

Malaysia's States and Regions : From the Legal History of the Malacca Malay Empire (The Law of the Malacca Code) To the Federation of Malaya (The Federation of Malaya Agreement 1957)

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Abstract--- The history of the state government had long begun with the people who lived in a province. The purpose of this paper is to shed light on the history of the development of state government Malaysia. It begins with the empire of Malacca Sultanate, which then continues its empire through generations until the formation of the Malayan state. Unfortunately, the history of Malayan Sultanate was on the Malay version and was hard to find in English translation. This article serves a brief of explanation the beginning of history Malacca Sultanate before the formation of Malayan federation states. This paper hopes to give a benefit towards reader especially historians in understanding the Malay federation and how these history records contribute to world history.

Keywords--- Malacca Sultnate, Malay Sovereignty, Federated Malay State, Treaty.

I. INTRODUCTION

The current Malay State Governments have a long history. The term 'government' used today refers to the sultanates of Malaya, who were initially under the control of the Malacca Malay Empire. History of the Malay States Government has a particular interest in the history of the Malaysian homeland. Malay Rulers, who signed the Federation of Malaya Agreement 1957 were legitimate heirs of the Sultanate of Malaya after the dissolution of the Malacca Malay Empire.

Thus, the Malay Sultanate or the Governments of the Malay States referred to herein refer to a government that has an alliance with the Malacca Malay Empire through one of three aspects, that is, from a tribal lineage, or has been a state under the auspices of colonies or inherited the principle of sovereignty (Manring, 1968). This paper aims to shed light on the background of the Malay States. The correct explanation of the Governments of the Malay States was crucial as the Federation of Malaya, later developed into Malaysia, was mostly built by sovereign Malay Governments when they agreed to form a strong alliance.

Today the majority of society inherits misunderstandings based on the perception that Malaysia is based on the Reid Commission Report and the approval of 'our forefathers', the highest leader of the Alliance. This understanding has long obscured the history of the homeland. The Malay State Governments were already in existence, and through the enactment approved in the Malay States, the Federation of Malaya was formed in 1948, finally independence from British intervention on 31 August 1957.

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II. MALACCA SULTANATE EMPIRE

The Malacca Malay Sultanate was founded around 1400 and lasted until the death of Sultan Mahmud II (also known as Sultan Mahmud Died) in Kota Tinggi, Johor, in 1699. This stand is contrary to popular belief that the Sultanate ended in 1511 as a result of Portuguese occupation. The popular notion is incorrect because only the City of Malacca was captured. Sultan Mahmud I succeeded in rebuilding his government with the support of the state of subjugation and protection.

In 1528 is an essential date in the history of the continuation of the Malay Empire of the Malacca Sultanate when in that year, two momentous events occurred. First, Sultan Mahmud accepted King Muzaffar as the Sultan of Perak. Silver was a province within his Empire. Secondly, Sultan Mahmud inherited the remainder of the Malacca Malay Empire empire to his son, King Alauddin. He was named Sultan Alauddin Riayat Shah II. The successor of Sultan Alauddin continued the rule of the Malacca Malay Sultanate in Johor until the death of Sultan Mahmud II.

The Malay Sultanate of Malacca was a sovereign government with international relations with foreign governments. The Malay Sultanate of Malacca was related to the Old Malay-Srivijaya Government in Palembang whose king came from Bukit Siguntang.

When the founder of the Malay Empire of Malacca, Parameswara, converted to Islam, his rule was reinforced by the concept and procedure provided by Islamic teachings that a king was the shadow of God on earth. The idea at the same time made one king the head of Islam. The position of a king in the Empire of the Malay Sultanate of Malacca as a reflection of God on the earth is closely related to the concept of an Islamic caliphate or caliphate.

In the legal history of the Malacca Malay Empire, Sultan Muhammad Shah (1424-1444) is said to be the first King of Melaka to institute a written constitution. The written constitution is called the Law of Malacca. The law of the Malacca Code contains not only constitutional law but also various provisions affecting Malay customs and other Islamic laws. According to Liaw (2003), the Law of the Melaka Code was compiled on the orders of Sultan Muhammad Shah and was added from time to time until the 19th century AD

The Law of the Malacca Code is strong evidence that the Malacca Malay Sultanate already has its own political and legal system, at least in written law that proves the implementation of local customs and Islamic law.

Malay history records the system of law enforcement, and the judiciary is well implemented. Laws and criminal penalties stemming from Islamic teachings are implemented as Government law. For example, the penalties for felony theft are not only enshrined in the Law of Malacca but are enforced only if they are convicted by the terms set by the government. The execution of the sentence was made with the emphasis on the principle of repentance, which is the opportunity given to the thief to become self-aware. During the reign of Sultan Alauddin, he ordered the King's Treasurer to build a hall at the four-way junction and in the center of the country to collect the lost items found by the people of Malacca. Thieves were also ordered to deliver the stolen goods to the station. The thieves who have been defrauded after the trial are subject to punishment, including the cutting of their hands, until there are no more thieves in the state of Malacca (Shellabear, 1977).

