

## INTRODUCTION

Johore was the last state to acquire a British adviser in the administration of its government. However indirect British influence was prevalent in the state for a long time. British advisers took on the task of advising Johore rulers in indirect and informal ways.

The Sultans of Johore were descended from the Rulers of the Johore and Riau Empire. Johore was first ruled by Temenggong Ibrahim. He was followed by Sultan Abu Bakar, the first Sultan to acquire the title of Maharaja. Sultan Abu Bakar contributed greatly to the development of the state, especially the initial establishment of the Islamic law in the state. He was deeply interested with the Islamic developments in foreign countries and spent much of his time travelling and acquiring knowledge in this matter. The influence this had on him is seen in his portraits which picture the Sultan in Turkish costumes. Even the biggest mosque in Johore, the Masjid Abu Bakar, which was personally designed by the Sultan is based on Turkish design and architecture. Sultan Abu Bakar established the Islamic influence in the state in the sense that he established the initial foundation for the proper administration of Islamic law in the state.

The book 'Hikayat Johore' by Dato' Haji Muhammad Said bin Haji Suleiman can be regarded as an important and reliable source of the history of modern Johore. From that book we get the information that the government of Johore in 1885 signed a treaty with the British. The treaty between Sultan Abu Bakar and the Secretary of State of the Colonies was signed on 11th December 1885. A law was passed which

established the modern Johore government. The government machinery was set up with the Council of Ministers which consisted of the Menteri Besar and twelve other officers of the government who are all Malays of Johore origin. Therefore by 1885 the government of Johore was independent and free from undue interference from British advisers.

With the establishment of the state government, Islam was declared as the official religion of the state. At this juncture the laws and customs of the state were administered by the court and government officials according to laws based on those of the Straits Settlements. Islamic law was handled by the Kathis and their assistants according to 'hukum Shara'. All doubts were referred to the State Mufti. There is no clear information concerning the establishment of the Religious Department. But there is strong indication that the Religious Department was established at about the same time as the other state departments in 1895 by Sultan Ibrahim.

The Religious Department handles the administration of Islamic law in Johore. The department is divided into several departments like the office of Mufti, Kathi, the Zakat and Fitrah department, wakaf and khairat am and so on. Since Malaya gained independence in 1957, various committees was established to handle matters which concern the state. Islamic religion is a state matter and in Johore it is placed under the department of the Committee of Social Welfare. In 1949, the Council of Religion was established.

This study mostly deals with the analysis of enactments relating to the Muslim law. I have divided the paper into structure, the Shariah Court, family law of divorce and marriage and law concerning property like Baitulmal, wakaf and Zakat. I have laid emphasis on the chapter concerning Zakat due to the important matter to be discussed therein. I feel Zakat property should be better utilised for Muslim community.

## CHAPTER I

### STRUCTURE OF THE JOHORE RELIGIOUS DEPARTMENT

The Muslim religion in the state is headed by His Highness the Sultan of Johore, who possesses discretionary powers over all matters of religion in the state. The Majlis or the Council of Religion is endowed with the function to advise the Sultan in all these matters relating to the religion of Islam.<sup>1</sup> The Majlis consists of the President of Religious Department, the Mufti, the Chief Kathi, the Inspector of Religious Schools, the Secretary of Religious Affairs and not more than sixteen or less than twelve other persons to be appointed by the Ruler. The President of Religious Affairs is the Chairman of the Majlis; the Mufti is the Vice Chairman and the Secretary of Religious Affairs is the Secretary to the Majlis.<sup>2</sup>

#### The President, Religious Affairs.

The President, Religious Affairs, is the head of the Johore Religious Department and he is also the Chairman of the Majlis Ugama. He is in charge of the overall administration of the Islamic Department in the state. The Department has various offices or branches attached to it. They include the offices of Mufti or Kathi. There are also branches like the Religious Schools, Religious Information Department, and also separate departments concerning property like Zakat, Baitulmal, Wakaf and Khairat.

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1. Council of Religion Enactment 1949 s. 3.
  2. Council of Religion Enactment 1949 s. 2.

The Secretary, Religious Affairs is also an ex-officio member and Secretary to the Majlis Ugama.

### The Majlis.

The Majlis is a major component in the organisation of Islamic authority in the state. It is also known as the "Council of Religion and Malay Custom". This is primarily an advisory body on behalf of and under the authority of the Ruler to aid and advise the Ruler on matters pertaining to religion in the state.

Notwithstanding the fact that the Ruler possesses discretionary powers in the exercise of his function as head of the Muslim religion, the constitution endows the Majlis with an advisory function to him, apparently finding the conceptual basis in the principle of 'mushawarah' or consultation.<sup>3</sup>

The origins of the Majlis in Malaya dates back to the year 1916 when a Council of Religion (Majlis Ugama) was established in Kelantan to provide for the supervision of mosques. This Majlis was reconstituted in 1938 under the name 'Majlis Ugama dan Istiadat Melayu' with wider powers and was subsequently superseded by the President Majlis provided for by the Council of Religion and Malay custom and Kathis Courts Enactment 1953. Each of the other states followed suit.

