

U N E S C O

LEGAL ASPECTS OF MALACCA, JOHOR, KEDAH AND PERAK
SULTANATES - A COMPARATIVE STUDY
THIRD WORKSHOP ON MALAY SULTANATES
AND MALAY CULTURE

1st-4th November, 1982
Dewan Bahasa dan Pustaka
Kuala Lumpur
MALAYSIA

In the previous law I have more or less outlined some of the basic features and characteristics of law that existed during the fifteenth and early sixteenth centuries Malacca Sultanate. My preliminary observation was that the Malacca laws as shown by the Hukum Tanah (Malacca Law) and Undang-Undang Laut (Malacca Sea Laws) embodied a wide field which include among others, court procedure and regulations, royal privileges, codes of proper conduct,

CIVIL LEGAL ASPECTS OF MALACCA, JOHOR, KEDAH AND PERAK SULTANATES -
A COMPARATIVE STUDY

I am trying to trace further on the legal position of traditional Sultanates. The approach is comparative with the intention of the distinct characteristics and qualities of their

Muhammad Yusoff Hashim
Lecturer
Department of History
University of Malaya
Kuala Lumpur

As in the last paper the method that I employed in studying this subject was by looking through and analysing the respective legal documents and it is believed to have existed during the life span of these Sultanates. Elsewhere notions and notices on legal matters could in some isolated cases be unravelled from historical writings in the form of hikayat and other literary genres which by themselves are part of the work of Malay literary writers within a wider Malaysian-Indonesian indigenous legal context.

Not for publication nor to be quoted
without the author's permission

1. "Legal Aspect in the Social History of Malacca Sultanate", 3rd Workshop on Malay Sultanates, Dewan Bahasa dan Pustaka, Kuala Lumpur, 1978.
2. For a wider view on this refer to Mhd. Yusoff Hashim (ed.), Syair Sultan Mahmud, Analisis Kritis Pengajaran Malayu, Kuala Lumpur, 1978.

LEGAL ASPECTS OF MALACCA, JOHOR, KEDAH AND PERAK
SULTANATES - A COMPARATIVE STUDY

In the previous paper on the aspect of law I have more or less outlined some of the basic features and characteristics of laws that existed during the fifteenth and early sixteenth centuries Malacca Sultanate. My preliminary observation was that the Malacca laws as shown by the Hukum Kanun (Malacca Laws) and Undang-Undang Laut (Malacca Sea Laws) embodied a wide field which include among others, court procedure and regulations, royal privileges, codes of proper conduct, civil and family laws, various types of penalties, etc.¹

Now I am trying to trace further on the legal position of traditional Sultanates of Johor, Perak and Kedah. The approach is comparative with the intention to observe some of the distinct characteristics and qualities of their laws.

As in the last paper the method that I employed in studying this aspect was by looking through and analysing the respective legal manuscripts and texts believed to have existed during the life span of these Sultanates. Elsewhere notions and notices on legal matters could in some isolated cases be unravelled from historical writings in the form of hikayat and salasilah traditions.² These manuscripts form a literary genre which by themselves form part of the bulk of Malay legal digests within a wider Malaysian-Indonesian indigenous digest complex.

1. "Legal Aspect in the Social History of Malacca Sultanate", 2nd Workshop on Malay Sultanate, Ujung Pandang, 1978.

2. For detailed explanation on this refer to Mohd. Yusoff Hashim (ed.), Syair Sultan Maulana: Analisa Kritis Persejarahan Melayu, Kuala Lumpur, 1980.

These texts were compiled from as early as the fifteenth century until late nineteenth century. To date they provide the only written laws available for scholars currently involved in studies on Malay legal system of Malay Peninsula.³

I

The Texts

1. On Johore Sultanate there is at our disposal the Undang-Undang Johore dan Anak Sungai variously translated as The Laws of the Principality of Johore, The Johore Laws and Its Dependencies, etc.⁴ In a short but helpful commentary Logan has put forward that presumably this digest belongs to pre-nineteenth century Sultanate of Johore. In terms of structure the laws can be divided into two sections, namely the maritime provisions and the non-maritime chapters. At the risk of over-simplification it could safely be deduced that the contents of this Johor Laws are identical with those provisions which appeared in Undang-Undang Melaka. Perhaps the section on 'disciplines and rules to be observed at sea' of the Johore laws is the same as in the Malacca laws (abbreviated hereafter as MI).

