or compiled from Arabic sources, as a rule only the introduction, the conclusion and a few passing remarks are the work of the author, the rest being mere translation".

Mohd Nor Ngah appears to agree to this conclusion but adds some details that they held close resemblance in the following aspects: (1) style of beginning and ending the writing with exhortation and glorification of Allah and His Messenger, Prophet Muhammad; (2) small works are combined in the margin of the bigger works; (3) titles of the translation all of them in Arabic; (4) some local views were inserted amid of the translation; (5) main works focus on dogma, law and mysticism; and (6) very few works on *tafsir* and history and most of them are reprinted in Southeast Asia with no copyrights.³¹

³⁰ Mohd Nor Ngah, "Some Writing of the Traditional Malay Muslim Scholars Found in Malaysia", in *Tamaddun Islam di Malaysia*, ed. Khoo Kay Kim (Kuala Lumpur: Persatuan Sejarah Malaysia, 1980) 12. For a general theoretical aspect of Islamic legal texts see Sambo and Sarumi, "A Jurisprudential Appraisal of Conflicting Islamic Legal Texts," *Journal of Islamic Law Research* 6(2) (2021), 167-180.

³¹ Mohd Nor Ngah, *Kitab Jawi: Islamic Thought of Malay Muslim Scholars*, 1-3

Nevertheless his earlier writing suggested that even though manuals of the *Kitab Jawi* are translations or adaptations from Arabic, local views are prevalent and even the titles of the copied books are changed. *Kitab Umm al-Barahin* by al-Sanusi (d.895) represents one good example where three translations exist with different names or titles such as *Bidayah al-Nihayah* (by Muhammad Zayn bin Jalal al-Din in 1757), *Siraj al-Huda* (by Muhammad Zayn al-Din bin Muhammad Badawi al-Sambawi in 1886) and lastly '*Aqidah al-Najin* (by Zayn al-'Abidin bin Muhammad al-Fatani in 1890).³²

Despite all the criticism made on these writings as partly shown above, until today, especially in Malaysia there is no other religious compendium as comprehensive as these *Kitab Jawi* in respect of law and dogma. This is the reason why some of these writings are still being used and the names of the author are still being mentioned and referred to. Matheson and Hooker argue that *Kitab Jawi* literature is important because it represents Malay cultural identity and the purity of Islamic teaching and scholarship. With respect to *Kitab Jawi* written by the Patanis' authors, they are an essential element of Patani's past glorious history. It has been said that the religious scholarship of Patani writers has served as an inspiration for political support to the Malay people in their struggle for independence from Thai rule.³³ This is especially true when Malay culture and language were fast becoming eroded in Patani.

At the beginning of the twentieth century, British explorer, Cameron wrote that the Siamese dialect was very widely used in Patani which was the official language and must be used in all official communication

³² Mohd Nor Ngah, "Some Writing of the Traditional Malay Muslim Scholars Found in Malaysia," 10.

³³ Matheson and Hooker, "Jawi Literature in Patani: The Maintenance of an Islamic Tradition," 4, 7 and 18.

whereas "it is exceedingly difficult to find anyone who can talk Malay".³⁴ In the past, the Thai government, mainly for the desire to assimilate the Malays into the larger Thai society embarked on a series of policies that were repugnant and offensive to Malay culture and more so to the Islamic religion.³⁵ *Kitab Jawi* literatures have therefore served as a continuation of the Islamic and Malay traditions and to some extent as a guardian to these traditions.

Shaykh Dawud bin 'Abd Allah al-Fatani: The Writer of Malay *Kitab Jawi*

The accounts of Shaykh Dawud's life are rudimentary and sketchy. Information on his biography is drawn from his writings and historical facts surrounding his life in Patani and Mecca.³⁶ He was born in Krisek, Patani (south of modern Thailand). On his date of birth and death, our research found three different dates: 1720-1847, 1763-1845 and 1769-1847. The first date is highly questionable since it documented that he lived up to 127 years. Thus, the most probable date of his birth is between 1763 and 1769. He must have been fifteen or twenty years old when the Malay Sultanate of Patani was completely subdued by Siam in 1784.

³⁴ Cameron, "On the Patani," *Journal of the Straits Branch, Royal Asiatic Society* 11 (1883), 126-127.

³⁵ By using official letters from the Rulers of states of Greater Patani to the then Governor General of Straits Settlements, Frank Swettenham, Koch lists a mirage of complaints of ill-treatment of Thai officials towards the Malays. See Koch, "Patani and the Development of a Thai State," *JMBRAS* 50(2) (1997), 73-74.

³⁶ Matheson and Hooker, "Jawi Literature in Patani: The Maintenance of an Islamic Tradition," 19-20. Wan Mohd Saghir provides some details on his family lineage and student life in Patani and Mecca. But this information needs to be investigated and collaborated with other evidence.

Thus, he must have witnessed the invasion of Siam over Patani and what followed was several unsuccessful Patani uprisings or revolts against Siam in 1791 and 1808.³⁷ He was in Mecca when the latest revolt in 1831 took place. But he must have followed the developments in Patani quite keenly as it was reported that he actually joined one of the revolts. Shortly after or probably before 1784, he must have left Patani for Mecca to further his studies. Before proceeding to Mecca, he stopped at Aceh to study there for several years. Aceh was at that time an important transit point in the Malay world before proceeding further to the Islamic Middle East, particularly Mecca.

