

Environmental Malaysia: History, Sovereignty & Statehood

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Abstract--- *Malaysia is a federation that was formed by the 1963 Malaysia Agreement which now consists of the Federation of Malaya, Sabah and Sarawak. Prior to the formation of Malaysia, Federation of Malaya already have a constitution that institutionalized by the nine Malay Rulers (Negeri Sembilan signed by the Yang di-Pertuan Besar and the Ruling Chiefs) for Kingdoms of them each with the Queen of England represent two The Straits Settlement; Penang and Malacca in 1957. Ahead of that, the Federation of Malaya bound by the Federation of Malaya Agreement 1948.*

Keywords--- *Sovereignty, Statehood, Environmental Malaysia.*

I. INTRODUCTION

Malaysia is a federation that was formed by the 1963 Malaysia Agreement which now consists of the Federation of Malaya, Sabah and Sarawak. Prior to the formation of Malaysia, Federation of Malaya already have a constitution that institutionalized by the nine Malay Rulers (Negeri Sembilan signed by the Yang di-Pertuan Besar and the Ruling Chiefs) for Kingdoms of them each with the Queen of England represent two The Straits Settlement; Penang and Malacca in 1957. Ahead of that, the Federation of Malaya bound by the Federation of Malaya Agreement 1948.

1963 Malaysia Agreement signed to accept the inclusion of Singapore, Sabah and Sarawak as well as some amendments to the original provisions of the Constitution of the Federation of Malaya, 1957. When Singapore out of Malaysia, the Federal Constitution of 1963 was amended in 1965. The Constitution Act 1965 (including amendments thereafter) is the supreme law which sets forth the principles of Malaysian citizenship today and retains the principle of sovereignty as set forth in Article 181 (1).

Malaysia established that the principle of sovereignty of the Malay Rulers is the highest government and sovereignty are described in the Report of the Working Committee of the State Treaty of 1946 and the Constitution of 1948. The Constitution of 1946 the Working Committee established that the sovereignty of the Malay States shall be upon the kings of the states in accordance with Malay custom.

According to the book Jurisprudence Watan Constitution: Text, Context and Issues in Public Administration (2018), indigenous Malays are defined as manners culture and laws such as the interpretation on this day apart from the tenets revealed by Allah the extent not inconsistent with the principles of Islam; covering systems, regulatory, ethos and values as inherited from the practices of the Malay community and in the past. 1948 State Agreement also stipulates that the sovereignty of the Malay Rulers were as they had on December 1, 1941. Further description about

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the rule of Kings Malay can be found in the book sovereignty of the Malay Rulers: Jurisprudence, Governance and Principles of the Federal Constitution (2018).

The principle of the Malaysian constitution stipulates that although the Federal Constitution is the highest law, it does not mean that Parliament can enact the law in the Federation completely. Ranking sovereignty of the Malay Rulers as the supreme ruler of the states and their respective Federal Constitution as described above in fact have an influence on the application of laws which have been carried out in Malaya.

This paper aims to elaborate on the status of Islamic criminal law contained in various written laws prior to Independence Day, August 31, 1957 in the framework of the Federal Constitution today. This paper will use the history of law and the provisions of the law in force to resolve the debate under the heading above. The explanations in this paper will provide an opportunity for stakeholders to re-evaluate Islamic criminal law in accordance with the Federal Constitution through the framework.

II. ISLAMIC CRIMINAL LAW BEFORE INDEPENDENCE DAY

Islamic criminal law is divided into Qisas, Hudud and Ta'azir. The criminal law of Qisas includes murder, causing bodily injury or bodily harm, or intentionally injuring others. Hudud criminal law consists of apostasy, rebellion, robbery, theft, adultery, alcohol consumption and qazaf. Ta'azir criminal law also covers offenses other than qisas and hudud.

From a judgmental standpoint, Islamic criminal offenses are divided into three; First, qisas are punishable by either retaliation, diyat or irsy which is what is prescribed by the Qur'an and al-Sunnah if the conditions for proving it are fulfilled. Secondly, the hudud punishable by death, stoning, crucifixion, amputated hand, leg amputations, whipping or imprisonment, as prescribed by the Qur'an and al-Sunnah in accordance with the terms the proof of the error was improved. Third, ta'azir punishment is based on the Islamic jurisprudence if the conditions for the implementation of hudud and qisas are not met, and other offenses not provided for in qisas and hudud. The forms of wrongdoing and the punishment of the ta'azir are submitted to the government's agreement based on Islamic legal principles.

