



Islamic Law in Brunei Darussalam: Past, Present and Future

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Abstract. For a conservative Islamic nation, there have been no known conflicts in Brunei's religious affairs. While being predominantly inhabited by Muslims at 67% of the total population, the rest of the population are allowed to practice their religion in peace. As with other Islamic nations, Islam influences the government in upholding Islamic laws. Brunei has been implementing Islamic Law since the 16th century, and it was in the beginning of 20th Century with the intervention of foreign powers that Brunei had to or was rather forced to abandon it. Before the British implemented its Common Law, the main body of basic law in Brunei was Islamic law and that the law was well executed, administered and it was effective. The law was initiated by the ninth Sultan of Brunei Sultan Muhammad Hassan (1582-1598) and widely known as the Sultan Hassan's Kanun. In 2011, The Sultan and Yang Di-Pertuan of Brunei Darussalam during a meeting with members of the Brunei Islamic Religious Council (MUIB) proposed the introduction of an Islamic Criminal Act to deal with crimes while maintaining the implementation of existing civil and religious legislations. On 22nd October 2013 the Sultan announced this law, and on 1st May 2014 the Law has been enforced. This paper highlighted this fact that is Islamic law in Brunei Darussalam: past: present and future.

Keywords: hukum kanun, Islamic law, colonial era, independent era, future

1. INTRODUCTION

The governing structure of Brunei Darussalam rests on the country's written Constitution along with the three pillars of its national philosophy, namely Malay, Islam and Monarchy.

Brunei Darussalam's written Constitution sets out its governing authorities along with their respective functions and responsibilities. Specifically, the Constitution sets out the executive authority over the affairs of Brunei Darussalam and further creates the Council of Ministers, the Religious Council, the Privy Council, the Legislative Council, the Adat Istiadat (Customs and Traditions) Council and the Council of Succession. The basic order, structure, functions, responsibilities and underlying principles of the governing authorities are premised on what is prescribed in the Constitution. In relation to the law making process, it sets out the procedure within Brunei Darussalam with the recent rejuvenation of the Legislative Council, which will be discussed in detail later.

The Constitution of Brunei Darussalam was originally enacted in September 1959 much to the efforts of her then Sultan, Al-Marhum Sultan Haji Omar Ali Saifuddien Sa'adul Khairi Waddien, who is also the present Sultan's late father. The enactment of the 1959 Constitution represented the country's primary stepping stone in its move towards full independence, which eventually came in 1984.

Since 1959, the Constitution has been subject to a number of important amendments, in particular in 1971, 1984 and most recently in 2004. In fact, a newly revised Constitution was

published in 2004 incorporating all the amendments that have been made since its birth year of 1959.

Brunei Darussalam has in place a set of acts compiled in volumes called “Laws of Brunei.” At present, there are more than 200 Acts in place which are in loose leaf form kept in ring binder volumes that consist of legislations that were passed prior to Independence Day and those that were enacted after it. Some of the legislations are also Acts that were extended from the United Kingdom, some dating back as early as 1958. However, some have been notably repealed, either in whole or in part to reflect updates in the development of the law. There are however some old enactments that have been merely omitted from the Laws of Brunei as authorized by His Majesty for the Attorney General to omit. Nevertheless, its omission does not mean that they do not have the force of law and hence would still be considered valid unless it is otherwise provided.

There are also a number of Government Gazettes which consists of:

- i) new laws that has not been revised to become an Act;
- ii) amendments to new laws; and
- iii) subsidiary legislations to a particular Act.

Since Brunei Darussalam at present pass their laws in accordance with article 83(3) of the Constitution, any new laws that has been approved by His Majesty will be published in Government Gazette form and will come into force on the date His Majesty approves of. Hence that new law will for the time being be referred to as an Order and not an Act.

The Law Revision Act is in place to govern the revision of such Gazettes to turn into Acts. After the 1st of January of every year, the Attorney General revises the law and publishes a revised edition of the new law to be included in the Laws of Brunei volumes.