Many literatures have been written to show the active and vibrant sea routes in Malay Southeast Asia in Shaykh Dawud's time. John Dunmore told us that trading ships from Terengganu that were active since the sixteenth century sailed to many places in the region including Sumatra and Java. Terengganu situated on the eastern Malaysian coast was certainly closely connected to Patani.³⁸ David Bulbeck in his studies of Southeast Asian trades writes that Patani was an active port in the South China Sea in the 15th to 17th centuries exporting goods such as pepper to China market and business was in the

³⁷ For this historical account see Bailey and Miksic's introduction to their translation of Ibrahim Syukri (pseudonym), *History of the Malay Kingdom of Patani* (Ohio University, 1985) xiv.

³⁸ Quoted from Gosling, L.A. Peter, "Contemporary Malay Traders in the Gulf of Siam," in *Economic Exchange and Social Interaction in Southeast Asia*, ed. Karl L. Hutterer (University of Michigan Center for South and Southeast Asian Studies, 1977), 75. See also generally Hall, "Local and International Trade and Traders in the Straits of Melaka Region 600-1500," *JESHO* 47(2) (2004), 213-260. For local writers, see Ghani Ishak, "Malaysia," in *Seafarers in the ASEAN Region*, ed. Mary R. Brooks (Singapore: IEAS, 1989) 167.

hands of Muslim traders.³⁹ Shaykh Dawud spent many years in Mecca studying many aspects of Islamic knowledge especially, Arabic grammar, law, dogma and mysticism. He also travelled and spent some years in Medina for studies and finally settled in Ta'if and died there in 1847.

No doubt Shaykh Dawud was a prolific Malay writer. Matheson and Hooker suggest that he represents a pivotal figure in the history of Patani because he is the first *'alim* famously known from that area and his writings provided the foundation for the works of later Patani ulama.⁴⁰ He wrote popular tracts as well as extensive handbooks on Shafi'ite *fiqh*, theology and orthodox mysticism, the earliest of which was written in 1810 and the latest in 1843. All of Shaykh Dawud works were translations or adaptations from Arabic. His works were later on published in Mecca, Bombay, Cairo and Singapore up to the opening of the twentieth century, especially by Ahmad bin Muhammad Zayn al-Fatani where some of the Shaykh Dawud's works were published for the first time.⁴¹

Hurgronje informed us that it was probably due to Ahmad bin Muhammad Zayn al-Fatani's "patriotism to his countrymen that he published the entire series of works of Dawud ibn 'Abd Allah al-Fatani, the best of which was written between the years 1815-1840 and whose name is often met in the catalogue of Malay Manuscripts of the Batavia Collection".⁴² Shaykh Dawud's earliest known printed work was mentioned by Hurgronje as a work on prayers lithographed in Bombay

³⁹ Bulbeck, et.al., *Southeast Asian Exports Since the 14th Century: Cloves, Pepper, Coffee and Sugar* (Singapore: Institute of Southeast Asian Studies, 1989) 63.

⁴⁰ Matheson and Hooker, "Jawi Literature in Patani: The Maintenance of an Islamic Tradition," 19.

⁴¹ Article Patani, Sheikh Daud al-, EI (New).

⁴² Hurgronje, *Mekka in the Latter Part of the 19th Century*, 286-287.

in 1880. Hurgronje did not supply any name for that work. He also believed that there was a much earlier work by Shaykh Dawud published in Istanbul.⁴³ The Bombay date is much earlier than from Ian Proudfoot who tells us that Malay books were printed in Bombay as early as 1874 and possibly at other places like Cairo. In respect of local printers, Proudfoot believes printing copies of the Qur'an with introduction and notes in Malay in lithograph was done as early as 1854 in Palembang.⁴⁴

Some of the important works continued to be printed locally in Surabaya, Singapore, Penang, Patani and Kota Bharu. Shaykh Dawud is reputed to have written more than a hundred titles published in Mecca, Egypt, Istanbul and Bombay. Wan Muhammad Saghir provides a list of 57 books of which seven titles he has not seen yet.⁴⁵ Ahmad Fathi provides 41 titles, 11 of which are not available to him.⁴⁶ Mohd Nor Ngah suggests Shaykh Dawud authored twenty books.⁴⁷ It appears that each author has their own numbers and this is probably due to differences of materials in their private collection. In addition, many of these works need to be confirmed as to their authenticity.

⁴³ *Ibid.*, 287.

⁴⁴ Proudfoot, *Early Malay Printed Books: A Provisional Account of Materials Published in the Singapore-Malaysia Area Up To 1920, Noting Holdings in Major Public Collections* (Kuala Lumpur: Academy of Malay Studies, 1993), 27.

⁴⁵ Wan Muhammad Saghir Abdullah, *Syeikh Daud bin Abdullah al-Fatani, Ulama dan Pengarang Terulung Asia Tenggara* (Shah Alam: Hizbi, 1990), 70-73 (First published by C.V. Ramadhani, Solo, Indonesia in 1989 under the title *Shaykh Daud bin Abdullah al-Fatani Penulis Islam Produktif Asia Tenggara*. The current book published in Malaysia is the extended version of the first publication and contains further data).

⁴⁶ Ahmad Fathi al-Patani, *Ulama Besar Dari Patani* (Bangi: Penerbit Universiti Kebangsaan Malaysia, 2001), 34-35.

⁴⁷ Mohd Nor Ngah, *Kitab Jawi: Islamic Thought of Malay Muslim Scholars*, 6.

