

## Viewpoint

### *The Administration of Muslim Affairs in the Straits Settlements during the 19<sup>th</sup> Century*

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The year 1786 marked the beginning of the British official administration in Malaya through the effective manoeuvre of the East India Company (E.I.C.), particularly in Francis Light's view of the island's geographically and economically strategic positions to the British Empire. As the British started to step into the island, they brought in various aspects of British customs and cultures which manifested in the areas of administration or governance (formation of the Straits Settlements included Singapore and Malacca in 1826), education, social order, justice, *et cetera*. The British had, specifically, introduced English Law in the island as the sole-governing law which regulated the inhabitants' lives. In this regard, demographically speaking, the Muslim community formed a substantial number of the population in the colony. Thus, as far as Islam is concerned, the Muslim community is governed by Islamic Law (Shari'ah) and the customary laws (*adat*) in their daily lives. The Islamic Law is synonymous with the Mohammedan Law which was introduced in the colony in 1888 by the British colonial government.

There are a number of historians who have studied the British policy on the Muslim community in Penang, such as Nurfadzilah Yahaya (1994), Nordin Hussin (2007) and Jasni Sulong (2013), yet, there is still

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a lack of research needs to be done on the administration of the Muslim community in Penang, particularly in matters relating to the Muslim marriage, divorce, maintenance of a spouse, reconciliation, and other observances of Muslim religious practices, which this study attempts to cover.

The most significant literature that addresses the above issue is a book written by Nordin Hussin (2007) entitled, *Trade and Society in the Straits of Melaka: Dutch Melaka and English Penang, 1780-1830*. The author has discussed the matter under study with a specific reference to the trade developments and demographic features of both Dutch Melaka and English Penang with well-presented details. In fact, the author has utilised a substantial number of primary sources which range from local sources to the Dutch and British official sources. The author has also discussed in length about the economic nature of both port-towns, while considering several difficulties in compiling and presenting a more complete data of both port-towns. This literature primarily concerned itself with an observation and evaluation of the defining features of what a colonial town looks like and its distinctive features by taking Dutch Melaka and English Penang as examples for consideration.

Nevertheless, Hussin (2007) discussed the conditions of the Muslim community under the British rule in Penang during the 19<sup>th</sup> century insufficiently in his writing. There is no information on how the British had governed the Muslim community, especially in matters concerning their personal laws, such as marriages, divorce, inheritance, endowment, *et cetera*, despite the fact that the author had mentioned the use of a Malay Capitan as the leader of the Muslim community in Penang by the British authority to resolve any arising issues within the community. It is assumed that the Capitan also served as an intermediary between the community and the government, due to the fact that the appointed person was given an authority to administer and exercise their power in their own community.

The author further noted that the Capitan used to have judicial functions before it was abolished, following the institution of the court of Judicature after 1808. This point is indeed crucial for further discussion since by right, the inhabitants of Penang, including the Muslim community, were subjected to the English laws in all matters, except those related to one's religious practice. Since the English laws

became the law of the land, there were certain occasions whereby the English and Islamic laws came into conflict as this matter has been deliberated by Jasni Sulong (2013) and Nurfadzilah Yahaya (1994) in their writings. Overall, the administration of the Muslim community in Penang occupied one of the most important considerations by the British government in order to please the locals and to encourage them to contribute towards a better development of Penang as a whole.

Another noteworthy literature in this field is a book edited by Yeoh Seng Guan, Loh Wei Leng, Khoo Salma Nasution and Neil Khor (2009) entitled, *Penang and Its Region: The Story of an Asian Entrepot*. This work concentrates on the economic and socio-political dimensions of Penang, especially from the mid-19<sup>th</sup> until the 20<sup>th</sup> centuries. Several aspects have been discussed by the concerned authors in this book, which range from the historical survey of the island up to the economic and political lives of the people in this former British Crown colony, from the very existence of the British settlement in the island in 1786 until its independence from the British rule in the 1900s. This literature focuses its discussions on the economic developments of the island by attributing much of its process in the hands of the British and Chinese merchants and traders, most probably due to the large capital and expertise that they had.

Certainly, their significance is of greater importance compared to the natives of the island (i.e. the Malay-Muslims), who were less superior in terms of capital and expertise as mentioned previously. Nevertheless, there has been very minimal coverage dedicated to the economic activities of the Muslims in this island. Furthermore, there is also less information provided on the multiplicity of religions represented by the existence of the British, Eurasians, Malays, Chinese, Indians, Arabs, and other communities in the island, and the mechanisms adopted by the colonial government in Penang to address these complexities. Having said this, a glance over the administration of Muslims (including the Arabs, *Jawi* Peranakan, and Chinese Muslims) in the island is worthy of consideration as they formed the very core of Penang's society. Nevertheless, a scarcity of available sources in studying the Muslims' economic life and its demographic features is well understood by the researcher which could partly explain the prevalence of the above situations.

