

**DEVELOPMENT OF ISLAMIC LAW IN BRUNEI DARUSSALAM:  
A CRITICAL EVALUATION**

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**1432 / 2011**

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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An academic exercise submitted in partial fulfillment  
of the requirements for the degree of  
BACHELOR OF LAW

**Faculty of Shariah and Law  
Sultan Sharif Ali Islamic University  
Brunei Darussalam**

**Zulhijjah 1432 / November 2011**

**SUPERVISION**

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## DECLARATION

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## ACKNOWLEDGEMENT

- All praise and gratitude to Allāh Subahānahu Wa Ta'ālā for giving me the grace and guidance in completing this paper.
- Firstly, I would like to express my heartfelt appreciation and thankful to Assoc. Prof. Dr. Nehaluddin Ahmad, supervisor of this academic exercise for his continued support and guidance during the writing.
- My special thanks to the Government of His Majesty the Sultan of Brunei Darussalam, who granted me a scholarship to pursue my study at Sultan Sharif Ali Islamic University.
- And lastly, I would like to thank the members of my family – who gracefully accepted my long hours at work on this academic exercise.

## **ABSTRACT**

### **DEVELOPMENT OF ISLAMIC LAW IN BRUNEI DARUSSALAM: A CRITICAL EVALUATION**

This research aims to analyze and make a clarification on the real situation of the development of Islamic law as Islamic law is the utmost principle which governed the country of Brunei Darussalam. Furthermore, Islamic law has the highest position above any other matters as Brunei is an Islamic country. The research will explain on the development of Islamic law starting from the coming of Islam in Brunei during the reign of the first ruler of Brunei named Sultan Muhammad Shah who converted to Islam until nowadays. The methods that the writer will use in order to complete the paper are by research design specifically on the library research where the writer gets information from books, statutes and some browsing websites. The finding of this study shows that the implementation of Islamic law in Brunei has applied long time before and consequently increased rapidly. Therefore, this research presents the historical overview on the coming of Islam, the implementation of Islamic laws and its development until this time.



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## ABBREVIATIONS

AD	Anno Domini (Year of Masihi)
Dr / Dr.	Doctor (Title)
ed	Edition
i.e.	that is
ibid	ion beam induced deposition; ibidem; in the same place
MIB	Melayu Islam Beraja
p.	page
p.m.	Post meridiem (Latin) or after noon (English)
Prof.	Professor
viz.	namely

## CHAPTER 1: INTRODUCTION

Islamic law (also called as ‘Syariah law’) is the code of conduct or religious law of Islam. Most Muslims believe Syariah is derived from two primary sources and two secondary sources of Islamic law. They are the Holy Quran, hadith of Prophet Muhammad, *ijma’* and *qiyas*. Islam covers all matters in every single thing upon the Muslims. Islam has actually have five objectives, namely preservation of religion, preservation of life, preservation of lineage, preservation of property and preservation of senses. Due to its uniqueness, Brunei Darussalam has implemented Islam as the religion and principle of the land which governed the people of Brunei.

Being a state where majority of the populations are Muslims, Islam has been made the official religion of Brunei Darussalam. To say that Islam has only been practiced in this country in recent years are quite incorrect as there are sources, which date the establishment of a Muslim sultanate rule. In fact, Islamic laws have always been the governing laws in Brunei Darussalam even before the coming of the British.

There are evidences which show that Islam had come to Brunei since the 10<sup>th</sup> century. However, its reception was slow probably because most of the populations during that time were still holding on to their beliefs in Hinduism. Muslims were comprised of just a small section of the population including those traders who came to Brunei. And it was believed that the acceptance of the Sultans and nobles had started the spread of Islam among the community. Awang Alak Betatar, the first ruler of Brunei, embraced Islam when he married the princess of Johor. He changed his name to Sultan Mohammad Shah and since then Islam slowly spread within Brunei.

Islam was quickly spread among most of the people in Brunei when Sultan Sharif Ali, the third Sultan of Brunei, ascended to the throne. Believed to be a descendant of the Prophet Muhammad (Peace Be upon Him), he was a pious person and was the one who had started to build mosque and had been the one who determined the direction of the *Qiblat*. From then on Islam has become an important aspect in the life of people in Brunei where eventually it has become the official

religion of Brunei Darussalam. Other evidence that shows Brunei was indeed been governed by Islamic law can be seen in written and codified form. There exist two manuscripts; the first manuscript was called the “*Hukum Kanun Brunei*”; and the second manuscript was known as “*Undang-Undang dan Adat Brunei Lama*” (Old Brunei Law and Custom).

The writer will explain more details on the history of the coming of Islam to Brunei, the contents of the *Hukum Kanun Brunei*, development of Islamic law stages by stages and so forth.