3. The most current study on Malay legal matters is undertaken by M.B. Hooker. See for an example of his work (ed.), Readings in Malay Adat Laws, Singapore, 1970; "Laws, Religion and Bureaucracy in a Malay State", American Journal of Comparative Law, 1971, pp.264-286.

4. J.T. Logan, "A translation of the Malayan Laws of the Principality of Johore", JIASA, 9, 1855, pp.71-90 and M.B. Hooker (ed.), Readings... pp.84-111. A Jawi version of the law is available at Mazium Pusat Jakarta, volume No.50; A microprint copy of the manuscript is to be found at the University of Malaya Library, National Collections Division. The name of the scribe is Sheikh Haji Ahmad Semarangi, dated 1896 A.H.

Among the issues that appeared in both ML and Johore Laws are on land tenure, on hiring and borrowing, on principal and agent, on trespass, on accident during famine, theft and robbery, assaults and adultery, homicide, ordeals and contracts. Two examples of close similarities are listed out below:

Theft and Robbery

The Undang-Undang Johor says,

If a gang of thieves commit a robbery and one of the party only enters the dwelling, that individual alone shall be punished by amputation of the hand, and the rest suffer correctional punishment: The criminal shall be mounted on a white buffalo, have a posy of the shoe flowers stuck behind his ear, shall be shaded by a dish cover and shall have his face streaked with charcoal and turmeric and in this state shall be conducted through the town in mock procession ... should the stolen property be found it shall be suspended round his neck.

In the same manner the ML has already codified that:

He who steals from a house shall have his hand amputated. But if there are many thieves and only one of them breaks into the house then only that thief's hand shall be amputated. ... As for the rest (of the offenders) will be placed on a white-spotted cow, adorned with hibiscus flowers and a dish cover on his head, the face shall be smeared with lime, charcoal and turmeric and thus he will be carried around the country while gong is being beaten. If the stolen property is discovered, it shall be hung round his neck.

Wrecks

The Johore Laws say:

If a boat which has drifted, be found by anyone beyond the station ... such person shall be entitled to half the value recovered, but if such boat has drifted as far as the fishing traps or weirs, the recovered shall be entitled to a ransom of one kupang if such boat be five fathoms long, but if less two kenderi.

In the ML:

Regarding the recovery of a perahu: if it has drifted out to sea, the ransom is half of the value of the perahu. But when it has just begun to drift away and is then recovered, the ransom is one kupang, if the perahu is small ... two kenderi. Such is the custom.

These close similarities may well be attributed to the close historical links socially or politically between the two Sultanates. At a glance one may otherwise assume a major characteristic of these Johore laws, like its ML. counterpart, i.e. its overwhelming emphasis on (a) prevention; (b) punishment for criminals as well as immoral wrongdoings, in fact there is incidentally not so much distinction between the two categories. Thus for an instance issues on contract or marriage or forging the ruler's seal. These were dealt with only in a few lines. At then the main concern of these issues is with the prevention of forgery and punishment therefore.

4. On the laws of Kedah Sultanate: There are at the moment five manuscripts on Kedah Laws (i) The Undang-undang Pelabuhan 1060 H (Port Laws of 1650 A.D.). This supposedly oldest manuscript on laws in Kedah was compiled during Sultan Rijaluddin Mohd. Syah's reign who ruled the Kuala area. (ii) Tambera Datuk Seri Paduka Tuan 1078 H (The Laws of Datuk Seri Paduka Tuan 1667 A.D.), (iii) The Hukum Kanun Datuk Kota Star (The Canon Laws of Datuk Kota Star); (iv) Adat Bunga Emas, Alat Kerajaan Pada Nasa Tabal Orang, Adat Meminang (Customs on Bunga Emas, etc.), (v) Undang-undang Tahun 1199 H (Laws of 1784 A.D.).⁵

5. Summary and translations of these laws were done by R.O. Winstedt, 'Kedah Laws', Journal of the Malayan Branch of the Royal Asiatic Society, VI, ii, June 1928, pp.1-44.