None the less there is an agreement among all these scholars that the greatest and most comprehensive work of Shaykh Dawud is *Furu' al-Masa'il* on law written in 1838 in Mecca in two volumes and the latest was published by Dar al-Fikr, Beirut. Joni Tamkin has done a brief introduction on the contents of this work and a fair analysis of its commercial topics from the Islamic banking perspective.⁴⁸ By taking the subject of *bay' al-mu'atah* and *khiyar* (options in sale contract), Joni shows that Shaykh Dawud followed closely the writing of Shafi'is manuals.⁴⁹

Matheson and Hooker have the detailed lists of Shaykh Dawud's works and suggest that 12 works still being printed and nine others no longer available in the book shops. The list of books provided appears to be 23 altogether. Six of these were on the subject of fiqh which are *Idah al-Bab li Murid al-Nikah bi al-Sawab* (Istanbul – 1809), *Munyat al-Musalli* (1826–27 – Mecca), *Furu' al-Masa'il* (1841 – Egypt/Mecca), *Ghayat al-Taqrīb* (1887 – Mecca) and *Bughyat al-Tullab* (no clear date has been offered by any researchers).⁵⁰ Annabel Gallop provides us with three of Shaykh Dawud's writings on *fiqh* published in Bombay, the manuscripts all of which are now kept in the British Library in London. The first of these writings is *Munyat al-Musalli* published by Alwi Press, in 1890 and the other two are *Idah al-Bab li Murid al-Nikah bi al-Sawab* and *Sullam al-Mubtadi'* published by Hasaniyyah Press in 1893.⁵¹ Availability of these original printing

⁴⁸ Joni Tamkin Borhan, "Beberapa Aspek Pemikiran Syekh Daud bin Abdullah al-Fatani Dalam Perbankan Islam: Tumpuan Kepada *Furu' al-Masa'il*," *AFKAR: Jurnal Akidah & Pemikiran Islam* 3 (2002), 195-211.

⁴⁹ *Ibid.*, 204-205.

⁵⁰ Matheson and Hooker, "Jawi Literature in Patani: The Maintenance of an Islamic Tradition," 21.

⁵¹ Gallop, "Early Malay Printing: An Introduction to the British Library Collection," *JMBRAS* 63(1) (1990), 103-104. Also, recently Gallop,

manuscripts by the British Library is possible through the introduction of regulation of the British administration to register all books published in British India. According to this regulation, books once registered, a number of which then must be deposited to the government offices.

Similar regulations were introduced in the Straits Settlements in 1886 (Registration of Book Ordinance no.15) and in the Federated Malay States through Printing and Books Enactment 1915. Nevertheless, not all books were registered for some obvious reasons, and this is especially so with regard to religious books. Proudfoot tells us albeit speculatively that "Islamic religious treatises were not submitted for registration since it was inappropriate for a *kafir* government to regulate such works. Some publishers made it clear they depended upon the *kathi* for protection of their proprietary rights".⁵² Registration would indeed solve the problem of discovering the date of publication of these books of *Kitab Jawi* many of which were in the habit of not providing any details on the publication and even sometimes the author is unknown. Both Roolvink and Jones observed that it was quite difficult to ascertain the original dates of the Malay *Kitab Jawi*. Jones suggests the use of a watermark on the paper to indicate the date of printing. In Malay *kitab*, if the date was given by the author, it was normal to indicate the date of its completion.⁵³

"A Jawi Sourcebook for the Study of Malay Paleography and Orthography," *Indonesia and the Malay World* 43 (125) (Special issue in honour of E.U. Kratz), ed. & intr. Annabel Teh Gallop (March 2015): 13-171.

⁵² Proudfoot, "A Formative Period of Early Malay Books," *JMBRAS* 59(2) (1986), 102.

⁵³ Jones et.al., "Malaysia," 104.

Some Notes on *Nahj al-Raghibin* of Shaykh Dawud bin 'Abd Allah al-Fatani

The full title of the work under the present study is *Nahj al-Raghibin wa Subul al-Muttaqin*, which can be translated as *Way for Who Desires and Paths for the Pious*. Shaykh Dawud was said to have written the present work in 1226H (1811) in Mecca. It was then reproduced in 1290H (1873)⁵⁴ and was later published on the margin of *Bughyat al-Tullab*. Sir Richard Winstedt mentioned Sheikh Dawud's work known as *Ghayat al-Tullab*, the manuscript of which is kept in Jakarta dated in 1859.⁵⁵ It is not known whether this is a different manual or the same with *Bughyat al-Tullab* and therefore it needs to be confirmed.⁵⁶ The only manuscript, albeit incomplete, contains only 118 pages, and bears the same title of *Bughyat al-Tullab*, is kept in Pusat Islam Library in Kuala Lumpur and this also needs to be compared with the printed work. Wan Muhammad Saghir reveals that two volumes of *Nahj al-Raghibin* manuscript have just recently been found. The first volume was written in 1226 Hijrah and the second a year later.⁵⁷ Both of these volumes are kept in the Library of Pusat Islam in Kuala Lumpur (manuscript no.314) and contain about 422 pages. These volumes are indeed large works and probably not similar to printed works of the same title. Thus, they need to be investigated further and compared with printed works. The current text of *Nahj* that is used at hand was printed by

⁵⁴ Wan Muhammad Shagir Abdullah, *Syeikh Daud bin Abdullah al-Fatani, Ulama dan Pengarang Terulung Asia Tenggara*, 73.

