

THE ADMINISTRATION OF MUSLIM LAW IN WEST MALAYSIA
AND THE POSITION OF
SYARIAH COURT.

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PREFACE.

The topic of this project paper is, The Administration Of Muslim Law In Peninsular Malaysia And The Position Of Syariah Court. Although the topic seems general, the writer has emphasized more on Federal Territory as an example. The research is based on Administration Of Muslim Law Enactments of several states.

The object of this project paper is to examine on how the administration of Muslim Law being conducted and the position of Syariah Court as to this.

Since the Islamic matter is under the State List in our constitution, there are 13 Administration of Muslim Law Enactments. However after studying them,,the differences are not that great.

On the issue of the position of Syariah Court the writer has touched on the question of jurisdiction, procedure, function and problems. The writer also discussed on how to improve the position of the Syariah Court.

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CHAPTER I

POSITION OF MUSLIM LAW BEFORE BRITISH INTERVENTION

Before the British intervention Muslim Law and Adat were the law applied in the Malay States. The Sultan was the ruler where he possessed all the powers. If any dispute arise about the interpretation of the law and its disposition, the matters were be referred to him. He will give his decision base on Al-Quran, Al-Hadis and The Hukum Kanun which was enforced at that material time in every states.

In Malacca there was Risalat Hukum Kanun and Undang-Undang Melaka. In verse it contained Muslim Law and Adat such as law relates to marriage, divorce, maintenance and others.

In Pahang there was Hukum Kanun Pahang which contained Muslim Law relates to Qisas, forfeiture, defamation, robbery, theft and others. There was also law related to hire purchase, guarantee, investment, trust, land and gift.

In Johore, Muslim Law which applied in Turki and Mesir/ Egypt was interpreted in Malay and was adopted there.

Although the Sultan is the ruler, their chiefs were responsible for preserving order and at the same time maintaining social cohesion in their communities. For example Bendahara who is the Chief Minister exercise both political and judicial functions. The Temenggong was responsible for apprehending criminals, maintain prison and keeping the peace. Serious offences were tried by the District Chief but he had no power to order judicial execution which was the privilege of the Sultan. However in The Annual Report of Pahang 1888 it stated that:

" Many of the local chiefs exercise in the absence of the Sultan a practically unlimited jurisdiction in civil and criminal cases. "

In the case of Shaikh Abdul and Others v Shaikh Alias Bux¹, Edmonds J.C. referring to the position in Perak, Selangor, Pahang and Negeri Sembilan during 19th century stated that :

" Before the first treaties the population of these States consisted almost solely of Mohammedan Malay with a large industrial and mining Chinese community in their midst. The only law at that time applicable to Malay was Mohammedan modified by local customs. "