III. THE LAW OF THE MALACCA CODE

Laws of Melaka contain Malay custom and Islamic law. According to Abdul Monir Yaacob (2005), the Islamic law is based on the as-Shafei sect translation of a book of feqah entitled '*Fath al-Qarib*'. Since the days of the Malacca Sultanate was scattered books fiqh in Arabic as *Talkhis al-Minhaj* essay al-Imam Araz Abu Zakariyyah bin al-Nawawi, a religious scholar fiqh bermazhab Shafie, who is also author of the book *Minhaj al-Talibin*, and other books such as *al-Hayah wal-Taqrif*, *al-Muharrar*, *Tuhfah al-Muhtaj*, *Fath al-Wahhab*, *al-Mahalli*, *Nihayat al-Muhtaj*, *Mughni al-Muhtaj*, *Qalyubi wa al-Umairah*, *Fath al-Mu'in* and I' inside al-Talibin (Auni Haji Abdullah 1973).

Drafting Laws of Melaka shows the transformation of indigenous Malays to the implementation of Islamic law covering public and private corner. The statement is supported by observations made on the text of the Law of Malacca. For example in Clause 7 of the Malacca Law:

... But if a thief is caught, he is killed, then he must pay double, half to the minister, half to his master, for his curiosity is unknown. As for the law of Allah Ta'ala, the thief should not be killed except in his hands.

There are many provisions such as these which require the application of Islamic law after the customary sentence has been pronounced through the verses; 'but to the law of Allah Ta'ala', 'as to the law of Allah Ta'ala', 'so to the law of Allah Ta'ala', 'for to the law of Allah Ta'ala' and 'to transgress the law of Allah Ta'ala'. The warning is entered either after provisions derived from Malay customs that conflict with Islamic law or the intent to explain the penalty to be dealt with. The existence of such provisions are thoroughly explained that al-Quran and al-Sunnah adopted as the main source of legislation Malacca Sultanate.

The division of laws contained in the Law of Malacca (Liaw Yock Fang, 2003) can be expressed as follows:

- a) Constitutional Law: Contained in Clauses 1 to Clause 3, states the application of the Malacca Law to the state and the king for the benefit of the state, the king and the minister to protect the people. It further describes the provisions relating to the rights and conditions of a king, the responsibilities of the people, the appointment of state officials, the authority of the nobles and the procedure of the king and the people.
- b) Criminal Law by indigenous Malay: Contained in Clause 4 to Clause 18 (except 15) and 24, are also the conditions of a minister, had jurisdiction forgiveness of a judge and the minister, the basics of self-defense, the principle of mitigation of sentence, the trial procedure crime, other principles of criminal conduct and punishment; touching crime of murder, circumcision, defamation, theft, misdemeanor, fornication, false accusation, criminal modification, deception and crime. In the provisions of this section are explained sanctions from both the traditional and Islamic law.
- c) Contract law services (salaries) and the lease in accordance with the customary Malay: Contained in Clauses 15 and 49, are forms of compensation (remedy) in the event of loss of contract (frustration of contract), negligence (negligence) and fragile conditions (breach of contract).
- d) Law of the land by the indigenous Malays, contained in Clauses 19, 20 and 22.
- e) The law of negligence in relation to custody of the property according to Malay custom, contained in Clause 21.
- f) Law disasters and compensation claims by indigenous Malays, contained Clause 23 provides for the circumstances categorized as disasters, exceptions and forms of compensation for those who rescue disaster property.
- g) The wakalah (representation) law, contained in Clause 24.
- h) Islamic family law, contained in Clause 25 to Clause 28.
- i) The resignation of Shahbandar's jurisdiction is contained in Clause 29.
- j) Islamic contract law, contained in Clause 30 to Clause 39.
- k) The penalties of Islamic hudud such as theft, adultery, qazaf, apostasy, and alcohol consumption are contained in Clauses 7, 11, 12, 41, 45 and 47.
- l) The criminal law of qisas and Islamic deities, contained in Clauses 5, 8, 16 and 24.

- m) Criminal procedure laws and Islamic malls, contained in Clauses 40, 42 and 43. The provisions deal with confession in criminal offenses and the legal terms of a confession or affidavit, conditions of witness, trial proceedings and conditions of conviction crime.

