

The Role of the Malay Royal Institutions According to the Constitution in Safeguarding Malay Position from the Higher Education Perspective

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Abstract

The monarchy system has long existed in the social system in Malay states for great many decades. Following this system, the King has an absolute power in every state administration especially before the occupation of the English. When the Malay Federation achieved Independence in 1957, this ruling institution continued with several amendments to be adapted with the parliamentary democracy concept and constitutional monarchy. Other than executing the power that is allocated by the Constitution, the Royal Institution also epitomizes the Malaysian unity that comprises of multifarious ethnic groups. This is because under the Constitution, it is allocated it is the responsibility and mandate of the Yang di-Pertuan Agong to safeguard the privileged position of the Malays and the Sabahan and Sarawakian Bumiputera and rightful interests of other races due to the fact that the Monarchy Institution is not a politically-influenced unit and that it holds onto the exempted principle. This responsibility is not easy, because an issue such as the special position of the Malays has always become polemics in our pluralistic society. Thus, this article will look into the monarchy institutions in maintaining the position of the Malays from the perspective of the higher learning education. Such a perspective would indicate the matters that need to be inculcated in the curriculum of higher learning system pertinent to the role of the monarchy in safeguarding the Malays' position in the constitution. This is because the discussion on the Monarchy Institution at the higher education level is not made a specific subject but is inculcated in the constitutional course, the social system course in Malaysia or the Nationhood/Malaysian Study courses. Meanwhile, the discussion on the Monarchy Institution only revolves around what is dictated in the constitution without being elaborated in terms of its rationale as to why every allocation is included in the constitution. This argument needs to be taken into account as IPT students are more open and mature when analysing an issue rather than those who merely accept any issues that have been raised and contended.

Keywords: Malay Royal Institutions, Malay, Federal Constitution, Higher Education

1. Introduction

The monarchy administration has long existed in the social system of the Malay states for centuries. Following this system, the king has an absolute power in every state administration assisted by dignitaries appointed specifically before English occupation. Before the Second World War, although being under the wings of the British, the Sultans were the rightful rulers and were entitled to full power in their respective states. Meanwhile, at the same time, in several treaties with the British, the Sultans have to receive advice from British officers who were appointed as Residents or British Advisers except for advice on Islam. Such a situation was ongoing until Malayan Union was introduced in 1946 where the Sultan was only authoritative in Malay customs and Islam only and the state administrative authority was safe in the hands of the Governor. As the consequence from the opposition shown by the Malays, the Malayan Union Constitution was abolished and replaced with the Malay Federation in 1948. Through this new constitution, the rights of the Sultan were returned to them. They won the rights to be in the know of matters regarding the formulation of laws.

2. Problem Statement

Despite the many steps taken like the exposure on the constitution in History subject at the school level and the Malaysian Studies or Malaysian Nationhood course at the Higher Learning Institution level, these traditions including the monarchy system continues to be a polemic in the society, which goes to show that the step has yet to be capable of explaining this matter. The system of education and the mass media seem to be thought of as irrelevant for promoting a better understanding between ethnic groups (Syed Husin Ali 2008). Does this situation happen because it is not explained well through the education system, the mass media or the societal institutions? Thus, the Monarchy remains to be the polemic among the society at large.

The polemic of these issues has demonstrated that the level of knowledge and understanding of the Malaysian people is still low and has a long way to go, unlike the time where endorsements were made over the social contract in the formulation of the Constitution of the Malay Federation (Awang Sariyan 2008). Such a lack of awareness and understanding over these traditions is consistent with the opinion given by Tun Dr. Mahathir Mohamed who sought for the understanding of the people on the social contract among the multiple races that have existed even before the independence, to be enhanced. He stressed on the necessity of such move as to avoid from racial dispute especially when there are the emerging racial issues that have been exaggerated (Utusan Malaysia 2001).

This statement was supported by Tun Abdullah Ahmad Badawi who asserted that the failure in realising the social contract among the people is the reason for the conflict that has sparked in some countries of the world (Firdaus Abdullah 2006). The same opinion was also offered by Raja Dr. Nazrin Shah regarding the concern over the people's waning tolerance, causing the disintegration of the society by ethnicity and religion, where there is one group which is unhappy for the privilege granted on one group, whereas another group sees that this privilege is undebatable (Utusan Malaysia 2007). He recommends the young people to grasp the Constitution that ensures the rights of every Malaysian, at the same time contributing towards maintaining success in the construction of the country and in the maintenance of ethnic relations.