The fifth manuscript was apparently compiled by the Datuk Bendahara (Prime Minister) in consultation with the Pakuda Maharaja and other Kedah dignitaries. Scholars are of the opinion that this law consists almost entirely of the Malacca Codes (Maritime and Non-Maritime), commencing with various rules of court etiquette, royal prohibitions, criminal and personal laws, family laws, rules of land tenure, etc. Undeniably as Winstedt put it except for verbal inaccuracies and virtual Kedah dialectical influence the contents are copies of Chapters 1-23 of the Malacca Kanun, with minor changes and various modifications elsewhere, thus reflecting the impact of Malacca laws upon Kedah laws,^b particularly regarding its Maritime laws.

Again, like Malacca, Kedah was once a city port.⁷ The port laws which consist of thirty-seven chapters were designed to cater to problems pertaining to port activities (procedures of export and import, power and authority of the Harbour Master, values of export and import duties, duties of nakhoda [captain], etc.), as Chapter 4 of the laws codified that "... designed ... to determine the customs of the port and duties of the harbour-master".⁸ Chapter 31/37 are merely on port issues (83.7%). The rest are provisions on offences from the Islamic law point of view, introductory chapters, Muslims becoming infidels, etc.

7. The study appeared in a Masters Degree Dissertation by Abu Hassan bin Mohd. Sham, entitled "Undang-undang Melayu Lama dengan Jumpulan Undang-undang Melayu Melaka dan Undang-undang yang Terletak Di bawah Pengaruhnya", Department of Malay Studies, University of Malaya, 1973.

8. See R. Braedt, "Most Ancient Kedah", Malaya in History, IV, ii, 1958, pp. 18-46. M. Khan, History of Kedah, Penang, 1958.

9. R. G. Winstedt, op.cit., p.2.

The Tambera which consists of sixteen chapters, entirely deal with non-maritime codes, ranging from rules and offence on theft, procedures on sale and purchase of animals, duties of headmen, rules on huma (planting), penalties caused by mischievous buffaloes, etc. The first three chapters relate to some Islamic laws on daily prayer, Friday services, fast, tithes and gambling. The Hukum Kanun which comprised seven provisions merely deals with matters on the attire and privileges of rulers, 'dos and donts' of the subjects, rules of using colours, and so on.

Chapters on the fourth manuscript are merely rules and regulations on preparing golden flowers sent as tribute to Siam. This is entirely different and had never existed in any other Sultanate under study. The reason for this should be traced by falling back on the traditional Kedah-Siam historical ties right from the beginning of Ayuthian era. The rest of Chapters 2-24 deal with laws on the Raja's installation, duties of various Kedah chiefs specifically stipulated, orders on bestowing titles to certain chiefs, etc.

Taking a closer look at these laws we may set forth by saying that in terms of structure and contents there are close similarities between the Kedah, Malacca and Johor laws. The nature and subject matter of the provisions are almost identical among each other. Nevertheless there are also certain degrees of differences and variations especially with regard to the 'laying out' of the provisions and nature of penalties. I would personally presume that these minor irregularities are due to the formulation of those provisions much in accordance with

local and environmental needs,⁹ e.g. specifications on tonnage and weighing systems in Kedah are Koyan, kunca, naleh, gantang, etc. which are absent in Malacca and Johor laws. There are also variations in values of port duties, names of titular chiefs such as the kwang, bandela, Panglima Bandar, and so forth; no matter how different they were the subject matter was the same.

Matters on Islamic laws too are fairly clear. Malacca and Johor laws are likely to be more detailed in their provisions while in the Kedah digests the issues on Islamic laws permeate only in certain parts of the chapters, could easily be noticeable (Chapters 27 and 28 of MS.i; Chpts 1, 2 and 3 of MS.ii; only part of Chpt. 1 in MS.iii, Chapt. 10 of MS.iv).