## **CHAPTER 2: SOURCES OF ISLAMIC LAW**

### **1. The Holy Quran**

The Quran is the first and most important source of Islamic law. Believed to be direct word of Allah as revealed to Prophet Muhammad through angel Jibril in Mecca and Medina, the scripture specifies the moral, philosophical, social, political and economic basis on which a society should be construed. The verses revealed in Mecca deal with philosophical and theological issues, whereas those revealed in Medina are concerned with socio-economic laws. The Quran was written and preserved during the life of Prophet Muhammad, and compiled soon after his death. The verses of the Quran are categorized into three fields: “science of speculative theology”, “ethical principles” and “rules of human conduct”. The third category is directly concerned with Islamic legal matters which contain about five hundred verses or one thirteenth of it. The task of interpreting the Quran has led to various opinions and judgments. The interpretations of the verses by Prophet Muhammad’s companions for Sunnis and Imams for Shias are considered the most authentic, since they knew why, where and on what occasion each verse was revealed.

### **2. Hadith of Prophet Muhammad or Sunnah**

The Sunnah is the next important source, and is commonly defined as “the traditions and customs of Prophet Muhammad” or “the words, actions and silent assertions of him”. It includes the everyday sayings and utterances of Prophet Muhammad, his acts, his tacit consent, and acknowledgements of statements and activities. Justification for using the Sunnah as a source of law can be found in the Quran. The Quran commands Muslims to follow Prophet Muhammad. During his lifetime, Prophet Muhammad made it clear that his traditions (along with the Quran) should be followed after his death. The overwhelming majority of Muslims consider the Sunnah to be essential supplements to and clarifications of the Quran. In Islamic jurisprudence, the Quran contains many rules for the behavior expected of Muslims but there are no specific Quran rules on many religious and practical matters. Muslims

believe that they can look at the way of life, or *sunnah*, of Prophet Muhammad and his companions to discover what to intimate and what to avoid.

### **3. *Ijma'* or Consensus of Muslim jurists**

The *ijma'* or consensus amongst Muslim jurists on a particular legal issue, constitutes the third source of Islamic law. Muslim jurists provide many verses of the Quran that legitimize *ijma'* as a source of legislation. Prophet Muhammad himself said: “My followers will never agree upon an error or what is wrong”, and “God’s hand is with the entire community”.

### **4. *Qiyas* or Analogical deduction**

*Qiyas* or analogical deduction is the fourth source of Syariah for the Sunni jurisprudence. *Qiyas* is the process of legal deduction according to which the jurist, confronted with an unprecedented case, bases his or her argument on the logic used in the Quran and Sunnah. *Qiyas* must not be based on arbitrary judgment, but rather be firmly rooted in the primary sources. The general principle behind the process of *qiyas* is based on the understanding that every legal injunction guarantees a beneficial and welfare satisfying objective. Thus, if the cause of an injunction can be deduced from the primary sources, then analogical deduction can be applied to cases with similar causes.<sup>1</sup>

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<sup>1</sup> [http://en.wikipedia.org/wiki/Sources\\_of\\_Islamic\\_law](http://en.wikipedia.org/wiki/Sources_of_Islamic_law) browsed on 14 November 2011 at 7.35 p.m.

### CHAPTER 3: THE COMING OF ISLAM IN BRUNEI

Islam has officially been in Brunei since about the fourteenth century AD. The first Brunei ruler to embrace Islam was Awang Alak Betatar, after his marriage to a princess of Johore (Old Singapore), in circa 1368 AC by assuming the title of Sultan Muhammad Shah. In the '*Salasilah Raja-Raja Brunei*' (The Genealogy of the Kings of Brunei) by Datu Imam Yaakub it is mentioned that:

*... the earliest ruler of Brunei who embraced Islam and followed the teachings of Prophet Muhammad (May the Blessing of Allah and Peace be upon him) was Paduka Seri Sultan Muhammad and his brother Sultan Ahmad.*

Even though Islam was said to have been officially embraced by Sultan Muhammad Shah, there was however a strong possibility that Islam had already spread to Brunei very much earlier, because Brunei was a port of call for Muslim traders in this region. According to Chinese records the King of Puni (henceforth called Brunei) sent a mission to China in 977 AD, headed by Pu Ya-li, Shih Nu (Sheikh Noh) and Qadhi Qasim, bearing an official letter and gifts of native goods.<sup>2</sup>

The envoys were housed at the official Guest Hall, as befitting the customary protocol accorded to such accreditation. Since the contact between China and Brunei had been lost for some time before 977 AD, China referred to the mission of 977 AD as Brunei's first official delegation to China. In China's view the Brunei mission was competent and well organized, because it was headed by Pu Ya-li (Abu Ali) and Qadhi Qasim as representatives of the King of Brunei. The use of the names Pu Ya-li and Qadhi Qasim as heads of the mission showed that a Muslim society and inhabitants had already existed in Brunei before 977 AD, and that probably by then some local natives would have embraced Islam too.