This is in line with the Royal speech of the Yang di Pertuan Agong as he was officiating the First Meeting of the 12th Parliament for the Second term in the General Assembly which explains the history of the Independence and the fact that the Federal Constitution needs to be elaborated to the younger generation so that they can better understand the basis of the formation of the country (Berita Harian 2009). Does this issue demonstrate the lack of awareness and understanding and the diminishing interests of the young on the social contract that had been collectively agreed as the constitution was formulated back then? Awang Sariyan also shares his view that there is yet to be a study on whether the current community especially the younger generation, understands the issues related to the contract social or more fundamentally speaking, whether or not the people understand about the content of the contract (Awang Sariyan 2008).

Therefore, this article will look into the role of the royal institution in safeguarding the Malay position from the perspective of higher education. The higher education perspective here means the things that need to be instilled in the higher education system's curriculum related to royal institutions in taking care of the position of the Malays in the constitution. This is because the discussion on the Royal Institutions at the higher learning education is not made specific subject but is inculcated in the constitutional course, the social system course in Malaysia or the course of the Malaysian Studies. Meanwhile, the discussion on the Royal Institutions only revolves on what is dictated in the constitution without any rational explanation as to why an allocation is inserted in the constitution. This argument is worth taken into account as IPT students are more open-minded and can think more maturely in analysing an issue rather than simply accepting any issue that arises.

3. The Position of the Malay Royal Institutions

The emerging Non-Alliance Malay States in 1895 had been upsetting for the Kings who had formed and supervised the policy of the administration and implemented it. As the repercussion, a Durbar was held in Kuala Kangsar in 1897 which refers to one early gathering of four Sultans for the states of Perak, Selangor, Negeri Sembilan dan Pahang. This is followed by another Durbar in 1903 in Kuala Lumpur, 1927 in Kuala Kangsar, 1932 in Pekan, 1933 in Kuala Kangsar and Seri Menanti (Abdul Aziz Bari 2005). The proposal to establish The Royal Council began from the Malayan Union Constitution which founded the Sultan Council.

In terms of the structure, the membership comprises of the Kings and British officers namely the Chief Secretary of the Malayan Union, a Law Adviser, Secretary of Finance and chaired by the Governor of Malayan Union. Although the Malayan Union was no longer operating, this idea had not been dismissed entirely but continued by the Malaya Federation Treaty with the founding of the Royal Council under the Constitution. The Council, as founded under the Constitution has the following function contained in Article 38(2):

- (a) Selecting the Yang di-Pertuan Agong and the Deputy of the Yang di-Pertuan Agong following the provision of the Third Table;
- (b) Agreeing or disagreeing so that any action, practice or religious events extends through the entire Federation;
- (c) Agreeing or disagreeing that any law and making or giving advice on any appointment made under this Constitution necessitates the approval of the Council or wished to be done by, or after the negotiation with the council;
- (d) Appointing the members of the Special Court of Law under Clause (1) Article 182.
- (e) Granting forgiveness, reprieve and respite, or remitting, suspending or making light the sentences and punishments under Clause (12) Article 42.

The Council can also consider questions related to the national policy such as the change on the immigration policy and other matters deemed necessary. The Council comprises of Sultans, and the Yang Dipertua Negeri also Chief Ministers, yet, when the council is held to select or terminate the appointment duration of the Yang di-Pertuan Agong or the Deputy Yang di-Pertuan Agong or matter strictly related to privileges, position, nobility and the grandness of the Kings or Sultans or on religious actions, practices or events, the Yang Dipertua Negeri is not regarded as the member of the Council.

When the Malay Federation gained its Independence in 1957, this monarchy institution proceeded with a number of amendments so that it can be adapted to the concept of parliamentary democracy and constitutional monarchy. According to the concept of Constitutional Monarchy, they are required to seek for advice from the Ministers and act upon this advice. As an example, at the central level, the Yang di-Pertuan Agong, in attending to his obligations, must act according to the advice from the Cabinet. Meanwhile, at the state level, the King must act based on the advice from the Government Meeting Council. However, in this matter, the advice given should be guided by the provision and the spirit of the constitution. This explains that the advice that clashes with the constitution and laws need not be adhered with.