3. The Perak Laws

At present there are at least three manuscripts on Perak laws which came into being during the traditional Perak Sultanate (a) The Undang-undang Dua-belas (The Twelve Laws), (b) Undang-undang Kerajaan (Laws of the Monarchy), (c) Undang-undang 99 Perak (The Ninety-Nine Laws of Perak). I was not able to locate (a). Regarding (b), the manuscript professes to be "The Laws of Perak, Pahang and Johore". Undoubtedly, this is the Perak version of the 93 Chapters Undang-undang

9. The Undang-undang Pelabuhan, for example, mentioned rules relating to exemption from formalities and charges on all boats and ships bringing letters from 'kapitan' and 'Kompeni' of VOC to the ruler of Kedah (Chapter 16). Meanwhile Chapter 35 of the same law codified certain rules and proposals relating to receiving of letters from the Gubernur of Malacca. This Kedah-Dutch relationship must have been motivated by pre-nineteenth century economic link.

Kerajaan of Pahang¹⁰ It contained provisions which seemingly agree in every way with those of the Malacca laws - might as well be a copy of it, subsequently turned to be a Perak version of the Malacca digests with localised variations. Chapters are in fact being condensed into 75. Out of this, 31 Chapters merely deal with matters pertaining to slavery and debtors. The existence of such codes are historically natural as it has reported that by 1874 there were probably about 3,000 slaves in Perak. There are only three chapters on maritime laws (4%).

The Ninety-Nine laws could in brief be divided into four inter-related sections, namely 'Public Laws', 29 Chapters (duties of chiefs, matters regarding rajas and penghulus, homicide, judicial procedure, rules to litigation, etc.) 'Propriety Rights and Duties', 23 Chapters (person, clearing land, duty to strangers, killing of poultry, etc.), 'Slavery, Sorcery and Miscellaneous', 21 Chapters, (slavery, general sorcery, demoniacal possession, etc.), 'Relations of Sexes', 17 Chapters (seduction, adultery, marriage and dowry, etc.). Subject matter of this digest shows striking resemblance to the preceding digests, but considerable attention has been given to matters relating to medicine and ceremony of bathing, demoniacal possession, midwives, pawang and omchs. These were hardly mentioned or otherwise totally absent in the

10. The digest was translated by John E. Kempe and R.O. Winstedt in "A Malay Legal Digest Compiled for Abdul Chaffur Muahyuddin Syah, Sultan of Pahang 1592-1614 A.D.", JMBRAS, XXI, i, 1948, pp.1-67.

All the provisions are concerned with non-maritime laws. Perhaps there are three other points of interest that should be noted. Firstly, it stated that it was introduced to Perak during the reign of Sultan Ahmad Tajuddin (Marhum Tanah Abang) and the time of one Sayid Abdul Majid, the Minister; the provisions were set out in the form of responsa, i.e. series of 99 local dictas or judgements that purport to have been delivered by a Persian Minister, Khoja Bardza Ameer Hakim for the guidance of his master, Nusyirwan the Just.¹¹ Presumably these are the only laws of a Malay Sultanate of Malaysian Peninsula in which this style occurs and seems to argue a certain degree of relative sophistication.

Secondly, there is a Persian element in the laws attended by names such as Nusyirwan, Khoja Bardza, Raja Kobat, etc. which is in the course of inter-textuality also present in the Undang-undang Kerajaan¹² and other Malay "historical" works such as the Hikayat Maresekalek.¹³ However, as a matter of fact, neither this should be taken as implying any connection between Perak codes and Persian laws nor is this an evidence of Persian influence in the laws of a Malay Sultanate. The study is highly problematical. It may perhaps be only a genealogical gambit. Are we to seriously imagine that these ancient Persian worthies knew anything about Perak Malay padi planting, types of kerbau that

11. Translated version of this law by J. Rigby was reprinted in R. L. Wilkinson's Papers on Malay Subjects, Law, Pt. II, 1908, pp. 20-56. In 1970 it was reprinted in Hooker's Readings...., pp. 57-82.

12. See "Introductory" Chapter in Kempe and Winstedt, op.cit., p. 29.

13. Hikayat Maresekalek, Or. 2776d, Library of KITLV, Leiden. Legal and historical studies of the manuscript by the writer is in progress.

for stealing, etc. There are, of course, many other examples
were available in Perak, the social positions of pawang and bomohs in
Perak, etc.?

