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Federal Constitution: Special Protection for Sabah and Sarawak

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Abstract

The establishment of Malaysia in 16 September 1963 were replaced the Federation of Malaya (1948 - 1963). Therefore, two states in Borneo Island *i.e.*: Sabah and Sarawak willingly joined Malaysia. There was strong reason why North Borneo and Sarawak involved in the formation of Malaysia. Security, communist threats, decolonization and United Nations Resolution 1514 (1960) are the main reason of it. In 1962, North Borneo and Sarawak legislative council agreed to the formation of Malaysia on condition that state rights were safeguarded. Special protections for the new state and its people were an important agenda promised during the formation of Malaysia. As a result, Constitution of Malaysia includes special safeguards to protect Sabahan and Sarawakian interests. In general, it is known as 20-Points Agreements. In fact, it is 20-Points Agreements for Sabah and 18-Points Memorandum for Sarawak. The 20-Points Agreements are about special rights of Sabah and Sarawak that should be respected by all Malaysian citizens. The agreement is a list of 18 and 20 points drawn up by North Borneo and Sarawak proposing terms for its incorporation into the new federation during negotiations prior to the formation of Malaysia. Here, listed the 20-Points Agreement; *i.e.*: Point 1: Religion, Point 2: Language, Point 3: Constitution, Point 4: Head of Federation, Point 5: Name of Federation, Point 6: Immigration, Point 7: Right of Secession, Point 8: Borneanisation, Point 9: British Officers, Point 10: Citizenship, Point 11: Tariffs and Finance, Point 12: Special Position of Indigenous Races, Point 13: State Government, Point 14: Transitional Period, Point 15: Education, Point 16: Constitutional Safeguards, Point 17: Representation in Federal Parliament, Point 18: Name of Head of State, Point 19: Name of State, Point 20: Land, Forests, Local Government. Thus, this paper will be discussed the 18 and 20 points agreement constructively.

Keywords: *Federal Constitution, Special Protection, Sabah, Sarawak, 20 Agreements*

INTRODUCTION

Malaysia is an existence new country after Singapura split with Federation of Malaya (*Persekutuan Tanah Melayu*) in 1963. As a result, East Malaysia merged into Peninsular Malaysia become Malaysia. East Malaysia is referring to the states in Borneo island *i.e.*: Sabah and Sarawak including Labuan Island. The question is, eventhough East Malaysia is a part of Malaysia, but why Sabah and Sarawak always being treated differently from the states in Peninsular Malaysia? This paper will delicately answer that question.

Undoubtedly, Malaysian people itself are confusing about the issue of their country related to East Malaysia. Most of them are wondering why Sabah and Sarawak

are treated not equally Peninsular Malaysia. Certainly, Malaysia has two different dates of celebrating its country, first; National Day (*Hari Kebangsaan 31st August*) and second; is Malaysia Day (*Hari Malaysia 16th September*). All these were the reason for the formation of Malaysia which comes as a result of an agreement between Peninsular Malaya, Sabah, Sarawak, Singapore and the British Colonial government. It is refer to the Malaysia Agreement that stated 18 and 20 points as a promised to Sabah and Sarawak people before the emerging of new state i.e Malaysia.

A Brief History of the 18/20 Points Agreement

The 18 and 20-Points Agreement or memorandum was the conditions laid out by Sabah and Sarawak respectively before agreeing to form Malaysia. 18-Points Agreement is for Sarawak. Meanwhile 20-Points Agreement is for Sabah. In general, the agreement is well known as 20-Agreements for both states. The agreement signed on July 1963, few months before the formation of Malaysia. That is an important document safeguarding the rights and autonomy of Sarawak and Sarawakians, and Sabah and Sabahan. That refers to special right for Sarawak, Sabah and its people.