At the Federal Level, the Yang di-Pertuan Agong must be appointed, one who is a Sultan selected from the Kings from nine of the Malay states. Based on the concept of the Constitutional Monarchy, the Yang di-Pertuan Agong is given the authority where the Majesty is required to act on the advice on the Cabinet. The Yang di-Pertuan Agong is also The Highest Commandant of the Federal Armed Forces and has the authority to delay the sentence for people deemed guilty by the Martial Court of Law and for crimes committed in the Federal Territory of Kuala Lumpur. The Majesty is one of the three main elements of the federal legislative body, which is the Parliament. As the main individual in the Constitution, he has the power to make important appointments not only according to the Constitution but also according to Parliamentary Acts.

At the state level, with reference to the Constitution of the Malay State, except for the Constitution of Negeri Sembilan, the Sultan serves as the Head of State and has the state executive power. Nonetheless, the power must be executed on the advice of the Meeting Council or the Head of the Ministers. The Sultan has also the power to forgive and to delay the punishments for those who had been tried and charged as guilty in their own respective states. He also has the power to appoint any one under the State Constitution and the state laws. The Sultan is known as the Pillar of Nobility and Justice, and has the right to confer an award, respect and medal to anyone he wishes when it is deemed necessary.

Other than the above provision, the constitution also makes another provision in relation to the order of priorities for the Yang di-Pertuan Agong and other Kings. His position is prioritized from everyone in the Federation and the position of other Kings is prioritized from the dates that they are appointed as King. However, in their own states, a King would take the priority above other Kings. The royal institution prominent in Malaysia today, is protected by the Constitution through Article 38(4) whereby there is no amendment done on the provision concerning the Royal Council, the order of priority and their rights to be the heirs as the King of the States without the Council's approval.

Next, there is no law which directly touches on the privileges, position, nobility, can be endorsed without through the Royal Council. This shows that it is very difficult to obtain the approval like that and protected according to the constitution.

4. The Role of the Malay Royal Institutions in the Preservation of the Malay Position

Firstly, the allocations in Articles 153, 89, 90, 8(5)(f) and the Thirteenth Table in the above discussion cannot be amended, changed or omitted without the approval from the Malay Royal Council. This article serves as an assurance that cannot simply be denied. This is dictated in Article 159 (5) where by any constitutional amendment must gain 2/3 support in the assembly, and the approval of the Royal Council on certain issues like the sovereignty of the Kings, the special position of the Malays, the Sabah and Sarawak Bumiputera, national language and the federal religion. This allocation is dictated in the constitution due to the fact that the relationship between the Malays and their Malay rulers has been very close. For example, the waad between Demang Lebar Daun and Sang Nila Utama in the Malay History and how the Malays rose in opposition against the Malayan Union which had tried to diminish the power of the Malay Kings.

Article 153 explains that it is the responsibility of the Yang di Pertuan Agong to guarantee the special position of the Malays and also to protect the rights of other races. The Yang di Pertuan Agong under the government's advice can provide an allocation to the Malays over several aspects that are thought to be necessary, which is in the issues as follows:

- i. Determine the number of positions in the public services.
- ii. Determine the rates of permit and license reserves for any business or occupation.
- iii. Determine the rate of reservation on educational and training scholarships, incentives and privileges or special facilities given or provided by the government.

Article 89 concerning the Malay reserve land as follows:

- i. The Malay Reserve Land can continue to be the Malay reserve land after the Independence.
- ii. Any land which is Malay reserved, can be declared as the Malay reserve land following the law.
- iii. The state government can take over the land to allocate the Malays and non-Malays.
- iv. If the land is owned by the non-Malays, then the Malay reserve land cannot be declared.

Article 90 revolves around the exemption of law in light of the customary land in Negeri Sembilan and Melaka and the existing law in Terengganu on the Malay-hold land.

Article 8 (5)(f) elaborates on the entry into the Royal Malay Army Regiment that is only allocated to the Malays. Nonetheless, the inclusion into other army regiments is open to all ethnic groups in Malaysia and there is no prohibition imposed.