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<sup>2</sup> Pehin Tuan Imam Dato Paduka Seri Setia Ustaz Haji Awang Abdul Aziz bin Juned P.S.S.U.B., D.S.L.J. (2008), *Islam in Brunei during the reign of His Majesty Sultan Haji Hassanal Bolkhiah Mu'izzaddin Waddaulah, Sultan and Yang Di-Pertuan of Negara Brunei Darussalam*, 1<sup>st</sup> ed, p. xxi

A gravestone belonging to Pu Kung Chieh-mu dated 1264 AD found in the Muslim cemetery at Rangas on Jalan Tutong, Bandar Seri Begawan could further strengthened the date of the arrival of Islam in Brunei, because according to the translations by Wolfgang Franke and Ch'en T'ieh-fan, the said tombstone belonged to the 'Pu' family. It is said that Pu and his son Yiang Chien were Muslims from Chuan-chow District who came to Brunei during the reign of Emperor Sung (960-1279 AD).

From the above it could be adduced that Islam must have spread to Brunei earlier than 1368 AD. It was only after Awang Alak Betatar embraced Islam and took the title of Sultan Muhammad Shah did Islam become the official religion of the state; it was only then that Islamic teachings were taught openly by the Muslim preachers. It was a common practice in the Malay Archipelago that Islam would spread among the local inhabitants first before it became the official religion of the state. And only after the King or government of a state had embraced Islam that the state was called an Islamic state.<sup>3</sup>

It is mentioned in the chronicles of the Ming Dynasty (1368 – 1643) that during the reign of Hung-wu in the year 1370 AD a Chinese mission en route to Java had stopped over in Brunei. The King of Brunei at that time was Ma-ha-mo-sa. Later in 1371 AD, Ma-ha-mo-sa sent a mission to China, bearing a letter written in a script, which resembled the Hui-ku, along with native produce as gifts. If the script used in the missive of the Brunei King was the same as the Hui-ku, then probably the Brunei King was a Muslim, and that Islam had spread to Brunei very much earlier, for the usage of Arabic alphabets in the *Jawi* script must have taken quite a while before it could evolved into a comprehensive systematic script.

After the death of Sultan Muhammad Shah in circa 1402 AD, he was succeeded by his son, Sultan Abdul Majid, who was mispronounced in Chinese as Ma-na-je-ka-na. In the year 1405 AD (during the reign of Yong Lo 1402 – 1424 AD) Sultan Abdul Majid sent a delegation to China to obtain formal recognition of his coronation. The delegation took along a letter from the Brunei King and gifts like

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<sup>3</sup> Pehin Tuan Imam Dato Paduka Seri Setia Ustaz Haji Awang Abdul Aziz bin Juned P.S.S.U.B., D.S.L.J. (2008), *Islam in Brunei during the reign of His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah, Sultan and Yang Di-Pertuan of Negara Brunei Darussalam*, 1<sup>st</sup> ed, p. xxii



gems, pearls and various local produce. The Chinese Emperor was very happy with the gifts and homage given, and returned the honour by sending an official delegation to Brunei bearing various gifts, including the 'Royal Seal'. In August 1408 AD, the King of Brunei left for China. During his stay in China, the Brunei King was accorded great honour and was supplied with the special rules of Ta-ming-hui-tien (Ming Code and Regulations) comprising, among other things, two goats, four geese, eight chickens, twenty bottles of water, one hundred kilograms of rice, thirty *katis* of meehoon, four kinds of fruit and various vegetables.<sup>4</sup>

In view of the type of provisions and foods supplied by the Chinese Emperor to the King of Brunei and his entourage which listed only goat meat, geese and chicken (with no mention of pork), it could be concluded that the King of Brunei and his delegation were Muslims. This is verified by Pelliot and Kuwota Rukoro, who stated that Ma-na-je-ka-na was a Muslim, because the title 'Ma' in Chinese usually refers to Muslims.

In the month of October 1408 AD the King of Brunei passed away at the age twenty-eight and buried on a hill called O Hwa Chu Tsu Kang Siong, outside the entrance of An Tek Boon Goh Gate.

After the burial, the Chinese Emperor consoled Hsia-wang and appointed him King of Brunei to succeed his father Ma-na-je-ka-na. After one year in China, Hsia-wang and his entourage returned to Brunei escorted by a Chinese official named Chang Chien and a navigator named Chou Heng.

As Hsia-wang, the newly appointed King of Brunei, was only four years of age, his grand uncle acted for him as ruler of Brunei with the title of Sultan Ahmad and in the '*Salasilah Raja-Raja Brunei*', Sultan Ahmad is recorded as the second Sultan of Brunei who ruled from 1408 to 1425 AD.