⁵⁵ Winstedt, *A History of Classical Malay Literature*, rev. & ed. Yusof A. Talib, *JMBRAS Reprint* 12 (1991) 105. The Muslim date is given by Matheson and Hooker as 1274 Hijrah which corresponds to 1857 A.D.

⁵⁶ Matheson and Hooker, "Jawi Literature in Patani: The Maintenance of an Islamic Tradition," 21.

⁵⁷ Wan Muhammad Shagir Abdullah, *Syeikh Daud bin Abdullah al-Fatani, Ulama dan Pengarang Terulung Asia Tenggara*, 70-73.

Maktabah wa Matba'ah Dar al-Ma'arif, Penang, Malaysia, in two volumes in a single bound on the margin of *Bughyat al-Tullab*.

The selection of *Nahj al-Raghibin* for discussion in this article serves as a focal reference to other Shafi'is manuals in this region since the entire manual specifically deals with transactions. Shaykh Dawud asserted that the publication of *Nahj al-Raghibin* was the result of requests from many quarters asking him to write religious guidance on daily transactions. This justification is not exclusive as many other Muslim writers have done similarly. Contents of the manual appear to be carefully chosen by the author to cover daily important business dealings. It is therefore assumed that this manual had some practical use.

In the preface of the *Nahj*, Shaykh Dawud mentioned sources that he used in translating the text were *Minhaj al-Talibin* by Nawawi, *Tuhfat al-Muhtaj* by Ibn Hajar, *Nihayat al-Muhtaj* by al-Ramli, *al-Siraj al-Wahhaj* by al-Ghamrawi, *Manhaj al-Tullab* and *Fath al-Wahhab* by Zakariyya al-Ansari and *al-Iqna'* by al-Shirbini.⁵⁸ These are the authoritative manuals of the late Shafi'is scholars. Materials used for the translations suggest the author at the time of writing must have mastered the field of studies in Islamic law.

The arrangement of the text is basically similar to that of another Shafi'is manual on the law of commerce. Discussion of the topics was distributed in two volumes on the margin of *Bughyat al-Tullab*. Several topics which are not usually discussed under *bab al-mu'amalat* or transactions/commerce were allocated at the end of volume two. These are chapters or books (*kitab*) on succession (*fara'id*) spoils of wars (*ghanimah*), *zakat* and

⁵⁸ For a detailed exposition of these manuals see Brunessen, "Kitab Kuning: Books in Arabic Script Used in the Pesantren Milieu," *Bijdragen* 146 (2-3) (1990), 226-269.

charitable gift (*sadaqah al-tatawwu'*). The allocation of these chapters at the end of the volume suggests that the author was aware that they are not normally discussed under the general title of transactions (*mu'amalat*). He therefore must have intentionally included those chapters for more practical purposes to supplement discussion on commercial rules. It must be remembered that Patani at that time was in a turmoil of Siamese aggression and most of the Southeast Asian Malay states especially Aceh were not on friendly terms with European explorers. Thus, the inclusion of spoils of the wars must have some relevance, although the outcome of those relations with the western powers proved unfavourable to Patani and the rest of the Malay Sultanates for that matter, to benefit from his writing.

In the specific chapter on sale contract, a close comparison with other Shafi'is manuals reveals that the essence of the discussions is mostly a translation, but some modification was made to the arrangement of topics and some new examples were added. Mohd Nor Ngah as mentioned above has already pointed out this particular fashion. This modification may have been attributed to a variety of sources that Shaykh Dawud referred to, in which many different issues or points were discussed. He ultimately had to accommodate these many different issues and points in his writing making his book slightly different from the sources that he referred to in respect of chapters and sub-chapters arrangement. This style of writing still appears in modern Malaysia and Indonesia where discussions of particular topics or subjects were based on the discussions collected from various traditional and classical sources and rewritten again in a consolidated fashion.

Comparative Analysis of *Nahj al-Raghibin's* Text with Arabic Sources

Shaykh Dawud began his chapter with a definition of the sale contract both literally and technically as "giving a property with specific conditions".⁵⁹ This appears to be different from the text of *Iqna'*, which defines sale as the "exchange of property with property according to specific conditions (*muqabalah mal bi mal 'ala wajh makhsus*)".⁶⁰ Thus *Nahj's* definition of a sale contract might be his own. He then supported the permissibility of the sale contract from the Qur'an dan Hadith. This is again taken from *Iqna'*⁶¹ but the Hadith to support the definition is reported from al-Hakim on the most preferred way to earn a living. The Hadith is absent both in *Iqna'* and *Minhaj* but it is found in Zakariyya al-Ansari's *Tuhfat al-Tullab*.⁶²

Shaykh Dawud then proceeded to explain types of sale from the view of its three subject matters, namely: (1) sale of a subject matter that is present and can be seen (*mushahadah*), this is a permissible sale, (2) sale of a subject matter through seller's description and henceforth the delivery of which coming under his liability (*mawsuf fi al-dhimmah*) and (3) sale of subject matter that is not present at the session (*gha'ib*).⁶³ This explanation was taken from the text of *Ghayah* but without elaboration on their details as mentioned in *Iqna'*. It appears that Shaykh Dawud deliberately omitted the detailed discussion on the types of sale as if he wanted to limit his discussion to the

⁵⁹ Dawud bin Abdullah bin Idris al-Fatani, *Nahj al-Raghibin wa Subul al-Muttaqin*, vol.1 (Cairo: Matba'ah Mustafa al-Halabi wa Awladihi, 1935), 6.