The Thirteenth Table explains that there are four principles that need to be adhered to, prior to the determination or revision of the electoral boundary. The four principles are:

- i. An area should not cross the boundary of the state and consider the difficulty that may arise if the state assembly area includes the Public Assembly.
- ii. All the existing facilities in the said area should be considered for the purpose of voters' registration.
- iii. It is also dictated that the total number of voters for every electoral area must be the same. However, the constitution also dictates that for the rural areas, only half of the total number of voters for an area are required.
- iv. Any difficulty should also be taken into account when an area is changed and it is important to maintain one's relationship with his or her area.

Second of all, other than executing the power allocated by the Constitution, the Yang di-Pertuan Agong also assumes the symbol of unity of the Malaysian society comprising of diverse ethnics. Malays, Chinese, Indians and other races regard the Majesty as the protector of their interests and hopes. This is because, under the constitution, is has been allocated that the Yang di-Pertuan Agong carries the responsibility and mandate to safeguard the privileges of the Malays and the Bumiputera in Sabah and Sarawak, also the interests of people of other races. This also applies to the Royal Council, which has the authority in the issue of amendment towards the provision regarding citizenship.

These responsibilities and mandate are very intricate as issues such as religion and the special position of the Malays also the issue of citizenship often become the polemics in our multiple ethnic society. If these issues are not manhandled properly, it can affect the national stability. Although the Majesty's function as the epitome of unity and coherence appears passive and uncontroversial, the assurance that demonstrates the outstanding attribute of the Majesty is integral to prevent him from being seen as a tool of the ruling party (Abdul Aziz Bari 1999).

Thirdly, the Yang di-Pertuan and the Royal Council are very significant traditions in this country. To the Malays, they are the hopes and the symbol of unity among the pluralistic society. This is because, they are not chosen through any political medium and in fact, they are exempted from any political endeavors. This is among the reason which enables the royal institution to have the potential to play its role without imposing any terms and conditions as have to be decided by political parties. Meanwhile, for the latter, every decision it makes is bound by the party sentiments and considerations. The Yang di-Pertuan Agong is the only constitutional institution that has a sense of 'Malayness' and Islam, and it is very much important because the Prime Minister, the Cabinet and the Parliament do not have to be dominated by the Malays. Symbolically, the Yang di-Pertuan Agong acts as the holder of the authority and the power granted by the Malay states to the central authority.

As our fourth point, the role of the Yang di-Pertuan Agong can also be included in the scope of Islam in the constitution. Although the constitution does not dictate the Majesty as the Head of Religion for the entire federation, the constitution has determined his responsibility to place Islam under his care. This is stated in the oath of this position where the Yang di-Pertuan Agong is given the task by the constitution to protect Islam at all times and stand on a fair ruling to ensure the prosperity and the wellbeing of the state. Due to the fact that the Malays and Islam are two inseparable entities, then the duty to preserve the special positions of the Malays also include maintaining and protecting Islam. This duty is relevant, seeing that the federal government may not necessarily be led by the Malays and Muslim, as pointed out in the constitution of the Malay states. He is also the Head of Islam for those states without the King, Melaka, Pulau Pinang, Sabah, Sarawak and the Federal Territory. This happens because the Governor may be a non-Muslim. This Islamic provision is guaranteed, at all costs, because its amendment would necessitate more than two third the support of the majority and being endorsed by the Yang di-Pertuan Agong.

This is similar to the era of colonization, through peace treaties and close friendship with Malay Kings, whereby although they succeeded in gaining their rights to give advice concerning the country's administration, Islam had been exempted. For instance, Article 2 of the agreement between the Straits Settlements and the Dignitaries ruling Negeri Sembilan dated 20 June 1895, it was agreed that they had sworn in to follow the advice of the British Resident in all affairs of the administration, other than issues related to Islam (Mohd Salleh Abas1985).

This goes the same way for Allied States and Non-Allied States, the agreement done with the British also agrees that the Malay Kings must accept the advice from the British in the state administration except for the Malay customs and Islam. Meanwhile, after the Second World War, the Malayan Union Constitution 1946 and the Malay Federation Treaty 1948, had shifted the role of the British from being the advisor to the administrating officer of the Malay Federation directly, yet the aspects of customs and Islam as the religion were not intervened by the British.

