

THE CONSTITUTIONAL HISTORY OF SARAWAK

BY

MAJOR MOHD RAZALI OSMAN

Submitted in partial fulfilment of the requirement for

THE DIPLOMA IN LAW

at the

Kajian Pentadbiran dan Undang-Undang

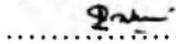
Institut Teknologi MARA

March, 1982

Signature of Author: .....



Certified by: .....



(Supervisor)

## ABSTRACT

Prior to 1841, Sarawak was just a small province of the Sultanate of Brunei and was administered by the Governor, who was the Sultan's representative. James Brooke acting in a private capacity as an adventurer and trader was instrumental in bringing peace to the province in 1841. In return for his aid Raja Muda Hashim, the Sultan's uncle and heir presumptive of the Sultan of Brunei, transferred the government of Sarawak to Brooke, who then styled himself "Rajah". This was the beginning of Sarawak modern history. The Brooke family ruled Sarawak for about a century till 1946.

Immediately after the Second World War, Sir Charles Vyner Brooke, the Third, and last, White Rajah ceded Sarawak to Britain. Thus, Sarawak became a Crown Colony in July, 1946. The cession of Sarawak to Britain created a lot of "unhappiness" with certain portions of the population especially with the Malays. As a result, "anti cessionist" movements were organised in Sarawak. Though unsuccessful, their activities climaxed with the murder of Mr. Duncan Stewart, the Second (Colonial) Governor of Sarawak in 1949. Constitutionally, Sarawak develop at a much faster rate under the British Colonial administration and the people were slowly but surely entrusted with the governance of their own country.

## CONTENTS

Title Page	i
Preface	iii
Abstract	vi
Table of Contents	viii
Map: The Growth of Sarawak	x
Chapter I: INTRODUCTION	1
Chapter II: THE WHITE RAJAH ERA	
I. Introduction	4
II. The Rule of Sir James Brooke (1841-1868)	5
III. The Rule of Sir Charles Anthoni Brooke (1868 - 1917)	8
IV. The Rule of Sir Charles Vyner Brooke (1917 - 1946)	12
Chapter III: THE CROWN COLONY ERA	
I. The Anti-Cessionist Movements	17
II. Sarawak as a Crown Colony	21
Chapter IV: SARAWAK IN MALAYSTIA	
I. Introduction	27
II. The Constitution of Sarawak (Annex C to the Malaysia Agreement, 1963)	28
A. The Governor as the Head of State	28
B. The Executive (Supreme Council)	30
C. The Legislature (Council Negri)	32
D. Other Provisions of the Constitution	36
III. Control of Immigration into Sarawak	38
IV. The Present Constitution of Sarawak	
A. Introduction	39
B. Part I - The State Government	40

## CHAPTER I

### INTRODUCTION

In 1839, the Sultan of Brunei was Sultan Omar Ali Saifuddin, the Second, and the Sultan's Governor in Sarawak was Pengiran Makota. Due to Makota's inefficiency in handling the rebellion of the Malays and Land Dayaks, which was led by Datuk Patinggi Ali, the Sultan sent Raja Muda Hashim, his uncle and heir presumptive of the Sultan of Brunei, to put down the rebellion. Sarawak at this time <sup>was</sup> just a small province in West Brunei (from Tanjung Datu to Samarahan and Sadong River). The arrival of Raja Muda Hashim in Sarawak did not, however, improve the situation as the rebellion had become "protracted" for many years.

On August 15, 1839, James Brooke who was then a "young sailor-cum-explorer" arrived in Kuching for the first time with the mission of conveying a message of thanks and some presents from the Governor of Singapore to Raja Muda Hashim, who had helped some British sailors who were shipwrecked near the coast of Sarawak. James Brooke returned to Sarawak on August 29, 1840 and he was offered to be the Governor and Rajah of Sarawak by Raja Muda Hashim if he could help to fight against Datuk Patinggi Ali and the rebels. With James Brooke's intervention, the rebellion was quelled and Pengiran Indera Mahkota was dismissed as Governor of Sarawak, *inter alia*, for his bad rule and malpractices in the administration. As a result, on September 24, 1841, James Brooke was proclaimed as the

first Rajah and Governor of Sarawak as promised by Raja Muda Hashim. However, it was only on August 1, 1842 that the Sultan of Brunei formally recognised him as Rajah of Sarawak, which title was rendered complete and unassailable. This was an important milestone in the history of Sarawak, which later developed slowly in a series of stops and starts, into its present shape and size as the largest state in Malaysia. This growth and its present size were very largely due to the energy of two Englishmen, James Brooke and his nephew Charles (respectively the first and second "White Rajahs" of Sarawak<sup>1</sup>).

How effective was Brunei's control and administration of the province of Sarawak and other provinces of the Sultanate remains a doubtful question. James P. Ongkili was of the opinion that:

"Although Brunei claimed the whole of present-day Sarawak as her territory, in actual fact the Sultanate had very little effective control of even the lower riverine and coastal settlements. The Brunei pengirans, and sometimes panglimas, who were the representatives of the Sultan usually governed fairly limited areas; and certainly the farther the ethnic groups were from the coastal areas, the more remote and independent the indigenous people were from Brunei or Pangiran authority and demands<sup>4</sup>."

Thus the Brooke family was able to establish their foothold in the province of Sarawak and later enlarged their territory by annexation of other provinces, and they ruled Sarawak for about a century.