

## ABSTRAK

Kajian ini menfokuskan asas penetapan hukum berlandaskan budaya Malaysia khususnya budaya Melayu dalam aspek hubungan sosial. Untuk mencapai objektif tersebut, tiga metode berbeza telah digunapakai. Pertama, metode komparatif diaplikasi untuk menganalisis konsep budaya berasaskan teori sarjana Barat dan Islam. Begitu juga huraian mengenai 'urf dan adat dalam pemikiran Melayu bagi melihat hubungannya dengan budaya sebagai asas pembentukan hukum. Kedua, metode pensejarahan diaplikasi untuk menyusun secara kritis rentetan perkembangan budaya Malaysia yang berpaksikan budaya Melayu. Perkembangan budaya Melayu memperlihatkan proses interaksi dengan pelbagai budaya asing. Bermula dengan pengaruh Hindu-Buddha, Islam dan kedatangan penjajah Barat. Kesan utamanya, lahir sebuah masyarakat majmuk yang mentransformasikan paksi kuasa mono-etnik Melayu kepada perkongsian kuasa multi-etnik. Masyarakat Malaysia yang heterogen ini masih berada pada tahap integrasi yang rendah kesan pengkhususan pekerjaan, pengasingan tempat tinggal, pemisahan proses sosialisasi serta pemencilan budaya. Manakala metode ketiga, iaitu sosiologi hukum diaplikasi untuk menelusuri fenomena dan menganalisis fakta-fakta yang berkembang dalam masyarakat sebagai asas pembinaan hukum berlatarkan realiti dan mentaliti tempatan. Contohnya, kepimpinan wanita, amalan harta sepencarian dan rumah terbuka. Hasil kajian ini mendapati, kesan interaksi masyarakat Malaysia menghasilkan pola budaya yang unik dan membezakannya dari masyarakat lain. Elemen ini dapat dijadikan asas dalam pengambilkiraan hukum. Justeru, kajian ini ingin membuktikan bahawa amalan masyarakat setempat boleh menjadi asas hukum yang diterima pakai bagi masalah hukum yang tiada *nass* yang jelas selagimana tidak bercanggah dengan syariah Islam.

## ABSTRACT

The focuses of this study are the basis of the establishment of Islamic law (*al-hukm*) based on the Malaysian culture, particularly in the Malay social relationship. To achieve the objective, this study tries to apply three different methods. Firstly, comparative method applies in analyzing the concept of culture and its relationship with '*urf*' and custom. Culture is elaborate based on the theories by western and Muslim scholars. The study also tries to illustrate the relationship between '*urf*' and custom with culture which contribute to the formation of the Islamic law (*al-hukm*). Secondly, the historical method that is applied to sequence the chronological development of Malaysian culture, based on Malay culture. The development of Malay culture demonstrates an interacting process with a diverse foreign culture influence. It begins with the influence of the Hindu-Buddhist, Islam and the west, which led to form a new plural society that transforms the Malay mono-ethnic authority to a multi-ethnic sharing power in the development of the modern Malaysian community. This heterogeneous community is still characterized by a low integration state as a result of the specialization of work, residential segregation, separation of socialization process and the isolation of culture. Thirdly, the method of sociological of law (*al-hukm*) is applied in order to go through the phenomena and analyze the facts that are growing in the community as the basis of the establishment of the Islamic law (*al-hukm*). In this case, three different perspectives have been chosen, i.e. the women leadership, jointly acquired property and the practice of mutual commemorate of the religious festival (*sambutan rumah terbuka*). The findings of the study show that the effect of this interaction in Malaysian community produces a unique cultural configuration and distinguish it from other communities. Therefore, coupled with the supremacy of the concept of '*urf*' as advocated by modern jurists, such unique cultural element can be a useful basis in developing an Islamic law (*al-hukm*). Hence, this study wants to prove that local community practices can become a basis for an Islamic law (*al-hukm*) that have no clear text (*naşş*), as long as it is not contradict with the Syariah.