An analysis of the Laws of the Malacca Code shows that customary law is still maintained even though it is not in line with Islamic law. It shows Islam to take over the position of Malay customs that conflict with Islamic law 'stages in the legal system of the Malacca Sultanate Empire.

In fact, Islamic law clearly dominates the customary law in Malacca Law. Islamic criminal law is not as far as the Malacca Code is concerned, but is in force. For example, the crime of theft in Melaka, written in the book *Sejarah Melayu* (BBE, 1991: 129):

So Sultan Alauddin ordered the King's Treasurer, asking for a hall at the four and central junction of the country, and having a chief there. So he said to the Emperor that if he should have the property of anyone, if it was not returned to the owner, he would put his hands on it; and if no one met with the property, it was sent to the hall. In the city of Malacca, if the property falls on the street or in the town, looking for a place to hang out there depends. Such is the fairness of Sultan Alauddin.

The use of the criminal law of qisas and hudud does not cease when the Portuguese conquered Malacca in 1511. Its use continued even after the dissolution of the Malacca Sultanate of Johor in 1699 when Sultan Mahmud II died.

According to Liaw Yock Fang (2003) to date more than 40 copies of the Law of Malacca Law have been found. Originally enacted Laws of Melaka in Melaka City, then added modified by the Malay kingdoms were under the influence of the Malacca Sultanate Empire. Malacca Law has several versions such as Kedah, Farmers, Johor and Aceh.

The law of the Melaka Code is believed to have been used in Riau, Pontianak and Brunei. The application of the criminal law of qisas and hudud in addition to the above written constitution is also contained in the Law of the Pahang Code. Based on a written legal documents, execution of the sentence for the offense of hudud, qisas and never walk in each of the Malay states.

IV. PRINCIPLES OF FEDERAL SOVEREIGNTY

The Federation of Malaya in 1957 instituted by the Malay Rulers and the Ruling Chiefs of Negeri Sembilan which represent areas of their respective powers. In the Federation of Malaya Agreement dated August 5, 1957, the British Government agreed to end its sovereignty over Malacca and Penang then by operation of the Federal Constitution, both the State lies in the sovereignty of the Yang di-Pertuan Agong.

Due to the Malay Rulers and the Ruling Chiefs of State nine institutionalize the Federal Constitution provided for Article 181 (1) in it. Article 181 (1) of the Constitution to maintain the sovereignty of the Malay Rulers and the Yang di-Pertuan Agong, a Malay Rulers in turn will assume as head of the Federation as well as the institutionalization of the Conference of Rulers under Article 38. Article 181 (1) the Federal Constitution provides that the sovereignty of the Federal or Malaysia lies in the principle of the sovereignty of the Malay Rulers as before

independence day. Debate scientifically on Article 181 (1) of the Constitution contained in the Rule book Rulers: *Jurisprudence, Governance and Principles of the Federal Constitution (2018)*.

For a long time the interpretation of sovereignty and its features in the Federal Constitution ignored the legal history of homeland. For example, discussions about the sovereignty of the Malay Rulers by Salleh Abas, Chief Justice (CJ) in the case of *Che Omar Che Soh lawan Pendakwaraya* [1988] 2MLJ 55 does not take into account many aspects of the indigenous homeland. The issues raised by Salleh Abas KHN are discussed in a paper entitled *Islamic Religions for the Federation*.

Gillen (1994) states that the Federal Constitution extends the sovereignty, rights, powers and jurisdiction of the Kings as it is and is enjoyed today and that sovereignty is not affected. Salleh Abas (2015) states, "comprised of Malaya's independence, the institution of the monarchy continued and adapted to the system of parliamentary democracy". Safeguard the sovereignty of the Malay Rulers of the Malay custom feature, ie elements of indigenous traditions shows that the Malay Kingdoms not colonized. This is because occupation only occurs if a king or country loses its sovereignty. The premise is especially important when it comes to today's principles of Malaysian sovereignty.

Article 181 (1) of the Federal Constitution reads:

Subject to the provisions of this Constitution, the sovereignty, prerogatives, powers and jurisdictions of the monarchs and the prerogatives, powers and jurisdictions of the Natives of the State of Negeri Sembilan under their respective territories as they have been and are hereby maintained and not affected.

