

The Influence of Turkish Ottoman Islamic Civil Law in 19th Century in the State of Johor, Malaysia

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Abstract

During the Johor Government in Malaysia through modern times, it did not escape from accepting the influence of foreign countries. Sultan Abu Bakar was responsible for foreign policy of his country, had a different series of visits and the establishment of diplomatic relations with countries in Europe and the Middle East. Looking at this policy was not surprising, that Johor was the first Malaysia state has its own written constitution in 1895. Position as a state which was in the process of implementing Islamic law can be seen when Johor have good relationship with the Turkish Ottoman Government. The biggest Turkish influence in the administration of Islamic law in the state of Johor was the implementation of Islamic civil law named Majalah Ahkam Johor. This Majalah has been taken from Majallah al-Ahkam al-`Adliyyah of Ottoman Government implemented in Turkey in the 19th century AD and its influence spread throughout a colony of Turkey at that time. This shows the Johor Government's relationship with the Government of Ottoman have gone so close, particularly when under the reign of Sultan Abu Bakar and generally before the existence of the Malacca Islamic government. Marital relations, trade, culture, arts, law and others to convince us that strong relationship between the two countries have gone a long time.

Keyword: Turkish Ottoman, *Majallah al-Ahkam al-`Adliyyah*, *Majalah Ahkam Johor*

1.0 Introduction

Johor Government of Malaysia relationship with Ottoman Empire started when the Sultan Abu Bakar held a series of visits to the Europe countries in 1893 AD. Johor was the only position in the east of the country at that time was determined to make Islam the basis of the country was opened up to the Ottoman Government to have a closer relationship between a Muslim country. This was shown by Hikayat Johor that says, "... until at last he met the Exalted Highness the Sultan Abdul Majid Khan in Constantinople. Then received by him with the best received and treated with adequately enough as it was fond Highness the Sultan of Turkey to see a king in the east of the country so well borne and ways, in the case of Muslims " (Mohd. Said Hj. Sulaiman: 58)

The above statement is at once explained to us that the Johor and Ottoman Empire relationship was very different from Johor relations with countries outside the other. Various statements that we can see that shows that his relationship with the Ottoman Government bring a new influence to the state of Johor. For example, the implementation of Johor Constitution 1895, dress the Sultan of Johor, the design of the Mosque of Abu Bakar (Shamsiah Ibrahim: 2), the creation of the Islamic code of the most interesting and honorary star gift from the Sultan Abdul Majid of Turkey (Onn Jaafar: 19). May also Johor Bahru at that time can be described as a "twin cities" with the City of Constantinople.

Relationship with the Ottoman Government as an Islamic country also surely has a positive impact in the development of Islamic law in the state of Johor. This can be seen with the implementation of *Majallah al-Ahkam al-`Adliyyah* as the Islamic civil law since 1893 AD. It was revealed in the introduction section of the Majalah, "*It is book which contains the laws of speech jurisprudence derived from syari`at al-Islam that has been adopted in the Johor Government forever in Arabic language.*" (Majalah Ahkam Johor: Introduction).

Then at the reign of Sultan Ibrahim, the code has been translated into Malay language and was named as "*Majalah Ahkam Johor*". He has made this law an official guide with regard to Islamic law in Johor in 1913. The question is how far the impact of the implementation of the *Majalah Ahkam Johor* in the aspect of administration of Islamic law in the state of Johor, Malaysia. Is there a law that ever held a memorable in Johor, or simply as a document of Islamic law was used as reference material only? To answer this question surely we need to be viewed the *Majalah Ahkam Johor* with more depth than the content aspect and its implementation in the state of Johor, Malaysia.

1.1 Majalah Ahkam Johor

There are two versions of the text of *Majalah Ahkam Johor* with a different contents in the introduction, but have similarities in other parts. Both texts written in Malay Jawi text version, measuring 16 x 20 cm and has 359 pages. It was printed in "Matba` Khairiyah Muar" without mentioned of date of published. The first text was not stated who was the publisher and in the introduction stated that this book contain the proceedings laws of jurisprudence derived from the Islamic law that has been adopted in the Johor Government forever in Arabic language.

It was used since the Sultan Abu Bakar of Johor trip to Turkish Ottoman Government in 1893 AD. Then it was translated into the Malay language and so that it was easy to understand. Once the translation was confirmed, it was presented to His Majesty the Sultan Ibrahim and requested permission to be printed and used as one of the books of guidance with respect to Islamic law. Permission for doing so was in accordance with exceptions mentioned in the Johor Government Law clause 49th and the book named as "*Majalah Ahkam Johor*".