Another substantial document in addressing the above issue is the Mohammedan Law of 1880 and its subsequent amendments. A number of researchers, such as Ahmad Ibrahim (1985), Jasni Sulong (2013), Nurfadzilah Yahaya (1994) and Abdul Kadir (1996), have examined this law and all of them generally agreed that the introduction of the Mohammedan Law in 1880 was the earliest enactment on the part of the British authority to cater to the Muslims' affairs in the Straits Settlements. Before the introduction of this law, there was no information on how the British authority had administered the Muslim community's affairs in the Straits Settlements, in general, and Penang, in particular, prior to 1880. The approach used by the British colonial government in matters concerning the appointment of the Mohammedan Registrar/Kadi/ Mufti among the male Mohammedans is also worthy of further examination and evaluation so that a sufficient knowledge on the matter could be established. This point is indeed essential in the context of day to day administration of Muslim affairs since from a demographic feature point of view, the Muslim community in Penang itself is heterogeneous in nature (consisting of Arab Muslims, Indian Muslims, Malay-Muslims, *et cetera*).

As a matter of fact, Sulong (2013) mentioned that Penang was regulated under the English Law; historically speaking, the law was put into practice in England since the 12<sup>th</sup> century. It was introduced into the Malay Peninsula during the British colonisation of the country in the 19<sup>th</sup> century. In general, English Law was commonly known as common law which could be defined as "general law" or the "law for all". This law was applied to every region under the British sovereignty, including Malaya along with its several principles and maxims, for the benefit of the populace. The author further observed that principally, there are two factors which made the presence of English law felt into the local law, which, at first, was through the codification of the same law as it has been practiced in Britain, and secondly, through the previous rulings on the similar reported cases, which is legally known as 'judicial precedence'.

Sulong (2013) concluded that the concept of law does not simply reason from certain provisions of rulings in the act, but it was also fashioned from reasoning and rulings of the learned judges on the trialled cases. As such, it inaugurates the presence of English Law for the locals in the country, and in this case, Muslims in general. He observed that the attitude of non-interference into local laws and practices was a sign

of respect to local customs, which was clearly designed to safeguard justice and fairness in the colony. In this context, Sulong (2013) explained that Sir Benson Maxwell C. J. mentioned that through the introduction of the First Charter of Justice in 1800, it had recognised the usage of Muslim and Hindu laws to govern their affairs in colony. In short, one may imply from the above conditions that the local practices and customs were part and parcel of judicial considerations, and that they were respected. Sulong (2013) further added that the English Law cannot be applied wholly, as the local community also has its own procedures and legislations. Yet, arguably, in certain occasions, there were few reported cases which showed the indifferent attitude of British judges upon matters concerning the Muslims affairs.

Furthermore, a brief discussion of the Muslim community in the colony will be discussed. Demographically speaking, Muslims constituted of a significant number of the population in the island. The Muslim community here includes the Malays, Arab Muslims, Indian Muslims, and Jawi Peranakan. In the context of the Muslim administration under the British rule, Hussin (2007) mentioned that there was a creation of a particular position, which he termed as the “Malay Capitan” under the British colonial government, which seemed to act as an intermediary between the Muslim community and the government. In relation to that, Sulong (2013) mentioned that the first fundamental law for the Muslims was enacted in the 1880s, which was known as “Mohammedans Marriage Ordinance No.V/1880”. This ordinance fundamentally comprised of “law of marriage, divorce, inheritance, and *et cetera*.” The inheritance matters were printed in part III of the ordinance, under the title, “Effect of Marriage towards Property.” He further noted that this enactment contains four provisions and another 33 sections and sub-sections as well. The first division of this Mohammedan Law touches on the registration of marriages and divorces (Section One to Section 23). Meanwhile the second division outlines the appointment of the Kadi (from Section 24 until Section 26); and the third division touches on the effect of marriage on property (Section 27); and the last division discusses on the general administration of this law.

A similar observation has been made by a prominent Malaysian lawyer, Ahmad Muhammad Ibrahim (1985), when he said, “Di Negeri-Negeri Selat minat British dalam hal-ehwal agama Islam hanya dapat dikesan daripada tahun 1880 apabila Ordinan Perkahwinan Mohammedan 1880,

No. 5 Tahun 1880 digubal untuk mengatur pentadbiran undang-undang perkahwinan Islam” (“In the Straits Settlements, British concerns on Islamic affairs could only be traced back in 1880s when Mohammedan Marriage Ordinance 1880, No. 5 had been formulated to regulate the matters concerning Mohammedan marriages”). Moreover, the issue of non-interference on the part of the British colonial government could be carefully examined through the provisions in the Mohammedan Law and how the English Law manoeuvred into the rulings. Nevertheless, this ordinance also outlined the provisions that are in line with the Islamic Law; for instance, Sulong (2013) mentioned that “wives in polygamous marriages will share the share among them equally, and only four legal wives will inherit the property.”