The above provisions stipulate that the interpretation of the sovereignty of the Malay Rulers must be tied to the history of indigenous law of each State participating in the Federation of Malaya and Malaysia today. 1946 Report of the Working Committee of the Constitution states that the sovereignty of the States of Malaya shall be upon the kings of the states that follow Malay customs. The statement was completely rejected the application of common law principles in the interpretation of the sovereignty of the Malay Rulers and the sovereignty of our country today.

In terms of the legal framework of the constitution, sovereignty manifest shall be based on interpretation according to the custom of the Malays, the indigenous character. Watan mean elements that are rooted in the homeland and inherited from the Malacca Sultanate and the Malay Kingdoms thereafter.

The sovereignty of the Malay Rulers by indigenous Malays are the true essence of the interpretation in the Constitution. Raya is what is defined as civil and legal culture today than same laws as revealed in the Qur'an and Sunnah; covering systems, regulatory, ethos and values that do not contradict the principles of Islam as inherited from the practices of the Malay community and in the past. Raya also includes the political system and the law is enforced. Malay traditional principles laid implementation prerogatives, powers and jurisdiction of the Malay Rulers must be tied to Islam or Sharia-compliant practices.

From the point of implementation, the principle of the sovereignty of the Malay Rulers shall be performed in accordance with the provisions of the Federal Constitution. This is because Article 181 (1) requires, "Subject to the provisions of this Constitution" at the beginning of the sentence. Therefore, this paper also outlines the requirements

of "Subject to the provisions of this Constitution" for the application of sovereignty within the framework of the Federal Constitution from two angles:

- a) Characteristics of the Federal Constitution.
- b) The supremacy of the Constitution.

V. CHARACTERISTICS OF THE FEDERAL CONSTITUTION

Report of the Working Committee of the Constitution in 1946 to extend the approval of representatives of the Malay Rulers, the British and UMNO. Working Committee Report stated that the sovereignty of the Malay States, shall be upon His Majesty the Kings in states that follow Malay customs.

1948 State Agreement further defines the prerogatives of sovereignty of the Malay Rulers, power and authority he had as at 1 December 1941. Reid Commission Report 1956 also records the terms of the Agreement State 1948. These documents, together with the history of indigenous law shall be referred together to interpret the principles of our country's sovereignty.

The sovereignty of the Malay Rulers: Jurisprudence, Governance and Principles of the Federal Constitution (2018) concluded that the characteristics of indigenous sovereignty is derived from the teachings of Islam and Malay customs based on three main aspects, namely; first, Laws of Melaka as a constitutional Malaya. Second, Islamic law as the birthplace of Malaya. Third, current thinking about the principle of sovereignty. Moreover, the notion of the sovereignty of the Malay Rulers have been discussed by western scholars such as Stockwell (1979) and Wheeler (1928). Stockwell (1979: 75) states:

Traditionally Raja Melayu considered as a source of all law, heads of government and religion. He is responsible for maintaining the tradition and the community structure. However, his power may be exercised by other parties, and other parties may execute tasks or advise him with his policies but the validity of all credible action lies in the sovereignty of the Malay Rulers (author's translation).

Wheeler (1928: 101) further states that, "In Islam... the sultan was the emperor and the pope, from the worldly aspect he was a sultan; from the spiritual point of view he is the caliph, the reflection of God."

The concept of sovereignty in the framework and philosophy of law in the Federation of Malaya in 1957 and Article 181 (1) which is still in force. Such a view is supported by Smith (1995: 46) states that in the period before the war, Britain maintains that the sovereignty of the Malay Rulers are not affected by the agreements he-he entered.

From the point as an adherent of Islam, Malay Rulers can not deprive him of the obligation to comply with the commands of Allah not to mention their status as religious leader and supreme ruler. The responsibility of a king as the government to carry out the law of Allah Almighty is described in Surah al-Ma'idah (5: 45), "And whoever does not condemn what Allah has revealed, then they are the wrongdoers." Although the provisions of 181 (1) on the state sovereignty of the Malay Rulers, the fact that sovereignty was a trust, that principle is clearly understood by the pronouncement of the oath rank Yang di-Pertuan Agong as shown in Table 4 of the Federal Constitution.

