

ABSTRACT

This study aims to examine the development of the Arab society and the changes that shaped it in the era of modernity. A special focus, however, is given to Sanhūrī's Codes for Arab civil laws in the middle of the Twentieth Century. The type of methodology adopted for this research is historical and analytical. It follows a historical method to explore the situation of Islamic law in the Arab countries before the enactment of Sanhūrī's Codes, with special reference to attempts that have been made to codify the law from the early Islamic age until the time of Sanhūrī and to follow the progress of his project during its revision, performance, and demonstration of its outstanding features by Sanhūrī himself. The study also hinges upon the descriptive-analytical and critical methods to describe and critically analyze Sanhūrī's Codes for Arab civil laws throughout the various phases it had undergone, to finally come up with a reasonable and justifiable evaluation of Sanhūrī as both a legal professional and architect of several Arab civil codes. The research concludes with some important findings. The most significant is that the works of Sanhūrī were not fully identical. The Iraqi Civil Code became one prototype, the Egyptian Code another. Other Codes distributed between the two models. The proposed revision of the Egyptian Civil Code was a different problem in that the Code was not a version of codified Islamic law, as in Iraq, but in many parts was a direct translation of French Law. It means perceiving a particular environment and circumstance, Sanhūrī felt that a country (Iraq) applying the *Majallah* cannot receive the same treatment as a country with a Western inspired Civil Code (Egypt). The Iraqi Civil Code is distinguished from its Egyptian counterpart in that it contains a number of provisions of the *Majallah* that was under revision and due to be replaced. However, it is evident that Sanhūrī extracted laws from more than twenty Western Codes along with the rules and general theories he had taken from the Islamic law.

ABSTRAK

Studi ini bertujuan untuk mengkaji perkembangan masyarakat Arab dan perubahan yang telah membentuknya di era modern. Akan tetapi, perhatian khusus diberikan terhadap kod yang dikembangkan oleh Sanhuri bagi undang-undang sivil Arab di pertengahan abad keduapuluh. Methodologi yang digunakan bagi penelitian ini adalah historis dan analitis. Penelitian ini menggunakan kaedah historis untuk mengkaji situasi Hukum Islam di Negara-negara Arab sebelum kewujudan Kod Sanhuri tersebut, dengan rujukan khusus terhadap usaha-usahanya yang telah dilakukannya untuk mengkodifikasikan undang-undang dari sejak zaman awal Islam sehingga ke zaman Sanhuri dan mengikuti perkembangan projeknya pada masa revisi, kemampuan dan demonstrasi dari karakter Sanhuri yang menonjol. Studi ini juga menggunakan kaedah kritis dan diskriptif-analitis untuk mendeskripsikan dan menganalisa kod Sanhuri bagi undang-undang sivil Arab melalui berbagai fasa yang telah dilaluinya, sehingga kepada penilaian yang munasabah dan dapat diterima terhadap karya Sanhuri sebagai seorang ahli hukum dan perancang kod undang-undang sivil Arab. Penelitian menyimpulkan dua penemuan penting. Yang paling penting adalah karya-karya Sanhuri tidaklah sama satu sama lain. Sivil kod Iraq menjadi salah satu prototaip manakala kod sivil Mesir menjadi prototaip yang lain. Kod-kod yang lain berada di antara kedua model tersebut. Revisi yang dilakukan dari kod sivil Mesir merupakan masalah yang berbeda dalam arti bahwa kod tersebut bukannya merupakan satu versi dari undang-undang Islam yang terkodifikasi seperti di Iraq namun di banyak aspek sebagai terjemahan langsung dari undang-undang Perancis. Hal itu bererti, dengan memahami lingkungan dan keadaan khusus, Sanhuri merasa bahawa sebuah negara (Iraq) yang menerapkan *majallah* tidak dapat menerima perlakuan sebagai sebuah negara dengan kod sivil yang diinspirasi oleh barat (Mesir). Kod sivil Iraq berbeza daripada kod sivil Mesir dari segi bahawa kodnya mengandungi beberapa peruntukan dari *majallah* yang masih di dalam revisi dan perlu diganti. Akan tetapi, jelas bahawa Sanhuri mengambil intisari dari undang-undang lebih dari dua puluh kod negara-negara barat serta peruntukan-peruntukan hukum dan teori-teori umum yang diambil dari hukum Islam.

UNIVERSITI MALAYA

ORIGINAL LITERARY WORK DECLARATION

Name of Candidate: **NAJM ALDEEN K. KAREEM** (I.C/Passport No: **G1848032**)
Registration/Matric No: **LHA050002**
Name of Degree: **Doctor of Philosophy (Comparative Law)**
Title of Project Paper/Research Report/Dissertation/Thesis ("this work"):

Sanhuri's Civil Code for Arab Countries and Its Relevance to Modern and Islamic Laws

Field of Study: **Civil Law**

I do solemnly and sincerely declare that:

- (1) I am the sole author/writer of this Work;
- (2) This Work is original;
- (3) Any use of any work in which copyright exists was done by way of fair dealing and for permitted purposes and any excerpt or extract from, or reference to or reproduction of any copyright work has been disclosed expressly and sufficiently and the title of the Work and its authorship have been acknowledged in this Work;
- (4) I do not have any actual knowledge nor do I ought reasonably to know that the making of this work constitutes an infringement of any copyright work;
- (5) I hereby assign all and every rights in the copyright to this Work to the University of Malaya ("UM"), who henceforth shall be owner of the copyright in this Work and that any reproduction or use in any form or by any means whatsoever is prohibited without the written consent of UM having been first had and obtained;
- (6) I am fully aware that if in the course of making this Work I have infringed any copyright whether intentionally or otherwise, I may be subject to legal action or any other action as may be determined by UM.

Candidate's Signature

Date 11 August 2010



Subscribed and solemnly declared before,

Witness's Signature

Date

Name: **Dr. Md. Khalil b. Ruslan**
Designation: **Associate Professor (UM)**

ACKNOWLEDGEMENT

It is a pleasure for me to express my sincere thanks to my dear supervisor Assoc. Prof. Dr. Mohd. Khalil Ruslan for his advice and guidance throughout the entire course of this project. My gratitude to all of my lecturers and colleagues for their assistance and suggestions during the preparation of the thesis. My heartfelt appreciation for the external examiners, namely Prof. Dr. Khalid M. Abou El-Fadl (UCLA School of Law, USA) and Prof. Dr. Fikret Karcic (Faculty of Law, Sarajevo University, Bosnia and Herzegovina) and the internal examiner Assoc. Prof. Dr. Siti Zaharah Jalaluddin (Faculty of Law, University of Malaya) for their kind readings and suggestions. Special thanks to the library of University of Malaya, libraries of Wheaton College and University of Loyola in the United States of America, library of International Islamic University Malaysia, library of University of Sulaimani, Sulaimani's Central Library, Awqāf library in Iraqi Kurdistan, library of Yarmuk University in Jordan and library of American Legal Association in Chicago, for their help and assistance during the collection of the data. Finally, I am most grateful to my spouse Dr. Payman A-K. Zangana, my two beloved sons Meer and Amed and my dear daughter Mardeen for their love and encouragement throughout my studies.