The empire of the Malay Sultanate of Malacca also has sound economic policy and administration. Maritime world-class trading activities fueled the economy of the Malacca Malay Empire to become the world's most vibrant port. According to Andaya (2008), the Empire of the Malay Sultanate of Malacca not only managed harbour in Malacca but other ports along the Malay Sea. The drafting and enforcement of the Law of the Sea by the government of the Malay Empire of the Malacca Sultanate shows the extent of its influence and territory in the early 15th century.

After the death of Sultan Mahmud II, the reign of the Malacca Malay Sultanate was taken over by the Treasurer Dynasty (Wilkinson, 1935). The new government began with the appointment of Tun Abdul Jalil named Sultan Abdul Jalil Riayat Shah IV. The policies of Sultan Abdul Jalil Riayat Shah IV and the unrest that occurred during and after his rule resulted in the dissolution of the original territory of the Malacca Malay Empire with the emergence of the ruling Malay governments. The Malay kingdoms were Kedah, Kelantan, Negeri Sembilan, Pahang, Perak, Selangor, Terengganu, and finally, Perlis separated from Kedah.

The above Malay Governments continue to apply the Laws of Malacca with improvements to their current needs and place. The continuation of the Law of the Malacca can be seen in the Laws of Johor, the Laws of Pahang, the Laws of Kedah, and the Laws of the Ujung River. The new Constitution for the Perak Malay Government, which is Law 99, is also based on Islamic legal sources. The position proves that the Malay States Governments continue the principles of sovereignty and the application of Islamic law.

III. FOREIGN POWER INTERVENTION

The economic growth and raw resources derived from trading in the Port of Malacca attracted traders from the East and the West. The huge profit of Islamic traders trading in the European market as a result of the supply available in the City of Malacca has left Europeans in awe. The development encouraged Europeans to create financial markets and capital raising with the aim of expanding colonies and intervening for wealth.

That is the big agenda underlying the interests of foreign powers, especially the Portuguese, the Dutch and the British present in Malaya. These interests also influence their policies and policies in Malaya. As explained, the main goals that cannot be denied are economic importance; to capitalize on the richness of Malay products and technologies while expanding the European product market.

Portuguese is said to have the meaning of 'gold, gospel and glory' (Bannon & Wright, 1971). Although the Portuguese finally succeeded in capturing the city of Malacca, they could be said to have failed not only because of the persistent attacks by the Malay Governments on the City of Malacca but the widespread corruption of their own. Portuguese attempts to spread the Catholic teaching among the Malays were unsuccessful.

The Dutch are less visible in Malaya compared to their dominions in Sumatra and Java. The Dutch conquest of the port of Malacca in 1641 furthered the control of the spice trade in the Straits of Malacca and the tin monopoly in Perak. They were eventually forced to surrender their interests in the Straits of Malacca to the British through the Kew Letter in 1795 as a result of the war with France. During the period between 1806 and 1815, the Dutch

occupied France. Finally, in 1824 an agreement called the Anglo-Dutch Treaty was signed with the British to end Dutch intervention in Malaya

The social and institutional changes resulting from the 'Glorious Revolution' in 1688 in England triggered the Agricultural Revolution. Technological innovations in line with the rise of the new era of the so-called 'the Age of enlightenment' have led the British to compete with European countries. When the British set foot in Penang, the Industrial Revolution began in Europe.

As a result of the British intervention policy in Malaya beginning with the Treaty of 1874, the birth of the Unfederated Malay States, the Federated Malay States and the Strait Settlements. The above status stems from a series of agreements signed by the Malay Rulers with the English. The Pangkor Agreement was signed by the parties of interest, namely the Malay King and the British representatives. The Treaty of 1874 cannot be considered to be beneficial only to the other party. This is because the parties enter into voluntary negotiations to achieve their goals.

Through the doctrine of counsel introduced as early as the Treaty of 1874, the political system and principles of common law and equity were subject to modification imported into the local system in Malaya. However, the introduction of common law principles and English equity methods does not undermine the principle of Islamic sovereignty. The doctrine of counsel meant that the Malay Rulers should seek advice and act on the advice of British officials, acting as 'British advisors' in matters of administration other than those pertaining to Islam and Malay custom.

Beginning with the treaty, English intervention in Malaya was also terminated by the treaty. The process was perfected through constitutional development. The Federal Constitution today is drafted in accordance with the terms of the State Agreement 1948. The State Agreement, dated January 21, 1948, was signed between the British Government and nine Malay Rulers; Negeri Sembilan was signed by the Yang di-Pertuan Besar and the five governors.