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<sup>4</sup> Pehin Tuan Imam Dato Paduka Seri Setia Ustaz Haji Awang Abdul Aziz bin Juned P.S.S.U.B., D.S.L.J. (2008), *Islam in Brunei during the reign of His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah, Sultan and Yang Di-Pertuan of Negara Brunei Darussalam*, 1<sup>st</sup> ed, p. xxiii

### **Dating the arrival of Islam in Brunei**

Several dates have been put forward by Western historians concerning the introduction of Islam into Brunei. But upon closer examination of their arguments, there seems to be fallacies and contradictions with the local historical scene. For example, some opinions that Islam was brought into Brunei via Sukadana, after the King of Sukadana was converted to Islam by Sheikh Shamsuddin from Makkah. This is incorrect because the arrival of Sheikh Shamsuddin in Sukadana was said to be in circa 1550 AD, by which time Brunei had already been ruled by seven Muslim Sultans, viz., Sultan Muhammad Shah (1363 – 1402 AD), Sultan Ahmad (1408 – 1425 AD), Sultan Sharif ‘Ali (1425 – 1432 AD), Sultan Sulaiman (1432 – 1485 AD), Sultan Bolkiah (1485 – 1524 AD), Sultan Abdul Kahar (1524 – 1530 AD), Sultan Saiful Rijal (1533 – 1581 AD). Even Sultan Sharif ‘Ali, who was said to be responsible for expansion of Islam in Brunei had passed by in 1432 AD, more than 100 years before the King of Sukadana embraced Islam. It is mentioned in the *Salasilah Raja-Raja Sambas* that Sultan Tengah, son of Sultan Muhammad Hasan (9<sup>th</sup> ruler of Brunei) had married Ratu Suria, daughter of the King of Sukadana, and had arrived in Sukadana around 1600 AD, and while in Sukadana Sultan Tengah had taken Islamic religious lessons from Sheikh Shamsuddin. This showed that Sheikh Shamsuddin was still alive in Sukadana by the end of the 16<sup>th</sup> century, and that Islam in Sukadana was a much later happening than Islam in Brunei.

In his report of a visit to Brunei in 1505 AD, Ludovico Varthema said, “... *The people are pagans and are men of good will.*” This statement cannot be used as proof that Islam had not been introduced in Brunei at that date. The pagans he met could probably be the indigenous people of Borneo and Brunei. These people, the Muruts, Dusuns and Bisayas were certainly pagans and had not embraced Islam even to this day. In other words, such a chance encounter cannot be used as proof that Islam had not come to Brunei by 1505 AD.<sup>5</sup>

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<sup>5</sup> Pehin Tuan Imam Dato Paduka Seri Setia Ustaz Haji Awang Abdul Aziz bin Juned P.S.S.U.B., D.S.L.J. (2008), *Islam in Brunei during the reign of His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah, Sultan and Yang Di-Pertuan of Negara Brunei Darussalam*, 1<sup>st</sup> ed, p. xxiv-xxv

Tom Pires mentioned that during his visit to Borneo in 1515 AD he met a King of a place on Borneo Island who had just embraced Islam. Even though he did not mention the name of the place, it would not necessarily refer to Brunei for the Island of Borneo at that time had several settlements and states ruled by Kings.

On 6 January 1514 a Portuguese by the name of Rui de Brito Patalim wrote about Brunei as follows:

*There came from Borneo to this city (Malacca) three junks: they brought seed pearls and provisions, in addition to other foodstuffs. The King is a pagan, but the merchants are Moors. Borneo is a great island, which lies between China and the Moluccas ...*

This report by the Rui de Brito Patalim appears to contradict the writing of Antonio Pigafetta (1521 AD) who says, “... *The King [of Brunei] is a Moro and his name is Raja Siripada.*” A comparison of the date of Rui’s report with the genealogy of the Kings of Brunei would show that the visit of Rui, must have occurred during the reign of Sultan Bolkiah (the fifth Sultan of Brunei). It is evident that what Rui wrote was incorrect, because even before Sultan Bolkiah there were four other Muslim Sultans of Brunei.

### **An Islamic Government**

The influence of Islam spread quickly after the arrival of Sharif Ali in Brunei. After successfully preaching the religion, Sharif Ali married Princess Ratna Kesuma, the daughter of Sultan Ahmad. Sultan Ahmad did not have a son and when he passed away, the people requested that Sharif Ali be made Sultan and be known as Sultan Sharif ‘Ali (1425 – 1432 AD). This event was estimated to have happened before 1426 AD, because according to Chinese annals, after 1425 AD, relations between China and Brunei gradually weakened and was finally broken off. Probably this was caused by the succession of a new Sultan who had a different foreign policy.<sup>6</sup>

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<sup>6</sup> Pehin Tuan Imam Dato Paduka Seri Setia Ustaz Haji Awang Abdul Aziz bin Juned P.S.S.U.B., D.S.L.J. (2008), *Islam in Brunei during the reign of His Majesty Sultan Haji Hassanal Bolkiah Mu’izzaddin Waddaulah, Sultan and Yang Di-Pertuan of Negara Brunei Darussalam*, 1<sup>st</sup> ed, p. xxvi-xxvii

Sultan Sharif ‘Ali was a very devout, pious and blessed ruler, who became famous as ‘*Sultan Berkat*’ (Blessed Sultan). It was Sultan Sharif ‘Ali who started the building of mosque, the organization and consolidation of national defence by having the people built a stone fort. The ‘*Salasilah Raja-Raja Brunei*’ by Datu Imam Yaakub mentions the following:

*... it was this Sharif ‘Ali who was the ruler known as Paduka Seri Sultan Berkat (the Blessed Sultan) who promoted the teachings of the Prophet Muhammad (May the Blessing of Allah and Peace be upon him) and built mosque, instructed his Chinese subjects to build a stone fort.*<sup>7</sup>

With an orderly and just government based on the principle of Islamic administration, Brunei became a highly respected state. Though relations between Brunei and China were no longer close nevertheless the trade between the two countries continued. The Chinese who resided in Brunei traded with China, Patani and the neighbouring countries. The era was regarded as a period of peace and tranquility, and Brunei became known as ‘Darussalam’.