The agreement is stated in the Proclamation of Malaysia and the Cobbold Commission reports. Clearly, in the agreement stated important right of the Sabah and Sarawak when they merge into Malaysia. In general, researcher found that, the conditions and rights that were meant to safeguard the autonomy and the special interest of the people of Sabah and Sarawak, protecting, among others, these regions' rights on religion, language, education, administration, economy and culture are important elements in the agreement. Some of the points were incorporated into the Constitution of Malaysia for instance in the Part XII: General and Miscellaneous (Federal Constitutions, article 161)

Malaysian Constitution

Malaysian Constitution never denied the special protection and safeguard of Sabah and Sarawak. It can be seen in the Federal Constitution Part XII as following: Part XIIA:

- 161. Use of English and of native languages in States of Sabah and Sarawak
- 161a. Special position of natives of States of Sabah and Sarawak
- 161b. Restriction on extension to non-residents of right to practice before courts in States of Sabah and Sarawak
- 161c. (Muslim education in Borneo States—Repealed)
- 161d. (Freedom of religion—Repealed)
- 161e. Safeguards for constitutional position of States of Sabah and Sarawak
- 161f. (Use of unofficial languages in Singapore Assembly—Repealed)
- 161g. (Special position of Malays in Singapore—Repealed)
- 161h. (Safeguards for constitutional position of Singapore—Repealed)

Crystal clears that, Malaysia by its laws respect and takes care of its citizen through its Constitution. A constitution is considered as supreme laws of Malaysia. In consequence, people of Sabah and Sarawak always treated as what the constitution mentioned their rights.

Federal Constitution

Broadly speaking, the idea of federalism is a system of government in which entities such as state share power with a national government. Federalism is a system of government in which the same territory is controlled by two levels of government. Malaysia has been practicing this idea in its administration and governance. There are two level of governments' i.e; federal and state. That is why East Malaysia and Peninsular Malaysia can be seen slightly difference in the way how it is operate.

Generally, national government is responsible for the federal governance, and also governing the issues that affect the entire country. While the smaller subdivisions; states and cities, govern the issues of local concern. Both the national government and the smaller political subdivisions have the power to make laws. Both have a certain level of autonomy.

Federal and State Relations in Malaysian Constitution

The ninth schedule of the Federal Constitution lay out the distribution of legislative powers and responsibilities between the federal and state governments. The federal government's scope including trade, commerce and industry, foreign affairs, defense, internal security, law and order, physical development (communication and transport), human development (education, health and medicine). In the other hand, the state governments controlling; lands and mines, Muslim affairs and customs, native laws and customs, agriculture and forestry, local government and public services, burial grounds, markets and fairs, licensing cinemas and theatres. The operating at the same time by federal and state covering social welfare, scholarships, town and country planning, drainage and irrigation, housing, culture and sports, as well as public health.

Special Protection for Sabah and Sarawak

Special position for Sabah and Sarawak is very unique agreement between Malaya and Borneo. It was justified for many reasons, such as security, communist threats, decolonization and United Nations Resolution 1514 (1960). The 1963 pact between the Federation of Malaya, the British government, North Borneo (Sabah), Sarawak and Singapore was drawn up after a lengthy process of bargaining and negotiations before the formation of Malaysia.

United Nations (UN) Treaties Series printed in 1974 page 4 mentioned the agreement relating to Malaysia. The United Kingdom of Great Britain (UK), Northern Ireland, the Federation of Malaya, North Borneo, Sarawak and Singapore are involved in that agreement of formation of Malaysia (United Nation Report, 1974). Article I, II, III and IV agree as bellows:

Article I

"The Colonies of North Borneo and Sarawak and the State of Singapore shall be federated with the existing States of the Federation of Malaya as the States of Sabah, Sarawak and Singapore in accordance with the constitutional instruments annexed to this Agreement and the Federation shall thereafter be called "Malaysia".

Article II

“The Government of the Federation of Malaya will take such steps as may be appropriate and available to them to secure the enactment by the Parliament of the Federation of Malaya of an Act in the form set out in Annex A to this Agreement and that it is brought into operation on 31st August 1963 (and the date on which the said Act is brought into operation is hereinafter referred to as "Malaysia Day").

Article III

“The Government of the United Kingdom will submit to Her Britannic Majesty before Malaysia Day Orders in Council for the purpose of giving the force of law to the Constitutions of Sabah, Sarawak and Singapore as States of Malaysia which are set out in Annexes B, C and D to this Agreement”.

Article IV

“The Government of the United Kingdom will take such steps as may be appropriate and available to them to secure the enactment by the Parliament 1, came into force on 16 September 1963, in accordance with article II, as amended by the Agreement of 28 August 1963.