The following features of sovereignty in the Federal Constitution may be deduced from the following provisions of the Federal Constitution;

VI. DESIGN ASPECTS

The form of sovereignty in the Federal Constitution is explained in Article 3 (5); The Yang di-Pertuan Agong as head of the Islamic religion of the uninitiated States, Article 32 (1); The Yang di-Pertuan Agong as head of the Federation, Article 38; institutionalizing the Council of Kings, and Article 39; Yang di-Pertuan Agong is the executive executive of the Federation. The election of the Yang di-Pertuan Agong is determined by the Council of Rulers under Article 38 in a syllable and is required to pronounce the oath as per Schedule 4 under Article 37.

The election of syura and the terms of the oath in office in the name of Allah SWT to preserve Islam and to govern it justify the sovereignty of the Sovereign in the form of trust. It proves that the Yang di-Pertuan Agong is not in full power, he is subject to the oath of office and the provisions of the Federal Constitution. Likewise members of the Federal Administration, including the Prime Minister are required by Article 43 (6) of the Federal Constitution to pronounce oaths as in Schedule 6 before the Yang di-Pertuan Agong.

VII. ASPECTS OF NATURE

An aspect of nature is determined by the holding or belief of law or the constitution of the government or country, whether it is based on the particular religion, doctrine, beliefs or objectives it upholds.

The nature of the sovereignty of Malaysia is fully provided by Article 3 (1) of the Federal Constitution, namely Islam as the religion of the Federation. Although Article 3 (4) requires, "Nothing in this provision shall reduce any other provision of this Constitution", it shall not make Article 3 (1) less than other provisions but shall be read together, is the same. In fact, the provisions of Article 3 (4) guarantee the powers of Islam under the States as set out in List II of Schedule 9 of the Federal Constitution.

The Yang di-Pertuan Agong's oath, "We solemnly declare and truly uphold Islam at all times and stand firmly under the rule of justice and peace in the country" reaffirmed Islam's position as a state of sovereignty. Malay. One thing that is often overlooked when talking about the characteristics of the sovereignty of our country based on the principle of constitutional monarchy, in addition to the items 181 (1) and 3 (1), is the faith of their own rulers.

Rulers beliefs founded on Kalima's been a lifeline. In the word shahadah is a confession of '*Uluhiyyah Monotheism*' which is referred to in political science as sovereignty. Sovereignty is closely linked to the will of Allah Almighty, that He alone has the absolute power to determine the laws and principles of the law of this world, including the right to make laws for a nation. In that context, humans are allowed to translate the law of Allah SWT in a contemporary form based on the principles outlined by Him. The significance of Islamic creed is very important because it is ad-Din. In today's context, the function of sovereignty is exercised by the people within their local legal framework as a great trust but the sovereignty of God is still with Allah Almighty.

The features of national sovereignty in the Federal Constitution relating to Article 181 (1) are summarized in Chart 1 as appendix here.

VIII. THE SUPREMACY OF THE CONSTITUTION

Sovereignty generally refers to the resources, functions and jurisdictions of the executive, legislature and judiciary of any government, including Malaysia. Sovereignty outlines principles in the legal framework. Sovereignty in the Federal Constitution is a continuum of continuity because of its Islamic teachings.

There are two legal principles that need to be understood, namely the principle of sovereignty and the constitutional principle. The principle of sovereignty is one of the characteristics that should be regarded as a core value in the interpretation of constitutional principles. In the Malaysian context, shariah-compliant is the principle of sovereignty based on the Islamic position in the Federal Constitution.

The principles of the Federal Constitution explain the political system and legal principles of the country including how they are applied. The principles of the Federal Constitution of Malaysia are known as the monarchy supported by parliamentary democratic systems and the doctrine of absolute separation of powers. The provisions of the Federal Constitution include substantive law and procedural law. Articles 159 (5) and 38 (4) of the Federal Constitution contain constitutional principles that cannot be amended without the consent of the Council of Rulers.

The principles of the Constitution which deal with the provisions relating to the powers and functions of the executive, legislature and judiciary under the Federal Constitution are summarized in Chart 2 as appendix here.

If properly refined, it is found that none of the provisions in Chart 2 restricts the implementation of Islamic principles of Islamic principles. In fact, the principles of executive power, legislation and Federal justice should not conflict with Islamic principles or Islamic law. The provisions of Chart 2 show only the forms and procedures of how executive, legislative, and judicial powers should operate within the framework of the Federal Constitution.

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