In Johore, there is the Council of Religion Enactment 1949. The Majlis consists of the President of Religious Department, the Mufti, the assistant Mufti,

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3. Abd. Majed Mohamed Mackeen, Contemporary Islamic Legal Organisation in Malaya, Page 38.

the Chief Kathi, the Inspector of Religious Schools, the Secretary, Religious Affairs, and not more than sixteen or less than twelve other persons to be appointed by the Ruler. The President, Religious Affairs is the Chairman of the Majlis, the Mufti is the Vice Chairman, and the Secretary, Religious Affairs, is the Secretary of the Majlis.<sup>4</sup>

An essential constituent of the Majlis is the Shariah Committee which with the Mufti, serves as the source of all considered legal opinions (fatwa) expressed upon any question relating to Islamic law or to a nass (a textual provision in the Quran or the Traditions), referred to it for an opinion by the Majlis by the written request of an individual or, of any court other than the courts of Kathi. It is also provided that the Majlis or the Shariah Committee acting on behalf of and in the name of the Majlis, may issue or give its ruling on any such question submitted to it.

The duty of the Majlis is to aid and advise the Sultan in all matters relating to Islam.<sup>5</sup> When a case is presented there shall be a meeting of the Council to decide on the ruling. Then it shall be presented to the Executive Council Members to be presented to His Highness the Sultan, to be approved. Any such ruling given by the Majlis in the exercise of its quasi judicial powers then can, if the Ruler so directs, be published in the State Gazette. This is then binding on all Muslim residents in the state concerned.

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4. Council of Religion Enactment 1949, section 2.  
5. Council of Religion Enactment 1949, section 3.

The fatwa given by a body of ulama on the question of Shariah law is not so much a 'ruling' as a considered legal opinion which may or may not gain the force of law. The authority of the Majlis to declare it a ruling is indeed a modern procedural device evidently embodying the right of the Ruler, from whom the Majlis derives its authority, to issue such fiats.

The Council of Religion Enactment in Johore does not have specific provisions for the functions of the Majlis. The provisions for the administration of Islamic law in Johore are not contained in one enactment but are found in 14 enactments. Thus the functions of the Majlis are listed in various separate enactments. The statutory powers of the Majlis in so far as they are derived from the express provisions of the Enactments concerned broadly relate to the following functions:

- a) management of all money and property of a fund known as Baitulmal<sup>6</sup>.
- b) sole trusteeship of all wakaf and of all other trusts (amanah), in accordance with Shariah law.
- c) sole trusteeship of all mosque in the state and the exclusive right to grant permission for the erection of new mosques.
- d) control and registration of all conversions to Islam.

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6. Baitulmal Enactment 136, 1934, section 14.

### The Mufti

The Mufti is a member of the Council of Religion of Religion and he is the authority responsible for the giving of 'fatwa' on any question related to the Muslim religion. His duties also include the preparation of 'Khutbah' for Friday prayers and also determination of property to be divided on the death of a Muslim person. But most important is the Mufti's function to give 'fatwa' or ruling on any questions relating to the Muslim religion. The Mufti will receive questions from individuals or from the Kathi's court concerning any doubts regarding the Muslim law.

For example there was a case where the Kathi's court had to decide on the question of maintenance or nafkah. The woman claimed her maintenance while the husband was already dead. The Mufti gave the fatwa that the court can order the amount to be paid from the deceased's property. When the Mufti gives the ruling it is for the Kathi's court to apply the ruling to the case. The Mufti is considered as the authority to give fatwa or ruling on questions concerning the religion and his fatwa is invariably binding on the Shariah courts and the other Muslims in the state.

The Mufti functions according to the Mohammedan Law Determination Enactment No. 48 (27 of 1919). It is provided that any court before which any question of law of the religion of Islam arises, may refer such question to a Mufti for his opinion.<sup>7</sup> The Mufti handles questions regarding the Muslim religion from both the Shariah court and the Magistrate courts.

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7. Muhammadan Law Determination Enactment No.48, s.2.