Thirdly, the preamble attempt to relate the provisions to the
laws of Allah which is definitely the consequence of the Islamic
influence which is also present in Malacca, Johor and Kedah laws. The
difference only lies in the degree of the Islamic impact and manner in
variations among them. Thus for an example Chapter 5 of the Malacca
Laws codified that he who kills is to be put to death by the law of God.
The Perak Laws also codified the same penalty for the same offence, but
went on to say that in the case of true believers, if the murderer
appears before the court, the death penalty will not be inflicted. But
a fine of five tahil of gold must be paid, and a funeral feast provided,
either a buffalo, a white goat or a white camel. Nature of penalties
between the two sets of laws also do not agree in various ways. In the
Perak Laws fines (in the form of varying weights, e.g. tahil, paha
or certain quantity of derham, dinar, etc.) appeared to be more favourable
than physical retaliations which were fairly commonly found in the Kedah,
Malacca and Johor laws, such as the slitting of the tongue or pummelling
of the mouth or extracting of teeth for abusing people, scalping of
heads for forging the ruler's seal, flogging with certain number of the

Johor laws - Strictly for rulers. No mention of others.
The penalty is death.

Kedah laws - Strictly for rulers, but could be used by the
chiefs and brigades with the ruler's
permission. The penalty is the article to be
confiscated only.

d) Punishment for theft or robbery:

Malacca and Johor laws - Mentioned explicitly: amputation of
(right) hand, otherwise on the discretion of
the judge, the thief became slave of the owner
of the property.

Perak laws - Amputation of hand, but with conditions
that (a) the accused must be an adult, (b) the
thing stolen must be worth 1 manik,
(c) it must be the thing itself and not
take it.

for stealing, etc. There are, of course, many other examples of found irregularities in executing penalties. 14

Other examples of irregularities are in the following issues:

(a) On the use of royal language:

<u>Malacca Laws</u>	<u>Johor Laws</u>	<u>Kedah Laws</u>
Titah (Command)	Titah	Titah
patik (I, me)	patik	patik
murka (wrath)	murka	kami
kurnia (grace)	-	kita
nugeraha (bounty)	nugeraha	kurnia

(b) On duties of rulers:

<u>Malacca and Johor Laws</u>	<u>Kedah laws</u>
firstly, merciful	pardon the sins of the subjects
secondly, generous	to be generous
thirdly, courage	inquire into offences
fourthly, able to give verdict decisively	execute laws strictly
(Chapter 1)	courtesy of manners
	issue orders without revoking
	do good works
	suppress evil works
	(Chapters 2 & 3)

(c) On the use of articles of yellow in colour:

- Malacca laws - Strictly for rulers. Could be used by the chiefs only with royal permission. The penalty is death.
- Johor laws - Strictly for rulers. No mention of others. The penalty is death.
- Kedah laws - Strictly for rulers, but could be used by the chiefs and bridegroom with the ruler's permission. The penalty is the article to be confiscated only.

(d) Punishment for theft or robbery:

Malacca and Johor laws - Mentioned explicitly: amputation of (right) hand, otherwise on the discretion of the judge, the thief became slave of the owner of the property.

Kerajaan of Perak - Amputation of hand, but with condition that (a) the accused must be an adult; (b) sane (c) thing stolen must be worth 1 emas 3 kupang, (d) thing must be taken from its proper place, (e) it must be the thing itself and not another like it.

These are the written works of laws or elements of laws found during the sultanates. There is the possibility that besides these written evidences there were also unwritten materials of customary laws taking shape in the form of oral traditions blended together with the complex network of social norms and adat. However, it has yet to be unravelled.

By tradition the four states practised Adat Temenggong, naturally the provisions of their laws are often described as containing rules of this adat. These comprise of two sections, i.e. on maritime laws and non-maritime matters. The written laws contained wide range of subject matter, jumbling of constitutional, civil and criminal laws, court rules, law of the fugitive slaves, libel, contract, betrothal agreement, and so forth. These are characterised further by the absence of any proper arrangement in any set order. As a matter of fact, these laws are not a complete statement of the law as compared to our present understanding of the laws of the present day. Furthermore there are internal inconsistencies in the laws. As usual these two factors are actually found rather in the domain of private laws where the digests themselves assume an already existing body of customary regulation.