He also does this with existing law that has been amended so he will publish a new revised edition of that law incorporating all the recent amendments.²

BRUNEI AT A GLANCE

Brunei became a Muslim country in the 14th century, with the conversion of Awang Alak Betatar, the first Brunei ruler (raja) to adopt Islam. Under the subsequent Islamic sultans, Brunei expanded its role and became actively involved in trade and commerce, as well as conquering nearby islands and states. As with many countries in Southeast Asia, Brunei then fell victim to the European imperialists, achieving full independence only in 1984. Today, the country is ruled by the 29th Sultan in the direct line from the first Islamic Sultan who ruled in the 14th century. In the 1980s after achieving independence from Britain, the Sultan adopted, as the country’s national philosophy, the Melayu Islam Beraja or Malay Islamic Monarchy. This national philosophy encompasses strong Malay cultural influences, stresses the importance of Islam in both daily life and in the functioning of the state, and calls for respect for the monarch as represented by His Majesty the Sultan. Since adoption of this philosophy, the country has pushed the development of Islam and is attempting to implement Islamic law and ideas in all realms.

Being a state where majority of the populations are Muslims, Islam has been made the official religion of Brunei Darussalam. In fact, Islamic laws have always been the governing laws in Brunei Darussalam even before the coming of the British.

ISLAMIC LAW IN BRUNEI DARUSSALAM: PAST FACT

Until Brunei accepted the Protectorate Agreement with the British government in 1888, Brunei had been a fully independent state capable of determining its own course in spite of having to face Spaniards from Manila earlier and fending off encroaching designs of British North-Borneo company and the avaricious James Brooke in the nineteenth century AD.³

Brunei Darussalam has been implementing Islamic Law since the 17th century, and it was the beginning of 20th century with the intervention of foreign powers that Brunei Darussalam had to or was rather forced to abandon it.

According to the late Professor Mahmud Saedon Awang Othman (1996) in his book entitled *The Implementation and Administration of Islamic Law in Brunei Darussalam* that before the British implemented its Civil Law, the main body of basic law in Brunei Darussalam was Islamic law and that the law was well executed and administered and it was effective.

The law was initiated by the ninth Sultan of Brunei Sultan Muhammad Hassan (1582-1598) and implemented and enforced during the reign of Sultan Abdul Jalilul Akbar (1619-1649) and his son Sultan Abdul Jalilul Jabbar (1659-1660). It was widely known as the Sultan Hassan's Canons.

Sultan Hassan's Canons or Law dealt with almost all aspects of socio-economic life, including debts, bankruptcy, interest payments, trade, marriage and divorce, and general crime such as adultery, slander, murder, theft and burglary. It also covered a wide area of Islamic law, with at least 47 clauses complying with Islamic law.

The Brunei Canons existence was noted by Sir Richard Windstedt in his book *A History of Classical Malay Literature* published in 1972. Sir Richard's original article was written much earlier and published in 1939 in the *Journal of the Malayan Branch of the Royal Asiatic Society*.⁴

The copy of the Brunei Malay Canons kept at Dewan Bahasa and Pustaka and it was published in 2003 as a book entitled *Hukum Kanun* compiled by Haji Asri Haji Puteh.

Brunei's Canons 44 chapters dealt with many Islamic law provisions.⁵

Being a state where majority of the populations are Muslims, Islam has been made the official religion of Brunei Darussalam. To say that Islam has only been practiced in this country in recent years are quite incorrect as there are sources, which date the establishment of a Muslim sultanate rule. In fact, Islamic laws have always been the governing laws in Brunei Darussalam even before the coming of the British.

There are evidences which show that Islam had come to Brunei since the 10th century. However, its reception was slow probably because most of the populations during that time were still holding on to their beliefs in Hinduism. Muslims were comprised of just a small section of the population including those traders who came to Brunei.⁶ And it was believed that the acceptance of the Sultans and nobles had started the spread of Islam among the community. Awang Alak Betatar, the first ruler of Brunei, embraced Islam when he married the

princess of Johore.⁷ He changed his name to Sultan Mohammad Shah and since then Islam slowly spread within Brunei.