Resource: page 241 of UN Treaties Volume No. 10760

The Important of Minorities

According to James Chin (2019), the different of Borneo states, historically, dynamics in politics led the formation of the Malaysia. Consequently, it is shaping the politic of Sabah and Sarawak. Peninsular Malaysia and Borneo has differences in ethnic minority. Three major ethnic in Peninsular Malaysia formed Federation of Malaya (*Persekutuan Tanah Melayu*). Meanwhile, there are many others ethnic in Borneo that shape Malaysia.

People of Sabah

Thirty percent (30%) of Sabahan population is the Kadazan-Dusun. They live at the hills and upland valley. Meanwhile, the second largest ethnic group is Bajau. Bajau people are a seafaring people and live near to the sea. The Muruts are the third largest among the ethnic groups in Sabah. Large percentage of Muruts can be found residing in the interior division. Other indigenous ethnic groups can be included as the Bisaya, Brunei Malay, Bugis, Kedayan, Lotud, Ludayeh, Minokok, Rungus, and Suluk.

In short, ethnicities in Sabah are very diverse. In this research, researchers found there are about 30 ethnic minorities in North Borneo (Sabah). 30 ethnic minorities of them are as following: 1. Bruneian Malay People, 2. Kadazan-Dusun, 3. Murut People, 4. Sama Bajau, 5. Dusun People, 6. Rungus People, 7. Kadazan People, 8. Lun Bawang, 9. Iban People, 10. Tausug People, 11. Kedayan, 12. Lotud, 13. Bisaya, 14. Orang Sungai, 15. Minokok, 16. Tidung People, 17. Rumanau People, 18. Ida'an, 19. Mangka'ak, 20. Dumpas, 21. Tambanuo People, 22. Kwijau, 23. Maragang, 24. Cocos Malay, 25. Orang

Asal, 26. Sa'ban People, 27. Bukitani People, 28. Ukit People, 29. Timorese People and 30. Ubian.

People of Sarawak

In general, there are five major ethnic groups in Sarawak. There are Iban, Malay, Bidayuh, Orang Ulu, Melanau. At the same time, researchers found that several minor ethnic groups. In Sarawak, there are 1. Iban people, 2. Bidayuh, 3. Melanau people, 4. Dayak People, 5. Kenyah People, 6. Penan People, 7. Kelabit People, 8. Orang Ulu, 9. Kayan People, 10. Lun Bawang, 11. Murut People, 12. Kedayan, 13. Bisaya, 14. Punan Bah, 15. Selako People, 16. Bukitani People, 17. Bruneian Malay People, 18. Sa'ban People, 19. Ukit People, 20. Minokok, 21. Orang Asal, 21. Mangka'ak, 22. Rumanau People, 23. Tambanuo People, 24. Kwijau, 25. Maragang, 26. Klemantan People, 27. Apo Kayan People, 28. Krio Dayak People, 29. Uma Baka' People.

Sabah and Sarawak people were involving in the formation of Malaysia through the Cobbold Commission. Their voice and opinion were the fundamental of the issue either the Sabahan and Sarawakian supported the proposal of formation of Malaysia.

Cobbold Commission

Cobbold Commission of Enquiry reported the new federation (Malaysia) would be in the best interests of North Borneo and Sarawak. Consequences of this, the Inter-Governmental Committee (IGC) was tasked to work out the future constitutional arrangements. That is including safeguards for the special interests of North Borneo and Sarawak. The measure taken to protect and to prevent Sabah and Sarawak people must be covering such matters. The matters are including religious freedom, education, representation in the Federal Parliament, the special position of the indigenous races, control of immigration, citizenship and state constitutions. Leaders of North Borneo and Sarawak were represented in the IGC. Elections were held in North Borneo in 1962. In the other hand, election in Sarawak taken place in 1963.

However, formation of Malaysia was rejected by the governments of the Brunei, Philippines and Indonesia for its own reason. There three countries were not willing to join Malaysia. The UN Secretary-General appointed a Mission to the Borneo States to conduct a survey. The survey was on whether the Malaysia proposal had the backing of the people of the North Borneo and Sarawak.

