
THE SULTAN & THE CONSTITUTION

Muhammad Kamil Awang



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PUSTAKA PERDANA



1000721

Dewan Bahasa dan Pustaka
Kuala Lumpur
1998



PERDANA
LEADERSHIP
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YAYASAN
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PERDANA

First Printing 1998
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Perpustakaan Negara Malaysia

Cataloguing-in-Publication Data

Muhammad Kamil, Awang

The Sultan and the constitution / Muhammad Kamil Awang.

Bibliography: p. 315

Includes index

ISBN 983-62-5980-5

1. King and rulers--Malaya. 2. Malaya--History. 3. Malaysia
--Constitution. I. Title.

321.87

Printed by
Percetakan Dewan Bahasa dan Pustaka
Lot 1037, Mukim Perindustrian PKNS
Ampang/Hulu Kelang
Selangor Darul Ehsan



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FOREWORD

It gives me great pleasure to warmly welcome this book entitled *The Sultan and the Constitution*.

The learned author Haji Muhammad Kamil Awang deserves our compliments and congratulations for this major effort on his part to crystallise his thesis into a book, which I think will be useful as a textbook for students studying law.

Haji Muhammad Kamil Awang is a graduate of London University and a Barrister of the Honourable Society of the Inner Temple London, and did a post-graduate course at the University of Kent at Canterbury, England. Upon graduation he joined the Judicial and Legal Service Malaysia. Subsequently, he was elevated to the High Court Bench. The publication of this book is not only a personal credit to him but equally a credit to the Malaysian judiciary.

I am sure everyone of us will find the book very useful and stimulating especially to the general reader who wants to know more of the history and development of the Constitution.

This book has been translated into Bahasa Malaysia, and it is also my hope that it will be revised from time to time to incorporate future amendments of the law.

I wish the book every success.

Tan Sri Dato' Seri Hj. Mohd. Eusoff b. Chin
Lord President
Malaysia

PREFACE

In the indigenous Malay society the Malay ruler was an absolute monarch, but over the years a transformation has taken place in which the ruler has become a constitutional monarch. This was formalised when the Malay state received its first written constitution. The present study was undertaken to examine the position of the ruler in the constitutions of the Malay states and the development of the constitutions to their present day form. The work consists of four chapters and a conclusion.

Chapter One traces the acquisition of British jurisdiction in the Malay states and the formation of the Protected Malay States. It examines the evolution of the native administrative machinery before 1874 and, after that date, with the introduction of Western Residential and the Advisory Systems in the Malay States. The introduction under both the residential and advisory systems of the State Council is examined and discussed. These, and the functions of Malay authorities and their composition are examined in the light of similar institutions in a protectorate and colony.

The origin of the Legislative and Executive Councils as found in the State of Johore is discussed and the membership of these Councils is examined. Discussion also focuses on the changes in the composition of these Councils, and that of the Council of State with modified membership qualification to admit Europeans and other races to sit in the various Councils.

Movement towards closer union under the Residential System with the formation in 1895 of the Federated Malay States as sort of loose

federation is discussed. In the Federated Malay States the centralization of administration was achieved at the expense of the rulers and their State Councils, who lost most of their powers. The result of the efficient centralization thus achieved was not accepted with enthusiasm by the Rulers of the States, and the subsequent attempt at decentralization that followed in the Federated Malay States is examined and discussed.

A comparative study of the position of the rulers under the Residential and the Advisory System, the similarities and dissimilarities are examined and discussed.

Chapter Two deals with the Post World War II period; the introduction of the Malayan Union Scheme. The British Government's attempt under the Malayan Union Scheme was to create a unitary state in Malaya, bringing together all the Malay states and the Straits Settlements of Malacca and Penang into one state, where the identity of each of the constitutional states in Malaya would eventually be eradicated. The proposal for a Malayan Union, and the Malayan Union Plan are closely examined and discussed *vis-a-vis* the position of the rulers in the Union. The attempt at creating a colonial type of government and administration with a British overlord, though partially implemented was doomed from the start. The Legislative and Executive Councils of the Malayan Union as envisaged in the Malayan Union Plan with membership of the Councils open to all citizens in Malaya were never implemented. The liberal citizenship provisions would have enabled all residents in Malaya and Singapore to be citizens of the Malayan Union, and thus were unacceptable to the Malays. The Malay rulers and the Malay community as a whole strongly opposed the Malayan Union; the basis of their opposition was their special position, and the liberal franchise law which would have upset the Malay-Chinese balance. Above all, had the Malayan Union gone through, the Malay rulers might have been deprived of all their powers.

The unremitting opposition mounted against the Malayan Union by the Malay leaders including the rulers, which received the widespread support of the Malay community as a whole and of others such as ex-Malayan civil servants in Britain, was a stumbling block in the Union's way. This subsequently led to its failure, and the Malayan Union ceased to exist in February 1948. In its place was set up the Federation of Malaya.

Chapter Three deals with the Federation of Malaya; the Federation of Malaya Agreement 1948 is discussed. The Federation consisted of all the states in Malaya as in the Malayan Union, and had a federal form of government under a British Officer, called the High Commissioner. The Agreement provided for individual State Governments with the Rulers as Heads of State. The Agreement also provided for a much more restrictive citizenship than that in the Malayan Union. The period of internal self-government in the Federation of Malaya is examined and discussed. This is the prelude to the independence of the Federation in 1957.

