

THE ADMINISTRATION OF MUSLIM LAW ENACTMENT, SABAH, 1977 (No. 15 of 1977)

In an article on the administration of Muslim law in Sabah, (1975) J.M.C.L. 309 the view was expressed that there appears to be a gap in the administration of the Muslim Law in Sabah and that this gap appears to have been only partially filled by the enactment of the Administration of Muslim Law Enactment, 1971. In particular no provision had been made for civil jurisdiction in Muslim matters.

That gap has now been filled by the enactment of the Administration of Muslim Law Enactment, 1977 (No. 15 of 1977). There was some confusion before as to whether it was the Muslim law or the Native Customary law that was applicable to Muslims; this also appears to be resolved by the fact that jurisdiction is given to the Courts of the Kathi Besar and the Kathi under the new enactment, thus separating the administration of the Muslim law from the administration of the Native Customary Law.

Before dealing with the detailed provisions in the Enactment it might be useful to consider the constitutional position. The Constitution (Amendment) Enactment, 1973 of Sabah amended the Sabah Constitution to provide that Islam is the religion of the State. In 1976 the Federal Constitution was amended (by Act A354) to provide in effect that the Constitution of the State of Sabah shall make provision for conferring on the Yang di Pertuan Agong the position of Head of the Muslim Religion in that State. No such amendment has yet been made in Sabah and the Constitution (Amendment) (No. 2) Enactment, 1976 (No. 17 of 1976) which appears to have been enacted to bring the State Constitution into conformity with the amendments made by Act A354 of 1976 does not have such a provision. It is also strange to find that although Article 161D (relating to freedom of religion) has been repealed by Act A354 of 1976, the Constitution (Amendment) (No. 2) (Enactment), 1976, has amended paragraph (6) of Article 24 of the Sabah Constitution instead of repealing it.

The Administration of Muslim Law Enactment, 1977, in effect regards the Yang di Pertuan Negeri as the Head of Islam in Sabah. The President and Members of the Majlis Agama Islam, Sabah are appointed by the Yang di Pertua Negeri on the advice of the Chief Minister (S. 3). The Yang di Pertua Negeri appoints the Mufti on the advice of the Chief Minister (S.9). The Kathi Besar, the Kathis and the Members of the Syariah Court of Appeal are appointed by the Yang di Pertua Negeri on the advice of the

Majlis Agama Islam (S. 45). The courts of the Kathi Besar and the Courts of Kathis are constituted by the Yang di Pertua Negeri (S. 46). Despite the application of Article 3(2) of the Federal Constitution to Sabah, it is the failure to comply with the order of the Yang di Pertua Negeri on the commencement of Ramadan etc. which is made an offence (S. 99). The power of the Majlis to make rules is subject to the approval of the Yang di Pertua Negeri (S. 105). Quite apart from the possible conflict between the Federal Constitution and the State Constitution on this point, difficulties may arise if a non-Muslim is appointed the Yang di Pertua Negeri in Sabah. The Constitution does not provide that only a Muslim can be appointed Yang di Pertua Negeri.

Part I of the Enactment contains the interpretation section. The definitions follow those in the enactments in Peninsular Malaysia with some drafting changes. "Mosque" is defined to include a surau used for holding Friday prayer and "zakat" is defined as "a levy on properties payable annually by a Muslim in accordance with the Muslim law and the provisions of this Enactment".

Part II deals with the establishment of the Majlis. This again follows common form with a schedule relating to qualification for membership and meetings. One significant omission in section 11 which deals with Rulings (fatwa) is that no reference is made to the authorities, whether of the Shafii school or other schools, which can be referred to in issuing the fatwa.

Part III deals with the appointment of the Secretary and of the officers and servants of the Majlis.

Part IV deals with finance and again follows common form as does Part V which deals with mosques. They re-enact Part IV and Part V of the Administration of Muslim Law Enactment, 1971 with amendments. Power is given to the Majlis to appoint an Imam not only for each Kariah but also for each daerah or district.

Part VI deals with the registration of marriages and divorces and re-enacts the provisions of Part VI of the former enactment with amendments and additions. Section 36 of the former enactment for example provided that no marriage shall be solemnised under the Enactment if the man to be wedded is married to any person other than the other party to the intended marriage except a written consent of the person to whom he is wedded is obtained. The corresponding new section 36 reads, "No marriage shall be solemnised under this Enactment if the man to be wedded is married, unless he shall have obtained a consent in writing of the Majlis". The application for the consent shall be lodged in the prescribed form with the Imam Daerah of the District wherein the marriage is requested to be solemnized who shall forward the same with his observations to the Majlis.