After the demise of Sultan Sharif ‘Ali in 836 H (1432 AD), his son succeeded to the throne as Sultan Sulaiman (1432 – 1485 AD). He ruled Brunei on the same principles of administration laid down by his late father. It is said that in order to improve the strategy of defending the country, he ordered the Chinese followers of Pengiran Maharaja Lela (Ong Sum Ping) to work with the local inhabitants in the construction of expanding the stone fort at the mouth of the Brunei River. And according to the late Allahyarham Pengiran Kesuma Negara Pengiran Hashim, the construction of the stone fort between the Chermin Island and Keingaran Island was started by sinking 40 boatloads of stones into the river.

### **Sultan Bolkiah (1485 – 1524 AD)**

Brunei developed into a prosperous state and reached its zenith during the reign of Sultan Bolkiah, the fifth Sultan of Brunei. He was a Ruler who was very keen on fresh ideas and novel plans. In order to achieve this he often travelled abroad in

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<sup>7</sup> Pehin Tuan Imam Dato Paduka Seri Setia Ustaz Haji Awang Abdul Aziz bin Juned P.S.S.U.B., D.S.L.J. (2008), *Islam in Brunei during the reign of His Majesty Sultan Haji Hassanal Bolkiah Mu ‘izzaddin Waddaulah, Sultan and Yang Di-Pertuan of Negara Brunei Darussalam*, 1<sup>st</sup> ed, p. xxviii

search of knowledge and fresh experience which could be used to develop his country and improve his people. On these trips abroad he would usually take the royal drum and beat it during his voyages – because of his versatility character he was known as ‘*Nakhoda Ragam*’. Datu Imam Aminuddin, in his *Silsilah Raja-Raja Brunei* mentions that:

*... and the Sultan begot Sultan Bolkiah, who fought a war with the people of Sulu and defeated the kingdoms of Sulu and Seludang whose ruler was Datu Gamban. Sultan Bolkiah was also named by the elders as ‘Nakhoda Ragam’. He married Princess Lela Manjani (Menchanai).<sup>8</sup>*

The expansion of Brunei under Sultan Bolkiah through wars, and the defeat of Sulu and Seludang, and then through the sultan’s marriage with Princess Lela Menchanai, the daughter of the Sulu King, as well the marriage with the daughter of Datu Gamban of Seludang, had increased the trade of Brunei and propagated the teachings of Islam in this region.

The greatness and strength of Brunei during the reign of Sultan Bolkiah is regarded as the golden era of Brunei Empire. This was testified by Pigafetta who accompanied Magellan on a visit to Brunei in 1521 AD.<sup>9</sup>

### **Brunei as the Centre of Propagation of Islam**

After Sultan Bolkiah passed away on 9 Ramadhan 930 (11<sup>th</sup> July 1524), he was succeeded by his son Sultan Abdul Kahar, who was known as ‘*Marhum Keramat*’. Pigafetta in 1521 AD called him ‘*Siripada*’.

*... that King is a Muslim and his name is Raja Siripada. He was forty years old and corpulent. No one serves him except women who are the daughters of chiefs. He never goes outside of his palace, unless he goes hunting...*

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<sup>8</sup> Pehin Tuan Imam Dato Paduka Seri Setia Ustaz Haji Awang Abdul Aziz bin Juned P.S.S.U.B., D.S.L.J. (2008), *Islam in Brunei during the reign of His Majesty Sultan Haji Hassanah Bolkiah Mu'izzaddin Waddaulah, Sultan and Yang Di-Pertuan of Negara Brunei Darussalam*, 1<sup>st</sup> ed, p. xxix

<sup>9</sup> Pehin Tuan Imam Dato Paduka Seri Setia Ustaz Haji Awang Abdul Aziz bin Juned P.S.S.U.B., D.S.L.J. (2008), *Islam in Brunei during the reign of His Majesty Sultan Haji Hassanah Bolkiah Mu'izzaddin Waddaulah, Sultan and Yang Di-Pertuan of Negara Brunei Darussalam*, 1<sup>st</sup> ed, p. xxx