Islam was quickly spread among most of the people in Brunei when Sultan Sharif Ali, the third Sultan of Brunei, ascended to the throne. Believed to be a descendant of the Prophet Muhammad (Peace Be Upon Him),⁸ he was a pious person and was the one who had started to build mosque and had been the one who determined the direction of the Qiblat.⁹ From then on Islam has become an important aspect in the life of people in Brunei where eventually it has become the official religion of Brunei Darussalam.

The Hukum Kanun Brunei was written during the reign of Sultan Hassan though it was believed that it had been started even earlier than that. It was completed and enforced during the reign of Sultan Jalilul Akbar and then continued during the reign of his son, Sultan Jalilul Jabbar. With the enforcement of this law, Islamic law has been enforced and that it had become the basic law and policy of Brunei Darussalam at that time.¹⁰

ISLAMIC LAW IN BRUNEI DARUSSALAM: TODAY SCENARIO

Brunei Darussalam has been reborn after shedding its Protectorate status from Britain in 1984 A.D., thus emerging as a Malay Sultanate unscathed in its form. This is a unique experience as all the other Malay Sultanates have either disappeared over time or have been subsumed by a greater entity either a republic as in Indonesia, or a Federation, like in Malaysia. Although described as an absolute monarch, the sultanate has evolved a series of constitutions after adopting the Residential System in 1906 A.D. This fact should not be interpreted as a new introduction for although Brunei may not have had the like of the modern written constitution, as pointed above, the base line is that the concept of the Malay governance has always been embedded in the Islamic concept of human welfare, both in heaven and on earth.¹¹

Nowadays Islamic law in Brunei is still governed under the Religious Council and Kadis

Courts Act (Chapter 77), an Act which consolidates the law relating to the Religious Council and the Kadis Courts, the constitution and organization of religious authorities and the regulation of religious affairs.

Apart from this Act, there are also other legislations enforced in Brunei Darussalam to govern the conduct of Muslims in this country, these legislations are for examples:

- i) Perbadanan Tabung Amanah Islam Brunei Act (TAIB), 1991 (Chapter 163)
- ii) Islamic Banking Act (IBA), 1992 (Chapter 168) – repeal by Islamic Banking Order (IBO), 2008
- iii) The Emergency (Islamic Family Law) Order, 1999 repealed by Islamic Family Act, 217.
- iv) The Syariah Courts Evidence Order, 2001.
- v) The Islamic Adoption of Children Order, 2001.
- vi) The Syariah Courts Act, 2005 (Chapter 184).
- vii) Halal Certificate and Halal Label Order, 2005
- viii) Finance Companies Act (Amendment) Order (FCA), 2006
- ix) Shari'ah Financial Supervisory Board Order (SFSB), 2006

- x) Islamic Bank Order, 2008.
- xi) Takaful Order (TO), 2008
- xii) Halal Label and Halal Certificate Order, Amendment 2008 (Chapter 183)
- xiii) Securities Market Order (SMO), 2013
- xiv) Syariah Penal Code Order, 2013
- xv) The Islamic Adoption of Children Order, 2001, an Order to make certain provisions on the law of adoption of children according to Islam; and
- xvi) The Halal Meat Act (Chapter 183) an Act which regulate the supply and importation of halal meat and related matters.
- xvii) Brunei Syariah Penal Code, 2013

ISLAMIC LAW IN BRUNEI DARUSSALAM: FUTURE PROSPECT

Throughout its long continuous history, Brunei's monarchy has seen the country through various fortunes, from being a vast empire covering beyond the Island of Borneo, to a small state which was threatened by extinction. It was the skillful maneuvering of the Sultan and his court that made the political survival possible.

One of reasons why Brunei survived, as pointed out by Osman, was its strong adherence to the ethical demands of the Malay kingship institution. An absolute monarch is not to be translated immediately as despotism, nor can we want to only assume that the monarchy is an anachronism just because it is an older form of governance, and does not reflect the more popular trend of democracy.¹²

Dual system

There is no trial by jury in the current Civil Justice system in Brunei Darussalam as pointed out by Brunei Attorney General in an interview with Borneo Bulletin published on 23 October 2013.¹³ According to her, cases are heard by a judge or magistrate, unless cases involve the death sentence, which is then heard by two High Court judges. The Magistrate Court hears most of the criminal cases such as theft, bribery, misuse of drugs and traffic-related incidents. A magistrate can pass a sentence of not more than seven years and of a fine not more than \$10,000.