It is also fairly difficult to determine whether in Malacca, Johor and Kedah there were any institution or legal functionaries dealing specifically with laws in the country to handle and to control the proper running and administration of justice. But in the case of Perak the Undang Besar Delapan (The Eight Constitutional Chiefs) were

reported to be responsible for safeguarding the proper administration and execution of the Undang-undang Kerajaan.¹⁵ Furthermore in the three states important chiefs (e.g. Bendahara, Laksamana, Syahbandar and in the case of Kedah the Paduka Seri Wangsa)¹⁶ under certain circumstances, could, on royal sanction be appointed as Hakim (judge) to preside over the laws. However, preference was still given to the ruler to finalise any issue on legal matters. A point of interest which might be deduced from the provisions being depicted by the Malacca and Johor laws is that punishments were meted out according to one's social rank in the society. Generally the higher one's status, the lesser the penalty. There was also every likelihood that the person could escape punishment.

III

Now, regarding the composition of these laws. Some scholars are of the opinion that the Kedah and Johor laws were merely adaptations of Malacca laws.¹⁷ Subsequently, it was claimed that the Malacca laws

15. Since the Orang Besar Delapan administered and took charge of the laws eventually the law was also known as Undang-undang Delapan. See W.E. Maxwell, "The Law Relating to Slavery among the Malays", The Straits Branch of the Royal Asiatic Society, No.22, 1890, p.256.

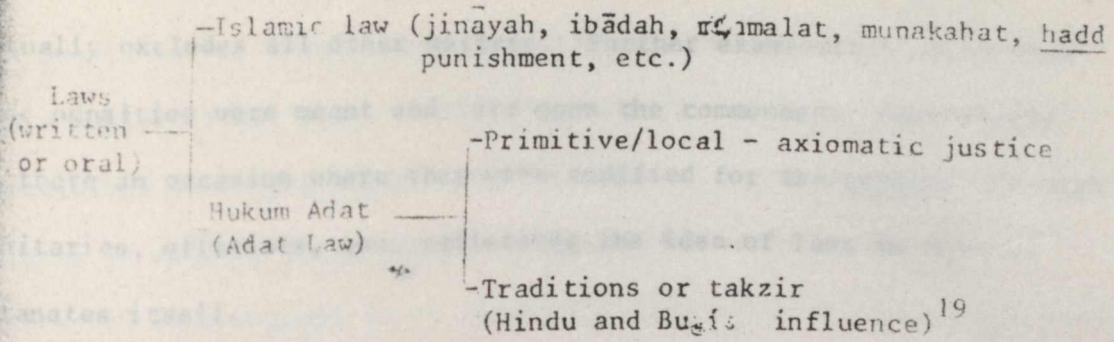
16. In the Sejarah Melayu tradition it was mentioned that each of this chief had his own court or balai. Thus there were balai Bendahara, balai Laksamana, balai Temenggung, etc. In Kedah Paduka Seri Wangsa was the chief of the hakim. Wan Yahaya, Salasilah atau Tawarikh Kerajaan Kedah, undated, p.25.

17. Liaw Yock Fang (ed.), Undang-undang Melaka (The Laws of Melaka), The Hague, 1976, p.1.

stood by themselves as the most important of all of these laws. It is probable too that both Johor and Kedah laws were none other than another version of Malacca laws. Nevertheless, saying that the Malacca laws were relatively a model for the Johor and Kedah laws by merely looking at the probable 'incidental' similarities and resemblances in the provisions besides understanding of their historical link may also aggravate further problems.

It is acceptable that there are some measures of uniformity among the provisions of the laws of these Sultanates. But this does not mean that they are of a common origin or as a matter of fact being a process of local diffusion. Perhaps it may also be, as Hooker puts it, a 'conscious imitation'.¹⁸ On the other hand, there are also virtual disparities among some of the chapters of the laws which may argue for a local origin or a circumstance of relative cultural independence. Besides this local origin which may appear in the form of adat (custom), hukum adat or hukum-resam (customary laws) and hukum (laws), also kias (analogy) there is also evidence of Hindu, Bugis and Muslim influence of varying degree of effectiveness. However, the third influence seems to be paramount, the impact was rather striking. In brief, we may enumerate that the laws of these Sultanates could be simplified as follows:

18. See M.B. Hooker, Adat Laws in Modern Malaya, Kuala Lumpur, 1972, p. 85.



IV.