The reign of Sultan Abdul Kahar was a continuation of the golden era of Brunei Empire. The colonies which he inherited from his father, Sultan Bolkiah, included the whole Borneo Island, and extended over the islands of Palawan, Sulu, Balayan, Mindanao, Bonbon, Balabak, Balambangan, Bangi, Mantanai and Saludang. During his reign the propagation of Islam, which had intensified during the reign of Sultan Sharif 'Ali, continued to be expanded, not only to all the people of Brunei, but also to the islands north of Brunei, such that Brunei came to be recognized as the centre of the propagation of Islam in this region. This was mentioned by Dr Francisco de Sande, the Spanish Governor of Manila, in a letter sent to Sultan Saiful Rijal (1553 – 1581 AD) requesting him to stop the activities of Muslim preachers of Brunei from propagating the teachings of Islam in the Philippine Islands during that period. Among other things the letter says:

*... I desire that you shall send no preachers of the sect of Mahoma to any parts of these islands, or to the heathen among the Tingues (hill-people), nor into other parts of your own island ...*

Brunei's fame as the centre of the propagation of the teachings of Islam attracted many Muslim theologians to Brunei and some of them even died in Brunei, and one of them was Sheikh Adam.

Information about Brunei as the centre for the propagation of Islam in the islands to the north of Brunei can be obtained from the writings of the Spaniards in the Philippines. In his report of 19 April 1578, Joan Ocho Ftabudo said that the teaching of Islam that was propagated in Balayan, Manila, Mindoro, Bonbon and other areas nearby was centred in Brunei. The report mentioned that:

*... Borneans and natives of Sian and Patan possess and observe their Alcorans – the law and worship of Mahoma .... in former times the King of Borney has sent preachers of the sect of Mahoma to Cebu, Oton, Manila, and other districts, so that the people there might be instructed in it as were those of Borney ... in Balayan, by Moro regarded among them as a priest, by name Siat Saen.*

The propagation of Islam in the regions to the north of the island of Borneo was not only achieved through trade and migration, but also through marital ties as practiced by Sultan Bolkiah and by some other Brunei traders. Antonio de Morge (who was in the Philippines between 1591 – 1603) mentioned this, and said that:

*A few natives of the island of Borneo began to come with their trade to the island of Luzon a few years before the Spaniards subjected it, especially to the towns of Manila and Tondo; and the people of the two islands (Borneo and Luzon) intermarried.<sup>10</sup>*

### **System of Government**

Besides showing great care and wisdom in all his work, Sultan Muhammad Hasan also practiced a unique system of government. He used Canon Law, Islamic Law and *Adat* Law (Custom Law) as the basis of his government. Enshrined in these laws is the fact that the Sultan is the absolute representative of his people and is the Head and Ruler of the state. In order to supervise the administration he created two new dignitaries, viz., ‘Pengiran Di-Gadong’ and ‘Pengiran Pemancha’ as additional Wazirs to the two already in existence, namely Pengiran Bendahara and Pengiran Temenggong. Every Wazir, Cheteria and Manteri appointed had their own specific duty and role. According to the *Salasilah Raja-Raja Brunei* of Datu Imam Yaakub, the criteria used by him to bestow titles of honour was that:

*... in the first place he must be of the nobility; secondly, he must be wise and intelligent; thirdly he must be brave and courageous in all that he does; and fourthly, he must obey and respect his King. So, if any one of the four mentioned conditions is lacking in a candidate, then the requirement is not complete and the candidate cannot be nominated a wazir, a manteri, a hulubalang or a government servant.*

Besides the Sultan, other dignitaries who had legal standing in the state were Pengiran Bendahara, Pengiran Temenggong and Pengiran Shahbandar:

*... the Laws were divided into three: the Laws of Bendahara, the Laws of Temanggong and the Laws of Shahbandar.*

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<sup>10</sup> Pehin Tuan Imam Dato Paduka Seri Setia Ustaz Haji Awang Abdul Aziz bin Juned P.S.S.U.B., D.S.L.J. (2008), *Islam in Brunei during the reign of His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah, Sultan and Yang Di-Pertuan of Negara Brunei Darussalam*, 1<sup>st</sup> ed, p. xxxiii-xxxvii

*Matters that were under the jurisdiction of the Bendahara were regulations about appointments and offices and about the children of the nobility, chiefs and religious leaders.*

*The Laws under the Temenggong were those related to the state and tafahas [army and defense].*

*And the laws under the Shahbandar regulated all trade, and welfare of orphans and the oppressed and junks (jong) and timber and the like.*

The Wazir who was responsible for religious (Islamic) matters was Pengiran Temenggong, and assisted by Cheteria and Manteri Ugama among them were Datu Imam, Siraja Khatib, Udana Khatib and all other Khatibs and Mudims.<sup>11</sup>

Among the said Manteris Ugama there were those who performed the duties of *Kadhi*, *Imam*, and managed the affairs of mosque. All the Manteris Ugama was also responsible for advising the Sultan on matters and problems of religion and its laws and regulations.