⁶⁰ Shirbini, *al-Iqna' fi Hall Alfaz Abi Shuja'* (Egypt: Isa al-Bab al-Halabi, 1950). 2, 2.

⁶¹ *Ibid.*

⁶² Zakariyya al-Ansari, *Tuhfat al-Tullab bi Sharh Matn Tahrir Tanqih al-Lubab* (Egypt: Mustafa al-Bab al-Halabi, 1921), 23.

⁶³ Dawud bin Abdullah bin Idris al-Fatani, *Nahj al-Raghibin wa Subul al-Muttaqin*, vol. 1, 7.

essentials of the sale contract. He probably did not agree with *Iqna's* assertion that there was another type of sale contract which is the sale of usufruct (*bay' al-manafi'*).⁶⁴ Such a sale is a contract for hire or lease and it is discussed under a separate chapter of *al-ijarah*.

After this brief introduction, Sheikh Dawud began by outlining the constituent elements of a sale contract or *arkan* which are three that are the contracting parties (*'aqidan*), the subject matter (*ma'qud 'alayh*) and the pronunciation of the contract (*sighah*) or offer and acceptance (*ijab wa qabul*).⁶⁵ This is a copy from *Minhaj*⁶⁶ but he elaborated on the meaning of *ma'qud 'alayh* which he explained as price and things purchased. He avoided referring to *Iqna'*, which suggests that these three constituent elements should be broken down into six, that are, seller, purchaser, price, subject matter of the sale, offer and acceptance.⁶⁷ Nonetheless, Shaykh Dawud had to expose to his reader some interesting observations made by *Iqna'*, especially on the justification of *ijab* and *qabul*. He did this by explaining the non-permissibility of *bay' al-mu'atah*, which is a sale contract concluded by actions of the parties where no offer and acceptance were pronounced.⁶⁸ In *Iqna'*, the reason was given to support the requirements of *ijab* and *qabul* generally. However, no specific reasons were given to explain the exception of *mu'atah* from this rule.⁶⁹

The subject of *mu'atah* attracted Shaykh Dawud's attention where he furthers the argument by referring to

⁶⁴ Shirbini, *al-Iqna'*, vol. 2, 3.

⁶⁵ Dawud bin Abdullah bin Idris al-Fatani, *Nahj al-Raghibin wa Subul al-Muttaqin*, vol. 1, 7.

⁶⁶ Nawawi, *Minhaj al-Talibin* (Jeddah: al-Haramayn, 1975), 38.

⁶⁷ Shirbini, *al-Iqna'*, vol. 2, 4.

⁶⁸ Dawud bin Abdullah bin Idris al-Fatani, *Nahj al-Raghibin wa Subul al-Muttaqin*, vol. 1, 8.

⁶⁹ Shirbini, *al-Iqna'*, vol. 2, 4.

the opinion of Nawawi and Ghazali on several points together with examples taken elsewhere not from *Minhaj* or *Iqna*.⁷⁰ Firstly, he agreed with both scholars above that *mu'atah* is permissible if it involves trivial things (*muhaqqarat*). He must be aware of Nawawi's position on this type of sale is that of permissibility⁷¹ and hence he felt a further explanation was worthwhile in order to make his reader aware of the reasons for the disagreement among the scholars on the subject. Secondly, the offshoot of this sale known as *istijrar* is not permissible because of the absence of an offer and acceptance. *Nahj* defines *istijrar* as a sale where the subject matter is taken for a number of days routinely and the price is paid only once.⁷² He insisted there must be a *sighah* for every time the subject matter is taken in order to make the sale valid. The example of *istijrar* sale is unique since it was not mentioned both in *Minhaj* and *Iqna*. It was relatively a new issue at that time, and it was also discussed by Ottoman Hanafi scholar, Ibn 'Abidin (d.1836) in his famous *Hashiyyah Radd al-Muhtar*.⁷³ Ibn 'Abidin lived at the same time as Shaykh Dawud. The insertion of this example clearly shows Shaykh Dawud's awareness of the current issues pertaining to Islamic contracts. One other example mentioned in the *Nahj* is the right of restitution of the property by the seller in the sale of *mu'atah*.⁷⁴ *Nahj* maintains that it is the responsibility of the buyer to return the property. Nevertheless, there is no mention on the

⁷⁰ Dawud bin Abdullah bin Idris al-Fatani, *Nahj al-Raghibin wa Subul al-Muttaqin*, vol. 1, 8.

⁷¹ See Ghamrawi, *al-Siraj al-Wahhaj* (Egypt: Sharikat Maktabah wa Matba'ah Mustafa al-Bab al-Halabi, 1933) 173.

⁷² Dawud bin Abdullah bin Idris al-Fatani, *Nahj al-Raghibin wa Subul al-Muttaqin*, vol. 1, 8-9.

⁷³ Ibn 'Abidin, *Hashiyyah Radd al-Muhtar* (Beirut: Dar al-Kutub al-'Ilmiyyah 1994), 7, 32.

⁷⁴ Dawud bin Abdullah bin Idris al-Fatani, *Nahj al-Raghibin wa Subul al-Muttaqin*, vol. 1, 9

right of the buyer to get back his price. Shaykh Dawud mentioned Ibn Hajar's name while elaborating on this aspect by stating the buyer is released from any obligation in the hereafter because although the sale is without *sighah* there was tacit consent.⁷⁵ This appears to be the first instance where Shaykh Dawud directly referred to Ibn Hajar.