5. Conclusion

The above analysis shows that the Malay Royal Institution plays a great role in taking care of, and safeguarding the Malays as manifested in the allocation in the constitution and at the same time safeguarding the rights of the non-Malays. Thus, this issue needs to be well understood by every layer of the society especially the younger generation to accept well and not aggravate any issues involving the Malays in the constitution. This has been stated by the 215th Royal Meeting Council that, Islam and the Malays are the main foundation for the formation of a country named Malaysia (Berita Harian 2008).

References

- Abdul Aziz Bari (2001). *Perlembagaan Malaysia: Asas-Asas dan Masalah*. Kuala Lumpur: Dewan Bahasa dan Pustaka.
- Abdul Aziz Bari (2005). *Islam Dalam Perlembagaan Malaysia*. Petaling Jaya: Intel Multimedia and Publication.
- Ahmad Ibrahim (1995). Prinsip-prinsip Perlembagaan Islam dan Perlembagaan Malaysia. Dlm. Abdul Monir Yaacob dan Sarina Othman. *Prinsip-Prinsip Pemerintahan Dalam Masyarakat Majmuk*. Kuala Lumpur: Malaysian Islamic Understanding Institute.
- Anon (2001). Betulkan tanggapan generasi muda. *Utusan Malaysia*. 16 February.
- Anon (2007). Tiga tonggak utama bina negara. *Utusan Malaysia*, 5 August.
- Anon (2008). Jangan sentuh Kontrak Sosial. *Berita Harian*. 17 October.
- Anon (2009). Hayati sejarah perlembagaan. *Berita Harian*. 17 February.
- Awang Sariyan (2008). Trend penulisan kritis semasa: Analisis isu-isu utama bangsa dan negara. *Kesturi* 15 (1&2), page 19.
- Firdaus Abdullah (2006). Pemikiran Firdaus. *Utusan Malaysia*, 2 June.
- Harding, A. (1996). *Law, Government and the Constitution in Malaysia*. Singapore: Kluwer Law International.
- Harding, A. (2002). The Keris, the crescent and blind goddess: The state, Islam and the constitution in Malaysia. *Singapore Journal of International & Comparative Law*. 6.
- Hashim Yeop A. Sani (1973). *Perlembagaan Kita*. Kuala Lumpur: Malaysian Law Publishers Limited Co.
- Ibrahim Ismail (2003). Agama Persekutuan: Jurisprudens Islam dalam pentafsiran perlembagaan. *Kanun* 15 (4). 11-35.
- Joseph Fernando (2006). The Position of Islam in the Constitution of Malaysia. *Journal of Southeast Asian Studies* 2 (37).
- Kevin YI Tan & Thio Li Ann (1997). *Constitutional Law in Malaysia & Singapore*. 2ed. Singapore: Butterworths Asia.
- Mohd Salleh Abas (1985). *Unsur-Unsur Tradisi Dalam Perlembagaan Malaysia*. Kuala Lumpur: Dewan Bahasa dan Pustaka.
- Nazri Muslim (2011). Islam dan Orang Melayu Menurut Perlembagaan Dalam Konteks Hubungan Etnik: Kajian Ke Atas Pelajar Institusi Pengajian Tinggi Awam. PhD Thesis, Universiti Malaya.
- Shad Saleem Faruqi (2004). Secularism or theocracy- a study of the Malaysian Constitution. *UiTM Law Review*. Vol 2. page 165-175.
- Sheriden L. A. dan Groves H. E. (1979). *The Constitution of Malaysia*. Singapore: Malayan Law Journal Ltd.
- Syed Husin Ali (2008). *The Malays: Their Problem and Future*. Petaling Jaya: The Others Press.
- Syed Muhammad Naqiub al-Attas (1972). *Islam Dalam Sejarah dan Kebudayaan Melayu*. Bangi: UKM Publications.
- Tunku Abdul Rahman (1984). *Contemporary Issue on Malaysian Religions*. Kuala Lumpur: Pelanduk Publications.
- Wu Min Aun (1999). *The Malaysian Legal System*. 2ed. Kuala Lumpur: Longman.