*Hukum Kanun Brunei* which served as the basis and legal source of Brunei consisted of forty-four articles whose objectives were:

*... Hukum Al-Kanun' is the Laws as practiced in big countries and include all customs and traditions that prevailed in its colonies and villages, so that it becomes useful to the country and to all the Kings and Ministers, and for the well-being of its people.*

Among the content of the *Hukum Kanun Brunei*, which were used for Brunei Law, were those affecting the Rights of the Ruler, Criminal Law, Law on Theft, Law on Marriages, Law on Adultery, Law on Apostasy, Law on Trade, Law on Usury,

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<sup>11</sup> Pehin Tuan Imam Dato Paduka Seri Setia Ustaz Haji Awang Abdul Aziz bin Juned P.S.S.U.B., D.S.L.J. (2008), *Islam in Brunei during the reign of His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah, Sultan and Yang Di-Pertuan of Negara Brunei Darussalam*, 1<sup>st</sup> ed, p. xlvii-xlviii



Law on Weights and Measures, Law on Buying and Selling, and Law on Lending-Borrowing.

For the Laws on Homicide, Theft, Adultery and Apostasy, it was mentioned:

*... That according to the Laws of Allah Ta'ala, the legal punishment for homicide is death.*

*According to the law of Allah Ta'ala a thief need not be put to death, but his right hand shall be amputated.*

*According to the law of Allah Ta'ala a muhsin (married man/woman who commits adultery) shall be stoned to death.*

*... when a Muslim becomes an apostate, he is made to repent three times; and if he refuses to do so, he shall be put to death. His body shall not be cleansed, it shall not be prayed upon, nor buried in a Muslim cemetery.*

In the Boxer Codex which contains records on Brunei by Spanish officials in 1588 AD and 1589 AD, there is mention of some of the said punishments:

*... one who steals royal property or counterfeits money dies for it ... one who wounds another, unless the wounded one pardons him by request or by restitution, the judge orders (the wounded one) to give him another wound ... if by chance he dies from the wound, ... he has to die.*

*They cut off the right hand of him who is a thief...*

*... in the case of a man who cohabits with an unmarried woman by way of flattery despite both of them being arranged to marry, they both will die for the crime.<sup>12</sup>*

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<sup>12</sup> Pehin Tuan Imam Dato Paduka Seri Setia Ustaz Haji Awang Abdul Aziz bin Juned P.S.S.U.B., D.S.L.J. (2008), *Islam in Brunei during the reign of His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah, Sultan and Yang Di-Pertuan of Negara Brunei Darussalam*, 1<sup>st</sup> ed, p. xlix-l

#### CHAPTER 4: THE LAW OF *HUKUM KANUN BRUNEI* (CANON OF BRUNEI)

The code refers to the law and regulations of Brunei and was one the guide lines under the traditional rule of the Brunei Malay Sultanate. It had been in existence even before the reign of the 9<sup>th</sup> Sultan of Brunei, Sultan Hassan (1582 – 1598). He later completed the code, but the compiler of these laws remains unknown, a common phenomenon of traditional literature.

The code of Brunei had been in force, and used by the Sultans of Brunei, until Brunei became a protectorate of the British in 1906. Evidence that the code had been in use is based on the written reports of Westerners who had been visiting Brunei since the 16<sup>th</sup> century. Brunei had become increasingly well known to Europeans during the 17<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> centuries, and many had landed on her shores, especially the British, who remarked then that the code was in use. One such visitor, W.H. Treacher, reported in 1880 that his ship, while lying anchored off the port, was boarded by intruders. Treacher reported the loss of a gold watch and a rifle to the Sultan. The stolen items were returned three days later and the three culprits had their hands chopped off.

Treacher also reported having been a witness to the execution of a criminal found guilty of committing a spate of robberies and murders upon traders plying between Brunei and Labuan.

The code carried in its introductory chapter statements declaring that the custom included in the code had been handed down through the ages from the Iskandar Zulkarnain Era. The purpose of the code was to provide “guidance and examples” to Sultan, Wazir, Cheteria, and Manteri responsible for running the country to ensure justice and welfare for the subjects, and to punish the law breakers with a view to bring about repentance.<sup>13</sup>

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<sup>13</sup> Yang Berhormat Pehin Jawatan Luar Pekerma Raja Dato Seri Utama Dr. Ustaz Haji Awang Md. Zain bin Haji Serudin (2000), *Brunei An Islamic Nation: Islamic Background*, 1<sup>st</sup> ed, p. 11

The Code contained 46 sections divided into six parts:

- i) The Ruler
- ii) Criminal offences and the courts
- iii) Loans and wages
- iv) Farming
- v) Marriage and divorce
- vi) Commerce.

Below are some examples on each part contained in the Code.

### **Part I – Pertaining to the Ruler**

- 1) Yellow dress was not to be worn except by the Sultan or others being permitted by him. The penalty for contravening the law was death.
- 2) Attire of filmy and transparent material was forbidden at royal functions held in palace grounds; offenders would have their clothes ripped off.
- 3) Certain words were only for exclusive use by or for the Sultan i.e. *titah* (command) and *patik* (I, me), *murka* (took exception), *kurnia* (royal gift), *anugerah* (award). Anyone found using these words indiscriminately to other than the Sultan would be punished by death.<sup>14</sup>

### **Part II – Pertaining to Criminal Offence and the Courts**

A) Some examples of criminal offences included in this sections:

#### **i) Murder**

- a) When a person committed murder although the murdered person was innocent, and the killing was done without the knowledge of the Sultan or his representative such as a judge, the offender was liable to a fine of 10 *tahils* sepede of gold. The fine was imposed upon him as penalty for failure to inform the Sultan or the Judge.