On the requirements of *sighah*, *Nahj* appears to provide an additional condition. *Minhaj* and *Iqna'* provide that pronouncement of *sighah* by parties must not be interrupted with any long distraction which has no concern with the sale nor should it be a long silence after the offer has been made. Secondly, both offer and acceptance must be in agreement at least in their meaning.⁷⁶ *Nahj* adds a third condition that the buyer can hear the offer and accept it.⁷⁷ This additional condition was taken from other sources. *Nahj* also appears to rearrange the examples taken from both *Minhaj* and *Iqna'*. Thus, instead of saying "I sold you with the price of a thousand broken *dinar* and it was accepted with thousand round *dinar*, the *sighah* is void", *Nahj* rearranges it by stating "I sold you with the price of a thousand round *dinar*".⁷⁸ This clearly shows that Shaykh Dawud did not want to follow entirely word by word what is in the Arabic texts. The same rearrangement can be seen in the discussion of the insertion of stipulation in the *sighah* which are of two kinds namely *ta'liq* (condition precedent of a particular event) and *ta'qit* (condition precedent of time). The examples of such conditions were taken from *Iqna'*,⁷⁹ but *Nahj* rearranges

⁷⁵ *Ibid.*

⁷⁶ Nawawi, *Minhaj al-Talibin*, 38; Shirbini, *al-Iqna'*, vol. 2, 4.

⁷⁷ Dawud bin Abdullah bin Idris al-Fatani, *Nahj al-Raghibin wa Subul al-Muttaqin*, vol. 1, 9.

⁷⁸ *Ibid.*

⁷⁹ Shirbini, *al-Iqna'*, vol. 2, 5.

them to make them clearer by explaining them immediately after the statement.⁸⁰

New terms and new examples are added to the translation in *Nahj*, while still following the main body of texts taken from *Minhaj* and *Iqna'*. This can be seen in the discussion of contracting parties' ability to transact. Thus, according to *Nahj* a minor, insane, interdicted person for the reason of prodigal as well as slaves who did not secure permission from their owners, have no ability to transact in a sale contract.⁸¹ The last restriction is not found in *Minhaj* and *Iqna'* as well as *Siraj*. *Nahj* also uses a different term albeit carries the same meaning such as two contracting parties ('*aqidan*') instead of '*aqid*', a term used in both *Minhaj* and *Iqna'* to signify the seller (*ba'i'*) and purchaser (*mushtarī*).⁸² Similarly, it is realized that *Nahj* also attempts to simplify the discussion by omitting lengthy discussions found especially in *Iqna'* and *Siraj*. Thus, the general idea of free will in contract is also touched by *Nahj* where discussion appears to be similar to *Iqna'*, but with certain variations in order to make the explanation clearer and briefer.⁸³

On the sale of the Qur'an and other religious texts *Nahj* makes the list of things that a non-Muslim cannot be part of the sale without providing reasons for such a restriction.⁸⁴ In *Iqna'* and *Siraj* full reasons are explained.⁸⁵ However, *Nahj* provides a full discussion on the sale of Muslim slaves.⁸⁶ This is easy to understand since slavery

⁸⁰ Dawud bin Abdullah bin Idris al-Fatani, *Nahj al-Raghibin wa Subul al-Muttaqin*, vol. 1, 10.

⁸¹ *Ibid.*

⁸² Nawawi, *Minhaj al-Talibin*, 39; Shirbini, *al-Iqna'*, vol. 2, 5.

⁸³ Dawud bin Abdullah bin Idris al-Fatani, *Nahj al-Raghibin wa Subul al-Muttaqin*, vol. 1, 10.

⁸⁴ *Ibid.*, vol. 1, 10-11.

⁸⁵ Shirbini, *al-Iqna'*, vol 2, 5; Ghamrawī, *al-Siraj al-Wahhaj*, 173.

⁸⁶ Dawud bin Abdullah bin Idris al-Fatani, *Nahj al-Raghibin wa Subul al-Muttaqin*, vol. 1, 11

was still in practice in Shaykh Dawud's time where Hurgronje provided us a full account of it in Mecca.⁸⁷ Slavery was also in practice in Malay states albeit in different forms until the late nineteenth century.⁸⁸ Further evidence that *Nahj* gives emphasis on the sale of slaves can be seen in the topic of full knowledge of the subject matter.⁸⁹ While the general statement on the subject is similar to the Arabic sources, the example of a slave is taken elsewhere and not from the two principal sources of *Minhaj* and *Iqna'*. Thus, according to *Nahj* it is not valid to sell a slave with a price of either two sales because nothing can be made certain either on the slave sold or the price paid. The emphasis on the topic of slavery is an indication that the author realized its practical importance to his readers and students.

Practical examples are frequent in *Nahj*. Thus, the sale of weapons to a non-Muslim is void if the purchaser is an enemy or termed as *harbi*. In this respect, *Nahj* uses the term *kafir benua* which could be translated as continental infidels.⁹⁰ In *Iqna'*, *Minhaj* and *Siraj* only the term *harbi* is used.⁹¹ *Nahj* also adds examples that are current at the time of writing and probably were asked for clarification by the author's countrymen or discussed by professors of the *al-Haram*. Insertion of these examples is by expanding the discussion on non-Muslims are not

⁸⁷ Hurgronje, *Mekka in the Latter Part of the 19th Century*, 10-20

⁸⁸ For detailed accounts of the practice of slavery in nineteenth-century Malaya see Maxwell, "Law Relating to Slavery Among The Malays", *JSBRAS* 22 (1890), 247-297; Sullivan, *Social Relations of Dependence in a Malay State: Nineteenth Century Perak: Monograph No.10* (Kuala Lumpur: MBRAS, 1982), particularly in chapter three 45-69.