Cases involving persons under the age of 18 years old is heard by the Juvenile Court. More serious cases are sent to the High Court, while the Intermediate Court has the same power as the

High Court but cannot pass sentences of imprisonment exceeding 20 years or hear cases involving the death penalty. In the Court of Appeal cases are heard by three judges headed by the President of the Court of Appeal.

The Syariah Criminal Penal Code Order, which has 254 Chapters divided into five sections, is meant for Muslims and non-Muslims.

Cases that can be heard by both Civil and Syariah Courts include theft, robbery, statutory rape, unlawful carnal knowledge, criminal defamation, homicide, causing hurt, extortion and more. For example, a robber enters a house and when the house owner tries to prevent the robbery, the robber kills the owner before escaping with the stolen items. The robber can be

charged under Chapter 55 for theft under Syariah law and Chapter 380 for theft under the Penal Code. For the charge of murder, the robber can be charged under Chapter 126 of the Syariah Criminal Code as well as under Chapter 302 'culpable homicide amounting to murder' of the Penal Code.

Other judicial bodies also have power concomitant with criminal cases, which can also be used as guidance in the implementation of the Syariah Criminal Code and the Penal Code. For example, Courts Martial have jurisdiction under the Royal Brunei Armed Forces Act to hear criminal cases conducted by military personnel. These cases are not only limited to military offences such as failure or neglect of duty or scandalous conduct, but also include offences that can be brought under the Penal Code such as theft, robbery and other offences.

In practice, the RBAF will only take action on military personnel for military offences. For other type of offences, RBAF will refer investigation and prosecution according to civil procedure or in line with Royal Brunei Police Force investigations, with the prosecution lying in the hands of the Civil Court.

Similarly, cases such as unlawful intercourse can be charged under the Islamic Religious Council Act and also under the Penal Code and Unlawful Carnal Knowledge Act.

Normally, if it involves a woman under the age of 16, the criminal procedure will be carried out in Civil Court. If the offender is an adult, the prosecution will be made at the Syariah Court.

The Attorney General made a reference to the titah of His Majesty the Sultan and Yang DiPertuan of Brunei Darussalam, saying that it is clear that His Majesty's vision is to have a nation with a unique justice system where the Syariah and Civil systems run concurrently.

With the implementation of the dual Criminal Penal Codes, she explained that investigation and prosecution of cases under the Syariah Court will be investigated by religious law enforcement, while assisted by the police and other law enforcement agencies if needed.

For offences that are under both the Civil and Syariah Codes, cases will be investigated by the police, while assisted by religious law enforcement and other law enforcement agencies if needed.

The Attorney General said the success of the implementation of the Syariah Criminal Code needs the involvement of the Attorney General's Chambers, Syarie Prosecution Division, Religious Enforcement Division, Prisons Department and lawyers.

CONCLUSION

This article examines the development of Brunei Islamic laws and their relationship with the Melayu Islam Beraja (MIB, Malay Islamic Monarchy) concept. Islamic laws were enforced during the reign of Sultan Sharif Ali (d. 1432) with the establishment of the Hukum Kanun Brunei. It continued to be the core of Bruneian legislature until the era of Sultan Hashim (d. 1906). Brunei Islamic laws went through a bleak period when the British Residential administration was introduced in 1906. The British legal system was used not only in enacting civil but also Islamic laws. Thus, the role of Islamic laws was weakened and merely applicable with regard to family issues. This situation persisted until 2013, when Sultan Hassanal Bolkiah undertook efforts to revive Islamic laws in stages. As an aspect of life for Bruneian society, Islamic laws also have a close relationship with the MIB concept. These three components –

Malay, Islam, monarchy – are interconnected and reinforce one another, thereby leading to racial and national strength and unity in the sultanate.

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