

MALAY NATIVE SOVEREIGNTY

As the Malacca Code is the basis of sovereignty of the Malay States, the Sovereignty enjoyed by the Malay Rulers as it was in 1st December 1941 was recognized, in the agreement leading to the formation of the Federated Malay States or Malaya that succeeded the ill-fated Malayan Union, after massive show of force by the Sultan's subjects. This understanding was there during the Constitutional Conferences of 1956 which led to 'Merdeka' or the handover of power from the British Government to the Federal Government. This clearly shows that Malaysia was not born of 'tabula rasa' or 'terra nullus'.

The federation of Malaysia was formed by the consent of the Malay States, and the handover British territories of the Straits Settlements, with Sabah and Sarawak entry via a referendum. Note the word, "federation"; this nation is not a unitary state like the rest of the ASEAN region. Our federal constitution recognizes the state constitution of every state of the federation. Islam is the religion of the federation as per Article 3 of the Federal Constitution, and Yang di Pertuan Agung shall be the head of Islam in states not ruled by Malay Rulers.

The Sacred Oath of the Yang Di Pertuan Agung as per Article 37 reads: "WALLAHI, WABILLAHI, WATALLAHI", those utterance hold the person of His Majesty to, "...memeliharakan pada setiap masa Agama Islam...", that is His Majesty's duty to Allah the Almighty with respect to Islam and by lifting and kissing his kris, he symbolically holds his subjects to the oath as well. His 'kerajaan' or rule will only be valid after the words 'Daulat Tuanku' is uttered by those who is invited to attend the ceremony. Again this can be found in the Malacca Code. This is the biggest rebut to the arguments that Malaysia is a secular state.

The measure of things in the modern discourse is definable, achievable and measurable. In this respect, let us look in detail a passage of the Malacca Code taken from the Vatican library: " "Amma ba'du, kemudian dari itu, ini suatu risalah pada menyatakan hukum kanun iaitu segala negeri yang besar-besar dan pada segala raja-raja yang besar-besar dan pada adatnya yang takluknya dan dusun supaya manfaat atas negeri dan RAJA DAN MENTERI AKAN MEMELIHARAKAN SEGALA RAYATNYA..."

The emphasis at the end of the passage, the burden of statecraft falls on the shoulders of the Ruler and his ministers to "take good care of all subjects". In Malacca Code this was stated in black and white, is incumbent on all office bearers and is an important responsibility, according to religion of the land, Islam. The interpretation of Islam shall reign supreme as the Rulers Oath is with Allah, the Almighty, Lord of lords.

Another text used by the former Kingdom of Johor and Kedah, is Taj al Salatin by Bukhari al-Jauhari, underlining further the characteristics required in a Sultan which fulfills the criteria, “definable, achievable and measurable”:

FIRST, Not to be aloof and not trivializing the problems faced by his subjects
SECOND, Be fair in attending problems, hear not arguments from one party, but be just in hearing all the affected parties;

THIRD, Restraint in His Majesty’s anger, pass judgement only after a solid and irrefutable evidence ;

FOURTH, To protect all his subjects irregardless of class, to protect them from any unjustified discriminations and to love all of them ;

FIFTH, To refrain from desiring wedded wives of his charges or his subjects;

SIXTH, To have as many discussions with the ulama, the intelligentsia, academics, scholars, poets, thinkers, people with Divine Insight (Muslim ascetics) and also societal leaders of repute and to refrain from mixing with the stupid, the foolish and the patently evil.

SEVENTH, To respect the elders among the society and to be kind to the poor and the infirm;

EIGHTH, To fulfill all promises made to the subjects ;

NINTH, To always care about the Shariah and to uphold it ;

TENTH, dispense justice to the evil doers and praise the people who do good, be mindful that “justice must be seen to done”, to ease the feelings of his subjects ;

ELEVENTH, To be polite in ruling and dispensing justice;

TWELFTH, The Ruler must refrain from sins and impropriety;

THIRTEENTH, The Ruler shall be the example of deeds and words, because his subjects will mimic his deeds, be it good or bad;

FOURTEENTH, The Ruler shall be generous with charity and alms ;

FIFTEENTH, to respect the Faqir who is pious and knowledgeable, because that is the path to enlightenment (as per Islam) wheras it is much better than that of a rich but ignorant men;

SIXTEENTH, to always remember death;

SEVENTEENTH, to build roads and other infrastructure for use by his subjects;

EIGHTEENTH, to promote trade and economic activities throughout his kingdom;

NINETEENTH, to build mosques and other services such as hospitals, madrassas, orphanages and ensure the needs of the subject fulfilled;

TWENTIETH, not to keep quiet when vices and immorality spread among the subjects.

From the above it can clearly be seen that the Malacca Code still binds the Malay Rulers, therefore doctrine “Separation of Powers” does not apply to our constitution. This is because the Rulers holds the trump card by the Reserved Powers of the Yang di Pertuan Agong.

Daulat Tuanku!!!

Below is the image of the initial pages of the Taj al-Salatin, copied by a scribe named Muhammad bin Umar Syaikh Farid on 4 Zulhijah 1239 AH (31 July 1824 AD). Image courtesy of The British Library Board.