A new section 37A provides that the Imam Kariah shall report to the

Majlis through the Imam Daerah all marriages and divorces in his Kariah with such particulars as the Majlis may require from time to time.

Part VII deals with the Maintenance of Dependants and in the main re-enacts the provisions of Part VII of the former enactment. Power to make orders of maintenance is however given to the Court of a Kathi Besar or the Court of a Kathi (instead of by the Imam as formerly). It might be noted that, on failure to comply with an order for maintenance, the court may sentence the person liable to a fine not exceeding one hundred dollars or imprisonment not exceeding one week for each month's maintenance remaining to be paid, provided that in no case shall the fine exceed five hundred dollars or the imprisonment exceed three months.

Part VIII deals with converts and re-enacts the provisions of Part VIII of the former enactment.

Part IX is new and deals with Religious Courts, their constitution and jurisdiction. The provisions follow those to be found in the enactments of the States in Peninsular Malaysia. Appeals from the Court of the Chief Kathi and the Courts of Kathis lie to the Syariah Court of Appeal.

Part X deals with offences and re-enact the provisions of Part IX of the former enactment, as amended by Enactment 4 of 1974 and 3 of 1975, together with further amendments. Section 93D might be noted as it deals with behaviour intending to wound the religious feelings (of Muslims); it is a re-enactment of section 45D of the former enactment, added by Enactment No. 3 of 1975. A number of new offences based on those existing in the enactments in the States of Peninsular Malaysia are added. These include sale and consumption of intoxicating liquor (S. 97), sale and consumption of food, drink and tobacco during Ramadan (S. 98), Disobedience of Order of Yang di Pertua Negeri on commencement of Ramadan etc. (S. 99), abetment of offence under S. 97 (S. 100), Khalwat (S. 101), and cohabitation by divorced woman and other illicit intercourse (S. 102).

It might be noted that section 93A (propagating other religious doctrine among Muslims) and S. 93D (Behaviour intending to wound religious feeling) are made applicable to all persons whether they profess the Muslim religion or not. It can be argued that to the extent that they create offences by persons not professing the Muslim religion they are *ultra vires* the Federal Constitution, although section 93A might be covered by Article 11(3) of the Federal Constitution.

Part XI deals with general matters and *inter-alia* gives power to the Majlis with the approval of the Yang di Pertua Negeri to make rules.

The Administration of Muslim Law Enactment, 1977, has provided for the administration of Muslim law in Sabah on lines which are already familiar in the States of Peninsular Malaysia. No attempt has been made to integrate the provisions of the Marriage Ordinance, 1959, (No. 14 of 1959) into the Enactment. If the Ordinance applies to Muslims then perhaps it

would have been better to re-enact its provisions in the Administration of Muslim Law Enactment. There are differences between the Sabah enactment and the enactments in the States of Peninsular Malaysia just as there are differences between the enactments in the various states in Peninsular Malaysia themselves. It is hoped that a uniform law relating to the administration of the Muslim law will be enacted in the not too distant future and that this law will then be adopted in the various states, including Sabah.

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LEGISLATION

The following list of Acts passed and revised in Malaysia is a continuation of the list of Federal Acts contained in Vol. 5, Part 1 [1978] J.M.C.L. 177-179.

FEDERAL ACTS PASSED

<i>Bil. Akta/ Act No.</i>	<i>Tajuk Ringkas/Short Title</i>
188	Akta Bil Perbendaharaan (Tempatan), 1946. Publication of national language text.

FEDERAL ACTS REVISED

<i>Bil. Akta Act No.</i>	<i>Tajuk Ringkas/Short Title</i>
190	Akta Ibu Kota Persekutuan, 1960. (Disemak - 1977) Publication of national language text.
200	Akta Pungutan Rumah Ke Rumah dan Di Jalan, 1947. (Di semak - 1978).
206	Arms Act, 1960 (Revised 1978).
207	Explosives Act, 1957 (Revised 1978).
208	Trustee Act, 1949 (Revised 1978).
209	Fees Act, 1951 (Revised 1978).
210	Fisheries Act, 1963 (Revised 1978).
211	Post Office Act, 1947 (Revised 1978).
212	Hire-Purchase Act, 1967 (Revised 1978).
213	Dewan Bahasa dan Pustaka Act, 1959 (Revised 1978).
214	United Kingdom Designs (Protection) Act, 1949 (Revised 1978).
215	Registration of United Kingdom Patents Act, 1951. (Revised 1978).