⁸⁹ Dawud bin Abdullah bin Idris al-Fatani, *Nahj al-Raghibin wa Subul al-Muttaqin*, vol. 1, 14.

⁹⁰ *Ibid*, vol. 1, 11.

⁹¹ Nawawi, *Minhaj al-Talibin*, 39; Shirbini, *al-Iqna'*, vol. 2, 5; Ghamrawī, *al-Siraj al-Wahhaj*, 173.

allowed to sell or buy certain objects as shown above. Thus, it is reprehensible (*makruh*) to undertake work for a non-Muslim under a hire contract, although it is permissible to do business with them.⁹² The sale of the Qur'an by a Muslim is reprehensible but not to purchase it.⁹³ The last example is probably to discourage the treatment of the Qur'an as a type of sale merchandise. This idea of reprehensible in commercial transactions appears in several places and generally does not originate from the Arabic sources of *Minhaj* and *Iqna* '.

Although from a legal perspective the idea has no effect on the invalidity of the sale, the insertion of the examples of this idea is understandable, since Shaykh Dawud was a member of a Sufi order, thus it is reprehensible to sell things through estimation (*takhmin*) without proper weighing such as a sale of heaps of paddy. But this is not applicable to things that can be measured such as cloth.⁹⁴ This concept of reprehensible can be found in Ibn Hajar's *Tuhfat*; in the case of selling goods that can be measured through the estimation, which is termed as *juzaf*, such as a sale of a sack of things (*sabura*).⁹⁵ The reason for such a reprehension is to avoid the purchaser's disappointment after the sale was completed. In other words, the purchaser has to take an extra risk in such kind of sale.

Discussions on the subject matter of sale contract reveal the use of examples that are different from the Arabic sources. This style is used in further discussion on the requirements of subject matter by supplying examples that are local to Southeast Asian region, particularly the

⁹² Dawud bin Abdullah bin Idris al-Fatani, *Nahj al-Raghibin wa Subul al-Muttaqin*, vol. 11.

⁹³ *Ibid.*

⁹⁴ *Ibid.*, 17.

⁹⁵ Ibn Hajar al-Haytami, *Tuhfat al-Muhtaj* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1996), vol. 5, 453.

Malay world, although the general style is still summarizing and condensing discussion found in the Arabic sources as shown above.⁹⁶ Thus the sale of heaps of paddy without exact measurement is valid.⁹⁷ Similarly, the sale of young coconut the outer skin of which is edible is valid although the interior of such a coconut is not inspected or seen.⁹⁸ These two examples are widely known to the people of the Malay world and not mentioned in Arabic sources. From these examples, it is quite notable that they were various aspects of Malay society's commercial and business practices. The author of *Nahj* appears to appreciate these practices and incorporate them in his work of *al-Nahj*. From these findings on the practicality of the topics and issues written by the author, it can be safely concluded that the presumption of early scholars of the Malay classics, as mentioned at the beginning of this article, is therefore not entirely accurate for overlooking these practical examples on the matters of commerce and trade.

Further, Shaykh Dawud's emphasis on practical aspects can be seen in his choices in selecting Arabic texts for translation. It is obvious that the style *Nahj* uses to translate is through a combination of different texts and making the translation interwoven. But if the Arabic sources were different in the approach, *Nahj* tends to follow *Minhaj*. This is understandable since *Minhaj* is considered to carry more weight than *Iqna'* being a commentary of Abu Shuja's texts. Thus, *Nahj's* order of listing the conditions for a sale contract subject matter is similar to *Minhaj*. Nevertheless, when it comes to the explanation and examples, *Nahj* appears to prefer *Iqna'* from *Minhaj* and its commentary, *Siraj*. Thus, a seller is

⁹⁶ Shirbini, *al-Iqna'*, vol. 2, 3; Ghamrawi, *al-Siraj al-Wahhaj*, 175.

⁹⁷ Dawud bin Abdullah bin Idris al-Fatani, *Nahj al-Raghibin wa Subul al-Muttaqin*, vol. 1: 17.

⁹⁸ *Ibid.*, vol. 1, 19.

required to have the ability to deliver the object of the sale is a general statement found in the Arabic sources, but the explanation is taken from *Iqna'*,⁹⁹ where in the case of an absconded slave, the sale is good if the buyer is able to guarantee the return of the slave with no additional cost.

Nevertheless, in this particular topic, *Nahj* seems to omit to mention the sale of a thing which is illegally appropriated or *maghsub*.¹⁰⁰ The same style can be found while discussing the sale of a part of a thing, a partition of which will diminish its value of it. Thus, the sale of a part of an expensive cloth by cutting such part is void as it will diminish the price of the cloth is mentioned by all the Arabic sources but the explanation of how such invalidity can be avoided seems to be inspired by *Siraj*. According to *Siraj* the sale of this particular fashion is valid when it is bought without determining which part to be partitioned or cut or *musha'* and after the contract, all parties can agree on its partition (*fa al-tariq al-bay' an yashtarih musha'an thumma yattafiq al-faslih*),¹⁰¹ whereas in *Nahj* it is suggested that the non-permissibility of such a sale can be avoided is to agree prior to the contract on the price after which the object will be partitioned or cut and after this has been done the parties can enter into the contract. Such a technique is perfectly valid in a sale contract.¹⁰²

Up to this point, it has been shown that *Nahj* has some elements of originality in arranging and selecting the appropriate topic to be translated and through inserting new examples which are current at the time of writing or local to the area of the writer's origins. It is shown that many times Shaykh Dawud omitted detailed discussion

⁹⁹ Shirbini, *al-Iqna'*, vol. 2, 3.