On August 31, 1957, the Federation of Malaya achieved her independence, and a new Federation of Malaya Constitution 1957 was promulgated. The Report of the Constitutional Commission under the chairmanship of Lord Reid, contains the draft Constitution and recommendations upon which the Constitution 1957 was based. Under the Constitution the identity of each of the constituent states in the Federation is preserved. The rulers as heads of their respective states are maintained, and individual State Governments are established with defined legislative and executive powers. The legislative powers are divided into the Federal, State and Concurrent List, and the residuary powers remain with the states. The nature and extent of such Federal powers clearly reveal a federal preponderance, and matters of local importance are left to the states.

The position of the rulers is discussed in the federal context; the relationship between the rulers and the Federal Government. The Federal Constitution creates a unique institution, the *Yang di-Pertuan Agong*, as the symbol of unity in the country and the Supreme head of the Federation. One important responsibility of the *Yang di-Pertuan Agong* is to safeguard the position of the Malays and the legitimate rights of other communities in the Federation. Islam is declared as the religion of the Federation, and in the states which have rulers, the rulers are the heads of the Muslim religion in their respective states, though they may delegate to the *Yang di-Pertuan Agong* powers for the co-ordination of religious acts, observances and ceremonies, which the Conference of Rulers agrees to extend throughout the Federation.

The Constitution also provides for a parliamentary system of government, bicameral at the federal level, and a one chamber legislature in each state. The composition and membership of these legisla-

tures are examined and discussed.

Chapter Four deals with the formation in 1963 of Malaysia; the merger of the former Federation of Malaya with the three new states, the Crown Colony of Singapore, North Borneo (renamed Sabah) and Sarawak. The Report of the Commission of Enquiry (known as the *Cobbold Commission Report*) in respect of Sabah and Sarawak entry into the Federation of Malaysia is examined. This *Cobbold Commission Report* and other reports such as the *Inter Government Committee Report 1962* form the basis of the constitutional position of these states in Malaysia. Numerous amendments were made to the Federation of Malaya Constitution, incorporating the various recommendations made, which formed the Constitution of Malaysia. The three states were each given a State Constitution.

In the Malaysian Constitution the relationships between the Federal and each of those new states are dissimilar and these are examined and discussed. In form and substance there is no change in the Constitution affecting the original states in the Mainland. The division of powers between the Federal Government on the one hand and each of the States Governments of Singapore, Sabah and Sarawak on the other, varies considerably. The State List (for Sabah and Sarawak) is more extensive, and for Singapore it was even more so.

Matters relating to religion, national language, immigration and the position of the natives of Sabah and Sarawak are set out in the Constitution and the *Inter-Governmental Committee Report*.

In respect of the Muslim religion, as new relationship between the *Yang di-Pertuan Agong* and the States of Sabah and Sarawak was effected, whereby the State Constitution made provision that Islam is the religion of the state and *Yang di-Pertuan Agong* is head of Islam in these states in line with that of the States of Malacca and Penang.

The conclusion deals with the ruler, from personal to constitutional rule; his position in the state and the Federal Constitution and Islam. The ruler as the *Yang di-Pertuan Agong*, his position in both the Federal and the State Constitution and Islam is examined. Though the form of ruler has changed, the ruler's functions in some ways are comparable to the pre-colonial system.

In the last decade there were several amendments which had been made to the Constitution and of these, six amendments were of great significance as they brought about fundamental changes to the institution of Sultanate. Extensive modifications and curtailments on the

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role, functions, powers and jurisdiction of the *Yang di-Pertuan Agong* and the Rulers had been made, bringing into focus the constitutional position of the *Yang di-Pertuan Agong* or the Ruler of a State *vis-a-vis* the modern concept of a constitutional monarch. In view of these amendments, I have at the end of each topic included an annotation of the latest amendments in respect of the topic. By incorporating the latest amendments in the relevant topic it is thus brought up to the present state of the law concerning the particular topic as it stands today.

MUHAMMAD KAMIL AWANG

ACKNOWLEDGEMENT

In completing this book I have contracted many debts. I should like to express my thanks to the staff of the libraries of the University of Kent, the Institute of Advanced Legal Studies and the Institute of Commonwealth Studies, of the University of London, and the Public Record Office (London) for their assistance.

In particular I wish to acknowledge the help I received from Mr. M.B. Hooker who supervised my work at the university, and for whose unremitting effort and encouragement no words of mine could adequately express my gratitude.

Finally, I must record my appreciation to a tolerant wife, Raja Zainara, and my children, Fazlina, Faizal and Farah Nina, for their constant source of support and encouragement in my work – at times under very trying conditions.

MUHAMMAD KAMIL AWANG

ABBREVIATIONS

All ER	All England Report
AIR	All India Report
AC	Appeal Case
CA	Court of Appeal
CO	Colonial Office Papers
FC	Federal Court
FMS	Federated Malay States
FMSLR	Federated Malay States Law Report
JMBRAS	Journal of the Malayan/Malaysian Branch of the Royal Asiatic Society
JRAS	Journal of the Royal Asiatic Society
KB	King Bench Division
MLJ	Malayan Law Journal
PCM	Perak Council Minutes
PC	Judicial Committee of Privy Council
PD	Probate Division
SCM	Selangor Council Minutes
QB	Queen's Bench Division

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