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<sup>14</sup> [REDACTED]

Notwithstanding the “Code” stipulated that Allah grants that a murderer justly deserves death himself as punishment, according to Quranic verse and the essence of do good and resist evil. (*Amar Makruf Nahi Mungkar*)

- b) If a Jew murdered a Christian or a non-believer, he should be sentenced to death, regardless of the murderer’s conversion to Islam.
- c) If a slave killed his master and this happened far away from the place of the Sultan or his representative and the slave was arrested and killed by another person, the slave killer was free from prosecution on account that the slave deserved to be killed.
- d) When a hired killer was killed by his intended victim, the hirer would be fined 10 *tahils* of gold, and was obligated to pay the dead man’s burial expenses.
- e) In the event that both the hired killer and his intended victim died, then the hirer would be sentence to pay to the hired killer’s family the fees promised.

## ii) **Slapping**

- a) If a slave slapped a free person, the penalty was a fine equivalent to the price of the slave.
- b) If a person slapped an innocent slave, the offender would be fined 5 gold pieces or 10 gold pieces if he was a rich person. In addition the “Code” stipulated that Allah grants that the slapper himself deserves to be slapped, and that, is a just punishment.
- c) If a person slapped a slave then suddenly the slave stabbed his assailant to death then neither would be punished although “Allah grants that the killer deserves to be killed”.<sup>15</sup>

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<sup>15</sup> Yang Berhormat Pehin Jawatan Luar Pekerma Raja Dato Seri Utama Dr. Ustaz Haji Awang Md. Zain bin Haji Serudin (2000), *Brunei An Islamic Nation: Islamic Background*, 1<sup>st</sup> ed, p. 13

### iii) **Theft**

- a) When a man stole from his village, and was discovered by the owner and killed by him on the same day, the killer was not guilty of any offence.
- b) But if the thief was not apprehended on the same day the offence was committed, then the victim had no right to kill him, but must hand him over to the judge for prosecution.
- c) If a theft was committed in a house and many thieves were involved, but only one was caught entering into the house while his accomplices remained outside, than the thief caught in the house would have his hands chopped off, and the others would receive civil punishments.
- d) Common shame punishment meant the guilty person would be paraded around the state on a chariot filled with hibiscus, with an umbrella and their faces painted with chalk. In addition they would be sentenced to return their loot to the owner if it was still in their possession otherwise they would pay according to the value of the stolen items.
- e) The Code stated that Allah grants that a thief should not be killed, but should have his hands chopped off.<sup>16</sup>

### iv) **Adultery**

- a) If a married person was found committing adultery, he would be stoned to death. If the offender was not married, he would be given a hundred strokes and be banished from the state for a year.
- b) Proof of adultery was either by admission or the testimony of 4 sane persons who actually witnessed the act being committed.

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<sup>16</sup> Yang Berhormat Pehin Jawatan Luar Pekerma Raja Dato Seri Utama Dr. Ustaz Haji Awang Md. Zain bin Haji Serudin (2000), *Brunei An Islamic Nation: Islamic Background*, 1<sup>st</sup> ed, p. 14-15

v) **Alcoholic Drinks**

- a) The penalty for drinking alcohol or any other intoxicating drink was fifty strokes of flogging for a free person and twenty for a slave.
- b) Proof of guilt was by admission or the testimony of 2 witnesses.
- c) A person whose breath had the smell of alcohol would not be liable for punishment.

vi) **Accusing Someone of Adultery**

- a) A person found guilty of wrongfully accusing others of adultery was liable to a fine of 10 *tahils* of gold if the accused was a free person, and 2 *tahils* if a slave.

vii) **Telling Lies**

- a) A person who told lies and claimed that what he said came from state dignitaries would be fined one *tahil* of gold, or publicly admonished. If he resisted, he should be deemed to have been guilty of undermining the stability of the Sultan's government, which is punishable by death.<sup>17</sup>

viii) **Engagement**

- a) Somebody else's fiancé should not be proposed to. If the parents of the engaged woman accepted a new proposal, while the proposer was aware of the woman's engaged status, the penalty was to return all engagement gifts received to the fiancé, while the new fiancé was liable to a fine to 10 *tahils* of gold.
- b) If the new proposer was not aware of the woman's engaged status, he was free from any punishment.

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<sup>17</sup> Yang Berhormat Pehin Jawatan Luar Pekerma Raja Dato Seri Utama Dr. Ustaz Haji Awang Md. Zain bin Haji Serudin (2000), *Brunei An Islamic Nation: Islamic Background*, 1<sup>st</sup> ed, p. 16

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