In part also stated that the permission granted by the Sultan of Johor to the Mufti, Sheikh Abdul Kadir bin Mohsin Al-Attas through a letter from the Acting State Secretary of Johor no. 998/13 dated 29th. November, 1913 AD. Consent on the date of commencement of the *Majalah Ahkam Johor* shows it used as a book of guidance with respect to Islamic law in the state of Johor. However, the book was not covering the whole in matters related to the Islamic law, but only on Islamic civil law, and it stated at the end of *Majalah* in the court rules.

The second text of *Majalah Ahkam Johor* has been published by Al-Mansor Adabi, a book printing company law in Singapore with the famous issued of the "Malayan Law Journal". In the introduction it was stated that in respect of the Johor Constitution, clause 49th and 57th, Sultan Ibrahim, with the consent of the members of justice and religion, confirmed that *Majalah Ahkam Johor* to be used by all officers, magistrates and judges in the state of Johor, in matters concerning of Islamic law. Instructions have been issued by the Mufti of Johor dated 29 Muharram, 1331 AH equivalent 21 November, 1913 AD.

This second text different from the first text in the Introduction in which Johor Mufti refers to himself as "*al-Haqir*" means the ignoble. While the second text Mufti ends with the writing "with the order." Thus this second text which was the text of the official *Majalah Ahkam Johor* used in Johor. This is because it was contained in the instructions for use issued by a printing company law.

While the first text was an introduction of a book and that would be their application in Johor. Then in 1988 AD, it was romanized by Hamzah Abu Bakar with the title "Majalah Ahkam Johor Yang Dipadankan Dari Majallah al-Ahkam al-`Adliyyah." (Abu Bakar Hamzah: 1988).

Both text *Majalah Ahkam Johor* contains sixteen books or headlines and 1.851 maddah or number. It began with the introduction of fiqh contained in maddah 1 to 100 (*Majalah Ahkam Johor*: 1-14). In the first book set on sale and it contains an introduction and seven chapters (maddah 101-403) (*Majalah Ahkam Johor*: 15-64). The second book in respect of rent and wages included therein salaries. This book contains eight chapters (maddah 404-611) (*Majalah Ahkam Johor*: 65-99). The third book states that the *kafalah* or liability contains an introduction and three chapters (maddah 612-672) (*Majalah Ahkam Johor*: 100-111). The fourth book states the *hiwalah*, transfer debt from a liability to the other obligations which contains an introduction and two chapters (maddah 673-700) (*Majalah Ahkam Johor*: 112-117). The fifth book states that the mortgage which contains an introduction and four chapters (maddah 701-761) (*Majalah Ahkam Johor*: 117-127). The sixth book states that the trust contains an introduction and three chapters (maddah 762-832) (*Majalah Ahkam Johor*: 128-144).

The seventh book states the *hibah* or grant that contains an introduction and two chapters (maddah 833-880) (*Majalah Ahkam Johor*: 144-151).

The eighth book states that the seizure and destruction that contains an introduction and two chapters (maddah 881-940) (Majalah Ahkam Johor: 151-164). The ninth book states the *Hijr* or forbidden, *ikrah* or force and *syufah* or collected, contains an introduction and three chapters (maddah 941-1044) (Majalah Ahkam Johor: 164-181). The tenth book states the *syarikah*, which contains an introduction and eight chapters (maddah 1045-1448) (Majalah Ahkam Johor: 182-264). The eleventh book states the *wakalah*, which contains an introduction and three chapters (maddah 1449-1530) (Majalah Ahkam Johor: 265-282). The twelfth book states the *sulh* and *ibra'*, or release, which contains an introduction and four chapters (maddah 1531-1571) (Majalah Ahkam Johor: 282-291). The thirteenth book states the *ikrah*, which contains an introduction and four chapters (maddah 1572-1612) (Majalah Ahkam Johor: 292-304).

The fourteenth book states the allegations, which contains an introduction and two chapters (maddah 1613-1675) (Majalah Ahkam Johor: 304-323.). The fifteenth book states the witnesses and the oath, which contains an introduction and four chapters (maddah 1676-1783) (Majalah Ahkam Johor: 323-348). The books at the end of the sixteenth book states that the sentence, which contains an introduction and four chapters (maddah 1784-1851) (Majalah Ahkam Johor: 348-361).

1.2 The Implementation of *Majalah Ahkam Johor*

Referring to the provisions of Johor Constitution 1895 as mentioned in the introduction of the *Majalah*, the two clauses referred to as back-up that allows the law is implemented in Johor, which is clause 49 and 57. Clause 49 provides that, "As for the jobs of the Government meeting, helping to be the King and the Cabinet in administering the affairs of state and people, such as making and make the correct and will add to or amend laws and rules of all kinds and but the appearance of religious law and shariah law ". (The Constitution of Johor: Clause 49).