¹⁰⁰ Nawawi, *Minhaj al-Talibin*, 39.

¹⁰¹ Ghamrawi, *al-Siraj al-Wahhaj*, 174.

¹⁰² Dawud bin Abdullah bin Idris al-Fatani, *Nahj al-Raghibin wa Subul al-Muttaqin*, vol. 1: 13.

found in the Arabic sources. This is no doubt to accommodate the needs and level of understanding of his countrymen on the subject discussed. Nevertheless, Shaykh Dawud's ideas on a certain aspect of commercial law appear to be uncompromising and probably a bit extreme considering their harsh result in commercial dealings. Thus, he maintained vehemently that the sale of absent subject matter is void even if its specifications have been particularized meticulously.

Accordingly, the sale of things under the light of an oil lamp or behind glass or water, except earth and fish, is void. Shaykh Dawud also deduced from this rule that the sale of a blind person is similarly void for the reason he cannot see the object. This rigid position is not the case in *Minhaj* where Nawawi provided a second opinion which suggests a sale of an absent object is valid provided the purchaser has an option whether to cancel or confirm the sale upon sighting or termed as *khiyar al-ru'yah*. *Nahj* apparently does not elaborate this point. Similarly in the discussion on the condition that subject matter of a sale must be pure and clean, he was adamant that the sale of a skin of a carcass and stools are void, even the skin can be cleaned, and stools can be used as fertilizers.¹⁰³

The same position was also repeated in the sale of things by inspecting a part of it or through its replica. Thus the sale of cotton in its cover is not good until it is peeled off; the sale of a book is not good just by inspecting its cover except by browsing the whole pages one by one; the sale of edible roots such as onions, potato, etc. must be unearthed and inspected to ensure they are free from defects.¹⁰⁴ Shaykh Dawud's support for such a strong view is taken partly from *Iqna*¹⁰⁵ and partly from a hadith he

¹⁰³ *Ibid.*, vol. 1, 11.

¹⁰⁴ *Ibid.*, vol. 1, 20.

¹⁰⁵ Shirbini, *al-Iqna*, vol. 2, 6.

quoted from Ibn Hibban that states "May Allah be merciful to Moses since to see is not the same with to be told; when Allah reveals to Moses that his people have deviated from the true religion, Moses at first did not react with surprise by throwing pieces of *Alwah* (pages from Torat), but when he saw with his eyes the deviant act of his people, he threw those *Alwah* (because he was very upset) and some of them were broken.¹⁰⁶ Shaykh Dawud's deduction from the hadith which is on the subject of theological history to be applicable to commercial activities is perhaps a bit too far from that of *Minhaj* and *Iqna'*. This probably reflects Shaykh Dawud's attitude as a Sufi adherer.

Conclusion

The sources used by *Nahj* in the topics discussed above are mainly that of *Minhaj* and *Iqna'*. Reference to other sources is minimal and limited to *Siraj*, *Tuhfat* and *Nihayat*. In case of *Tuhfat* the only reference that was made is on the question of selling two garments without determining the price of each garment under the heading of full knowledge of the subject matter and sale of goods by way of estimation.¹⁰⁷ In some cases reference is made to sources not mentioned specifically in the preface of *Nahj*. The general body or outlines of the topics of *Nahj* follows mainly that of *Minhaj* but the texts are mostly from *Iqna'*. It appears very clearly that translations from *Iqna'* and *Minhaj* are interwoven in *Nahj* and this demonstrates Shaykh Dawud's selective choice of ideas and examples from the Arabic sources. In many instances, the translation compressed and simplified the discussion. This was done simply by omitting detailed discussion or examples discussed.

¹⁰⁶ Dawud bin Abdullah bin Idris al-Fatani, *Nahj al-Raghibin wa Subul al-Muttaqin*, vol. 1, 20-21.

¹⁰⁷ Ibn Hajar al-Haytami, *Tuhfat al-Muhtaj*, vol. 5, 434 and 453.

However, this is not always the case where if a particular subject was of interest, such as sale of slaves, discussion may cover much more than of the Arabic texts. Similarly at many places, the translation of Arabic texts would be supplemented by examples or topics either current at the time of writing or local to the author's place of origins. It is therefore clear that *Nahj's* exposition on the topic of sale contract is not simply a translation but an academic exercise, which consists of selecting, rearranging and supplementing and presenting ideas and concepts of law on commerce. Most of these ideas may not be original, being basically translation from the Arabic texts, nonetheless the effort of the above style of translation and writing shows the ingenuity and resourcefulness of the author. It also reveals the author's extensive knowledge of the existing literatures of his school of law and the current practice of commerce during his life's stay in Mecca and Hejaz. For this reason, Shaykh Dawud's work at hand is not totally a carbon copy of the previous works, but it represents a talent of representing the ideas - although mainly through translation - of the Arabic works in a cohesive and concise fashion. It also shows that *Nahj* does have some practical purposes in respect of sale contract at least from the author's own perspective on the current trade and business prevailing at the time of writing both in Arabia and Southeast Asia.

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