20-Points Agreement for Sabah and Sarawak

In 1962 and 1963, resolutions were passed by the Malaysia Solidarity Consultative Committee and the Legislative Council of North Borneo to proceed with the Malaysia proposal. Malaysia proposal or formation of Malaysia's idea has to include the condition that the special rights of the Borneo States must be protected. Finally, the 20-Points Manifesto of the Sabah Alliance and a similar 18-Point Agreement in Sarawak were drafted.

The 20-Points Agreement of Sabah

Table 1: 20-Points Agreement Related To Sabah

Point 1: Religion	Point 6: Immigration	Point 11: Tariffs and Finance	Point 16: Constitutional safeguards
Point 2: Language	Point 7: Right of Secession (withdrawal into privacy or solitude)	Point 12: Special position of indigenous races	Point 17: Representation in Federal Parliament
Point 3: Constitution	Point 8: Borneanisation	Point 13: State Government	Point 18: Name of Head of State
Point 4: Head of Federation	Point 9: British Officers	Point 14: Transitional period	Point 19: Name of State
Point 5: Name of Federation	Point 10: Citizenship	Point 15: Education	Point 20: Land, Forests, Local Government, (etc).

The 18-Point Agreement of Sarawak

Table 1: 20-Points Agreement Related To Sarawak

Point 1: Religion	Point 7: Right to secession	Point 13: State Government
Point 2: Language	Point 8: Borneanisation	Point 14: Transitional period
Point 3: Constitution	Point 9: British Officers	Point 15: Education
Point 4: Head of the federation	Point 10: Citizenship	Point 16: Constitutional safeguards
Point 5: Name of the federation	Point 11: Tariffs and Finance	Point 17: Representation in Federal Parliament
Point 6: Immigration	Point 12: Special position of indigenous races	Point 18: Name of Head of State

The agreement for Sabah and Sarawak shows that the headings are the same for the first 18 points. In contrast, for Sarawak there is no last two points as 20-Points Agreement of Sabah. Most of the points are incorporated into the Constitution of Malaysia.

Issues Related to the 20-Points Agreement

As a further matter, there is not many Sabahan and Sarawak people are well alert about 20-Points Agreement which is their special rights. Some of them have heard some points of the agreement. Their knowledge regarding their own special rights is pretty limited. The Borneo Post had conducted a survey on this issue. Surprisingly, the survey discovered the people of Borneo did not know the 20-Points Agreement. Some of respondents feel unsure its contents (Borneo Post, 2020).

The question about Sabah and Sarawak wealth should be raised by the Federal Government. The two states contribute massive resources to the Federation. For that reason, the prosperity of the country should be shared among all the states in Malaysia. Or at least, the allocation of money for developing infrastructure in Sabah and Sarawak must be equal as in West Malaysia. During former Prime Minister of Malaysia Najib Tun Razak's era, he helped Sabah and Sarawak tremendously, for instance, the PAN-Borneo highway. Basically, in terms of economic development, Sabah and Sarawak need more help by the federal government. The infrastructure in both Sabah and Sarawak is vastly underdeveloped compared to the West Malaysia.

CONCLUSION

The Malaysian Constitution stated the special rights of Sabah and Sarawak by inserting thirty-five new articles to grant to Sabah and Sarawak guarantees of their autonomy and special position. This is shown to the people of Sabah and Sarawak; their special rights are covered by the supreme laws. The 20-Points Agreement listed beautifully in the Federal Constitution. However, after 57 years in joining Malaysia, people of Sabah and Sarawak do not assert their special right.

Sabah and Sarawak should more integrate with the idea of Malaysia. By hope West Malaysia and East Malaysia can have more achievement in developing its nations. Else, the 20-Points of agreement will become a barrier in successfulness of Malaysia. The Federal Government (Putrajaya) and political leaders of Sabah and Sarawak must connect themselves to the 20-Points Agreement in administration and governing the state.

In contrast, Sabah and Sarawak people should enjoy their privileges as written in the Federal Constitution. Malaysia Day is a 1963 spirit of integration between East and West Malaysia to be stronger and more united as One Malaysia. In nut shell, researchers are trying to open Sabahan and Sarawakian's eyes about their special rights. Awareness, knowledge, field work and advance research in this topic is the main point to develop literature review about the 20-Points Agreements of Sabah and Sarawak.

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