What then are the basic characteristics of these laws? At the outset we may say that almost all the laws belonging to these Sultanates devoted a large amount of space to a description of penalties for various offences ranging from major offences such as misuse of 'inner language' (e.g. titah, murka, kurnia, nugeraha) which carry ultimate sentence of death up to minor offences such as a buffalo causing damage to another's fence. A salient feature of these penalties is that they were based entirely on local traditions and indigenous in nature of which one of this sort of punishment was rooted on the value of malu (public bashing) according to takzir punishment for those who committed theft or zina with someone's wife.²⁰ In some other digests especially those of maritime types the description of penalties

19. On local written and oral Indonesian laws see van Vollenhoeven, Het Adatrecht van Nederlandsch Indie, 1928, Vol. I, p.9.

20. Chapter 12 of the Malacca Laws stipulates that: "If a man seduces another's wife, and the husband comes to know about it and lodges a complaint with the judge, he (the seducer) shall be ordered by the judge to prostrate himself before the husband in public. If he is unwilling ... he shall be fined 10½ tahil..." In the same manner the Maritime Laws of Malacca mention that if a male and female slave commit fornication and were caught, would not be bound by punishment according to Islamic law but they would be whipped by people who boarded the ship (dipalu beramai-ramai akan dia, Ch.2).

virtually excludes all other matters. Further examination shows that these penalties were meant and laid upon the commoners; very rarely was there an occasion where they were codified for the kerabat and high dignitaries, officials, thus reflecting the idea of laws in the Sultanates itself.

There is also no clear distinction drawn between various branches of laws, be it constitutional law, personal law, civil law or criminal law. For instance, regulations for court etiquette were jumbled with funeral obsequies of dignitaries, subjects, etc. Matters on laws of the land were mixed with offences for forging and counterfeiting the royal seal. Issues on various penalties for respective offences are denoted by the word fasal or bermula (chapter or that) in the case of Malacca and Johor laws; undang-undang orang (laws of the people) in the case of Perak laws.

Provisions pertaining to slavery (ownership, offences committed by slaves, personal and family rights of slaves, etc.), seem to deserve particular attention in almost all the laws of the states. Besides this, matters on animal trespassing, rules on receiving various types of foreign officials are common.²¹ Within this category, laws and regulations of ownership of land for berhuma purposes are also dominant.

11. This specially appears in Undang-undang Pelabuhan of Kedah, Chapter 35 of this law codified arrangements and protocols on receiving letters and envoys from Gurnadur of Malacca, Raja of Perak, Ruler of Jambi, Phra of Ligor, Oya of Senggora, etc. with different ranks and orders.

Further to this there are also provisions relating to rules on ownership and inheritance of property. But the law pertaining to this matter is not dealt with in any detail. In many instances, provisions are vague though a description of the acquisition of property rights is usually to be found. A clear example could possibly be extracted from Chapter 33 of the Ninety Nine Laws of Perak which accounts for the division of the estate of a deceased.²² The composition is rather artificial. Whether or not it argues for the Islamic law of farā'idh (division of property) or for the local and indigenous adat in property inheritance, is rather uncertain.

Rules relating to munakahat (marriage and divorce) are generally rules of Islamic Syafi'i laws. In Malacca and Johor laws (also in a few Chapters of Perak Laws) these include, among other things, rules and Hukum on wali, procedure of nikah, marriage witnesses, ruler of khiyyar (right of recission), right and circumstances of talak (repudiation). Other direct Islamic influence are rules concerning ibadah such as prayer and fast; muamalat like issue on riba' (usury) business transaction, trusteeship and ikrar (oath). A fascinating point to note regarding this Islamic influence is that sometimes the so-called

22. Chapter 33 of this law codified that "... law relating to the division of the estate of a deceased person.... House and garden, crockery, kitchen-utensils and bedding, are taken by the female children. Implements of iron and weapons, padi lands or mines, go to the sons. The debts and assets of the estate are divided as follows: a son takes double a daughter's share. The remaining property is equally divided, for all children are on an equality, all have the same origin, And it must be mentioned that if there are unmarried children their shares are increased by ten per cent."

and claimed to be hukum Allah (the law of God) is not Islamic law at all.²³ I presume that it is because of the technicalities and complexities of Islamic law that were imperfectly understood by the scribe or otherwise due to errors made by the copyist. Consequently the law texts being handed to us presently became corrupt.