The State Convention of 1948 was of great importance. It was to affirm the sovereignty of the Malay Rulers as prerogatives, powers and jurisdictions as on December 1, 1941 subject to the Treaty of the Federation of Malaya, eliminating the implications of the MacMichael Agreement and the establishment of the Malayan Union. The position reinforces the premise that the Federation of Malaya Agencies 1948, and 1957, as well as the Constitution of the Malay Federation of 1957, were constituted under the sovereignty of the Malay Rulers as on 1 December 1941.

IV. FEDERAL TERRITORY OF MALAYA

The states that established the Federation of Malaya were the Malay Governments, which were initially under the Malacca Malay Empire. The Malay Rulers are the highest rulers in the framework of the Malay States. However, the monarchy is not an absolute government. This is because the rule of the Malay Rulers springs from Islamic teachings as witnessed in the Laws of Malacca and subsequent written laws.

The states participating in the Federation of Malaya have comprised nine Malay States namely Johor, Kedah, Kelantan, Negeri Sembilan, Pahang, Perak, Perlis, Selangor and Terengganu. The Malay States had sovereignty and were recognized by the British Government before they allied themselves to form the Federation of Malaya. These statements are contained in the State Treaty of 1948, the Treaty of the Federation of Malaya 1948 and the Treaty of the Malay Federation of 1957, denying that the Malay Governments that formed Malaysia today were colonized by the Portuguese, the Dutch or the British.

From a legal standpoint, the Malay States were under British protection. The position of the Malay Rulers as the head of the sovereign and powerful Government has been maintained to this day. Among the arguments that show the power and sovereignty of the Malay Rulers recognized by the British are the cases of *Mighell v. the Sultan of Johor* [1894] 1 QB 149. And *Duff Development Co. v. The state of Kelantan* [1924] AC 797.

The United Kingdom of Great Britain's relationship with the Malay Governments is essentially tied to a series of agreements between two sovereign entities. Although the Sultan is required to act on Resident's advice, the Resident's primary duty is to provide information, not rule. The statement was quoted from the British Secretary of State's Office dated May 17, 1878, to the occupants of Malaya.

In short, the Malay States were never colonized. The independence of the Malay States continues to be recognized in the 'Proclamation of Independence Ceremony- Lowering of Union Jack' dated 18 July 1957 stating the following:

That the Malay States never having been British territory but only British protected territory, the British flag cannot be lowered since it has never been raised,

V. MALAY SOVEREIGNTY

Before Independence Day, the British Government recognized the territory of every Malay State. The Territory of the Malay State Government defined as enshrined in the Federation Agreement of Malaya 1948, The Federation of Malaya Order in Council dated January 26, 1948, and the Malay Federation Agreement 1957.

The treaty of the Federation of Malaya dated August 5, 1957, was signed by nine Malay Rulers (Negeri Sembilan signed by His Highness and Sovereign Lords) with the Queen of England through her deputy Sir Donald MacGillivray. Under the 1957 Federation of Malay States, each Malay state continued to have territories comprising land, islands and an area administered as part of the state along with its coastal territories (Fernando, 2014). The Proposed Memorandum of the DYMM of the Malay Rulers (1956) stated that the Malay Rulers held that control over land within their respective territories as part of their manifestation of sovereignty.

In legal terms and facts, the Federation of Malaya Agreement 1957 constituted the Federation of Malaya (Hickling, 1962). Malaysia was the name of the Federation when the Federation of Malaya joined Singapore, Sabah and Sarawak on September 16, 1963 (Singapore was withdrawn from Malaysia in 1965) (Lee, 1998). Without Sabah and Sarawak, the country would return to the Federation of Malaya.

Article 1 (3) (4) of the Federal Constitution stipulates that the territories of each State in the Federation of Malay States shall be the territories included in those States prior to Malaysia Day, except those submitted by the states of Selangor and Sabah to the Federal Government.

VI. CONCLUSION

The position of the Governments of the Malay States, which were later joined by Sabah and Sarawak to form Malaysia reflects the true identity of our nation. That understanding would refute the claim that the Federal Constitution was constituted by inter-racial negotiations; indigenous peoples and foreign nationals who were later admitted as citizens of the Federation of Malaya. The Malay States Governments that form the Federation of Malaya have their own identity that is complemented by Malay political system and customary law. Despite foreign intervention in the political arena which eventually brought the common law principles and equities out of England, the sovereignty of the Malay States remained in effect today. Finally, this paper serve as a platform for other researchers and historian in worldwide for better insight of federation of Malay state and its connection to the world history.

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