Provisions of the above mentioned exceptions in the work of Government Meeting. Although the most important task is to formulate and amend the law but it should be other than Islamic law and shariah law. Under this provision, the Sultan was in the execution of Islamic law in Johor and one of them by implementing *Majalah Ahkam Johor*. Effective use was commenced on 29 November, 1913 AD. Clause 57 also states, "It was a "state religion" of the colony and the state of Johor, which was the religion of Islam and it will be long lasting be, and attested and the "state religion" that was not all-time can any other religion or referred to as the state religion, although all other religions were allowed and should be allowed to be kept informed of perfect peace and may be religion in the colony and all the provinces of the Johor government subverted by those who made him." (The Constitution of Johor: Clause 57).

Above provisions are related to the implementation of Islam as state religion in terms of covering the implementation of Islamic law. This indicates that the implementation of laws other than Islamic law is permissible for adherents of other religions in peace and perfect. However, what happened in Johor before the year 1913 AD is based on the speech of Sultan Ibrahim, (Royal Address to His Royal Highness London: 1930) the implementation of Islamic law that is most effective in Johor before 1908 AD. After 1908, Johor began to use English law, namely "Panel Code" and the civil court system or the "Civil Court". Then in 1913 AD *Majalah Ahkam Johor* implemented. British influence in Johor interfere with the affairs of the most effective administration in the year 1914 AD, which allows the British to put a formal general counsel. However, in the case of English law, it has been implemented earlier in Johor with the formulation of the enactment of several laws introduced by the British.

Implementation of the enactment in Johor actually has resulted in numerous conflicts of laws in the state. Despite the fact that Islamic law cannot be amended or modified by any enactment, (The Constitution of Johor: Clause 49) but as they did in the case of *Wong Ah Fook versus State of Johore* (1 JLR 1 (1915) MLJ (1937) vol. VI 128) is rather different. The case seems to have challenged the position of Islam as state religion and judges openly decided Johor law is not actually implement Islamic law. The Implementation of an enactment of that really challenge the position of Islam as the state of Johor was in 1919 AD, by the Muslim Offences Enactment 1919. The implementation have great reaction from the judges in civil courts as can be seen in the case of *Anchom bte Lampong versus Prosecutor* (2 JLR 78 (1939) MLJ (1940) 22). In this case the plaintiff has argued that Islamic law was part of the laws of Johor. By the Muslim Offences Enactment 1919 is contrary or "ultra vires" of the Constitution of Johor and the punishment was not valid.

The Court rejected these arguments and held that the Court has no jurisdiction to declare that an enactment of the legislation approved by the Council of State and the pleasure of the Sultan was "ultra vires" of the Constitution of Johor. Unlike the case of *Fatimah bte Hanis versus Hj. Ismail bin Tamin* (2 JLR 67 (1939) MLJ (1939) 134). Judge ruled that the law implemented in Johor was Islamic law, based on the case of *Ramah versus Laton* ((1927) 6 FMSLR 128).

The above facts clearly explained to us that the role of English judges in Islamic law aside in Johor was very effective. A case that decided whether it be said the Islamic law or not was based on their results. They make the excuse that this was due to Islamic law as state law has not been mentioned explicitly in the Laws of the Constitution of Johor. Then they were free to make the interpretation of what the constitution or the "law of the land" for the state of Johor.

Similarly, in the implementation of *Majalah Ahkam Johor*, it occurs when Johor was experiencing conflicts of laws. English with the powers tried their best to ignore the implementation of Islamic law. In the early stages they categorize all existing laws including Islamic law as the enactment. This can be seen during the drafting of Enactment No. 1 in 1911 in which he makes the interpretation of "Enactment" as, "... shall mean an Enactment passed by His Highness the Sultan in Council whether or after the commencement of this Enactment, and shall include an order in Council or Proclamation made before the Commencement of this Enactment." (Enactment No. 1 of 1911, Article 2 (xiii)).

1.3 Conclusion

In conclusion, the implementation of *Majalah Ahkam Johor* actually has a huge impact in the history of Islamic law in the state of Johor. This *Majalah* has been taken from *Majallah al-Ahkam al-`Adliyyah* implemented under the Government of Turkish Ottoman in the 19th century AD.

This shows the Johor Government relationship with the Government of Turkish Ottoman have gone so close, particularly when under the reign of Sultan Abu Bakar and generally before the existence of the Malacca Islamic government. Marital relations, trade, culture, arts, law and others, convince us that a strong relationship between the two countries has gone a long time.

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