Most of these laws contain non-Islamic penalties for offences against 'public law'. That is again to say penalties for various crimes (which are regarded by Islamic law as jinayah) are indigenously based or merely adat rules. Reference could be made from sexual offences. All the three laws of Malacca, Johor and Perak treat offences against sex quite lightly. A man who is caught seducing a virgin and subsequently has intercourse with her, for example, is only required either to marry her or to pay certain amount of fines or both. In case the victim is

23. At least two cases could be traced from the Malacca Laws of such deviation. One, Chapter 14:2 says that a person who accuses others of committing zina and is guilty of this offence is ordered by the judge only to swear the oath and repent his deed, "... Such is the law of God". Whereas in the actual Islamic law, under kadhif rule, the accuser should be lashed 80 times as penalty. Two, Chapter 37:1 on rules governing the testimony of witnesses. The Malacca Laws say that a witness' testimony is only acceptable if he has five qualities, i.e. he must be a Muslim; ākil (sane); bāligh (of age); ādil (good character); should avoid committing big and small sins. In Islam, what is being mentioned as the fifth quality is actually not a separate quality by itself, but an elaboration of the word 'ādil' which comes fourth in line. The fifth quality should be hurriya (freedom). This is totally dropped by the Malacca Laws.

24. See Abu Sujak, Al-Taqrīb, 1897, No.21, p.22; Qassim al-Chazzi, Fath al-Qarib, 1895, pp. 700-1.

a married woman the seducer has only to prostrate himself before the husband and is then granted a pardon. Whereas in the actual Islamic law he is bound by a hadd punishment,²⁴ i.e. he shall be either stoned to death or will be flogged, whichever applicable.

In the Kedah laws, stealing, robbing, cock fighting, gambling worshipping of trees and rocks are all regarded as sins against God. According to Islamic law those committing these sins are liable to be severely punished or the wrongdoer would turn syirik or kufr.²⁵ But Chapter I of this law states that the elders should report these offences to the kweng (headman). Failure to report on the part of the elders or of the headman is punishable. Specific penalties imposed upon the offenders were not mentioned at all.

Finally, these digests of the Sultanates are not only legal documents, they are also quasi-political documents. Historically, we may say that the political organization of these Sultanate was somewhat

24. Hadd (limit, hindrance) punishment means penalties for committing crimes which have already been fixed by Islam. The four types of crimes are (i) stoning the person to death for committing zina; (ii) killing by crucifixion or with sword for those who committed highway robbery with homicide; (iii) amputating of hand and/or foot of the accused for committing theft, highway robbery but without homicide; (iv) for less serious offences e.g. accusation of zina, drinking of wine, etc. in which the punishment is flogging with varying numbers of lashes. See Encyclopaedia of Islam (New Edition), London-Leiden, 1960, under hadd rule.

25. Among the 'Satan's handiworks' considered as offences in Islamic law are intoxication, gambling, worshipping of trees and stones, divination of arrows, etc. Refer Verse 93 and 94, Surah Al-Māidah, Al-Quran.

'fluid' and unstable. In such circumstances the provisions of the laws could possibly provide a series of fixed points, theoretically defining the suzerainty of the rulers from the legal point of view. In terms of power there is a distinction between the Sultan's law and the village law. The law conferred a legal status upon the Sultans, and is distinct from the law held by the pembesar. In this respect, the laws could be regarded as fixed points on a political organization scale.

Thus, for example, say a new pretender to the throne tried to supply himself with certain genealogy to boost his claim, inevitably would model his regalia and the trappings of ranks from examples in the digests.