A few researchers, namely Ibrahim (1985), Sulong (2013) and Kadir (1996) have commented that due to the imprecision of the Ordinance of 1880, it was amended several times as far as Islamic Law is concerned, through “Mohammedans Amendment Ordinance No. XXV/1908, No. 26/1920 and No. 26/1923”. In its new revision, Sulong (2013, p. 30) observed that Section 27 was re-phrased to sync with the Islamic law which outlined that “if someone dies intestate after 1<sup>st</sup> January of 1924, the property will be distributed according to Islamic law, unless it disregards to customary practice.” He further added that in this case, it indicates that “the ordinance acknowledged the customary practice at higher level in comparison to Islamic law.” To elaborate, Sulong (2013, p. 30) remarked that “priority will be given to male over female heirs if they are at the same level of equivalence.” According to Zaini Nasoha (2004, pp. 42-46), the Ordinance was revised again in 1934. It was categorised under the “Chapter 57 Revised Laws of the Straits Settlements 1936, which then known as Mohammedans Ordinance 1936.” The Ordinance was enforced in Penang, Malacca, and Singapore, until 1959.

Another influential factor of English Law procedure that influenced the local law was the process of getting evidence and binding to the court. For instance, Sulong (2013, p. 124), citing the case of *Tijah v. Mat Ali* (1886) mentioned that, “Courts have jurisdiction to consult for evidences and explanations, either from experts, such as Muslim scholars, or from the book, such as the Koran and traditions.” The author, citing the case of *Teh Rasim v. Neman* (Perak Supreme Court No. 232/1919) also observed that although the above methods are not incumbent upon

the judges, nevertheless, “the given evidences have assisted judges in comprehending the case in proper manner.” This condition was specified in the Ordinance of 1926, whereby the judges have the freedom “in referring to any Koran translation, Book of Mahomedan Law, Minhaj et-Talibin, and A Digest of Mahomedan Law.” Another reference was added in 1934, called “Anglo-Muhammadan Law.”

Moreover, Sulong (2013) concluded that these facts were assisting judges “in their verdicts as were stressed in *Syed Ibrahim bin Omar al-Sagoff lawan Attorney General* (1948) in a manner so that to justice and fairness could be established among the concerned local communities.” In general, the British authorities in the Straits Settlements were respectful of Islam, which is professed by the Malays, and the role of the customary laws in the lives of the Malays. However, one may find that the British authorities, i.e. the administrators and judges, were quite indifferent in improving the administration of the Muslim affairs in the Straits Settlements in general, and Penang in particular, partly because it was not their prime business.

Interestingly, the British authorities did formulate a specific enactment or ordinance to administer the Muslim affairs. For example, the enactment of the Mohammedans Marriage Ordinance No.V/1880 was mainly about Muslim marriages and divorces. This ordinance was considered to be the first of its kind, which was established in the Straits Settlements by the British government in order to cater to the issues of the Muslim community. Before this ordinance came into existence, there was no law or ordinance formulated in the view of Muslim affairs in the Straits Settlements prior to the enactment in 1880, as observed by Kadir (1996) in his writing, entitled *Sejarah Penulisan Hukum Islam di Malaysia* (History of Islamic Law Writing in Malaysia).

It is believed that the British chose to rather not interfere in matters concerning Islam and Malay customary practices because they aimed to ensure that the general order in the colony remained calm and peaceful. This was also important to make sure that the day-to-day administration of the colony ran smoothly. The British colonial experience in other parts of the world such as in India, for example, possibly made them realise that religion was a very sensitive issue and should be handled with care. In this respect, Yahaya (1994) mentioned that the British administrators in the Straits Settlements acquired relatively substantial knowledge

on Muslim affairs from the British administration in India. Another interesting fact is that, with the promulgation of the Muhammadan Law of 1880, a post of the Qadi was created to facilitate the administration of Muslim affairs (especially with regards to marriage and divorce cases). Moreover, Yahaya (1994) has also observed that the Muslim litigants had pursued their grievances in colonial courts so often that it seemed that the secular non-Muslim courts assumed a role as an arbitrator for cases involving religious law in non-family matters and accepted the courts' decision in those cases.

In sum, this essay aimed at revisiting the administration of the Muslim community under the British colonial government, which included the British policy and its methods of governance in its colony. The view also sought to examine the attitude of the British administration towards the Muslim community at one scale, and the general Muslims' outlook towards the British rule on the other scale. The general theoretical and historical literature on this subject, and specifically in the context of the British administration on Islam and Muslims is incomprehensive, particularly on matters concerning the British policy-making and its implementation over such matters. With reference to the above matters, it is hoped that this insight would be able to identify, locate, and examine the above issues in order to discover more extensive information about the day-to-day administration of the Muslim affairs under the British rule in the colony, and eventually, enrich the existing literature in this field.

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