A. Amount of Fatwa given in a year.

<u>Classification</u>	<u>Average Amount</u>
Fatwa on General Property	250 to 300
Fatwa on Baitulmal Property	200 to 300
Fatwa on Small Estates	150 to 300

When the court refers questions regarding the Muslim religion to a Mufti, the Mufti is required to give his opinion within thirty days together with the reasons and references to the authorities on which it is based.<sup>8</sup> And upon receipt of such opinion, the referring court is required to proceed in determining the matter before it in accordance with the opinion, if no notice of appeal to the Ruler in Executive Council has been given.<sup>9</sup>

When there is an appeal, the Ruler in Executive Council, by resolution duly recorded appoint from the members of the Muslim community in Malaya to hear and determine such appeals, and may in like manner dissolve, alter or add to any committee so appointed.<sup>10</sup>

Whenever any such appeal is dismissed, the Ruler in Executive Council may, if the bringing of such appeal appears to have been frivolous or vexatious, order the appellant to pay a penalty not exceeding \$250.<sup>11</sup> The decision of the Ruler in Executive Council is final and no appeal can be brought from it.<sup>12</sup>

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8. Muhammadan Law Determination Enactment No.48, s. 4.  
 9. Muhammadan Law Determination Enactment No.48, s. 5.  
 10. Muhammadan Law Determination Enactment No.48, s. 8.  
 11. Muhammadan Law Determination Enactment No.48, s. 10.  
 12. Muhammadan Law Determination Enactment No.48, s. 11.



## The Kathi

The functions of a Kathi form one of the most important factors in the administration of Islamic law in Johore. The state of Johore is divided into nine districts and each district is represented by a Kathi to perform the functions of Islamic law in his area. The Kathi acts as a judge in the court of Kathi or the Shariah court which is constituted in all districts. The Kathi represents the Sultan as the head of religion in each district. The authority of each Kathi is subject to the authority of:-

1. Chief Kathi who also presides in Johore Baru, the capital of the state.
2. Supervisory Committee of Zakat and Fitrah, Baitulmal and the Muslim Trust Committee.

## Chief Kathi

His main duty is to register marriages and divorces of Muslim persons and he is assisted by an assistant. The Kathi or Chief Kathi performs his duty of registering Muslim marriages and divorces according to "Undang-undang Pendaftaran Nikah, Cerai dan Rojok 1935" or the Registration of Marriage and Divorce Enactment 1935. The Chief Kathi is also an ex-officio member of the Majlis Ugama.

## Duty of Kathi

Provision is made for the registration of marriages and divorces by the Muhammadan Marriage Enactment (Enactment No.17). Kathis and Naib Kathis are appointed by the Ruler,<sup>13</sup> and a Kathi may be appointed for a particular place or district or for particular nationalities or schools. A Kathi or Naib Kathi has such

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13. Muhammadan Marriage Enactment No.17, s.4.

powers in all matters concerning the Muslim religion, marriage and divorce and in all matters regulated by Muslim law as may be defined in his tauliah or letter of authority. Every Kathi does his duty in his office or in the Shariah court except for cases of marriage and divorce which can be settled in his own home. The Kathis for the various districts preside over the Kathi's courts which deal with disputes relating to Muslim marriage and divorce, claims for maintenance and other matters relating to Muslim law.

If there is any case of a missing person for example, or a wife who has deserted the husband, then the Kathi in his district will inform all the Kathis of other districts throughout the state concerning the person involved. If such a person were to come to any other Kathi in order to get married or to ask for maintenance, the Kathi concerned will report the missing person to the Kathi in the area where he was reported missing. Such matters are frequent and in this respect the cooperation is swift and the enforcement of administration of Muslim law is adequately dealt with.<sup>14</sup>

A Kathi must be a male and a Muslim of good character and position suitable to the attainments of a Kathi.<sup>15</sup> This means that he must have a sufficient knowledge of Muslim law and that he has a generally good reputation as a Muslim of good character.

It is provided that every marriage between persons both of whom profess the Muslim religion shall

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14. Materials obtained from Chief Kathi Johore.

15. Muhammadan Marriage Enactment No. 17, s.4.

be celebrated by a Kathi or a Naib Kathi.<sup>16</sup> Before making any entry of registration the Kathi or Naib Kathi shall make such inquiry as he may consider necessary to satisfy himself as to the validity of the marriage, divorce or revocation of divorce which is sought to be registered and for this purpose, he may issue summons requiring any Muslim to appear before him to give evidence or to produce documents. Such persons shall then be legally bound to comply with such summons and in default he will be liable to a fine not exceeding \$50.<sup>17</sup> In the inquiry the Kathi will make reference on these matters:-

- a. there is no objection as to both parties to be married,
- b. witnesses for the girl are examined whether they have the required status to be witnesses and the authority to do so,
- c. consent of the girl to be married,
- d. question of the amount of mas kahwin or mahr,
- e. conditions to be imposed in the contract of marriage,
- f. verification of divorce in the case of a divorcee who is to be married,
- g. ascertaining the period of idah for a divorcee.

A Kathi may refuse to register such marriage and he shall record his reasons in a book to be kept for that purpose.<sup>18</sup> An appeal against a Kathi's or Naib Kathi's refusal to register a marriage, divorce or revocation of divorce lies with the Registrar, provided such appeal is

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16. Muhammadan Marriage Enactment No.17, s.6.  
 17. Muhammadan Marriage Enactment No.17, s.8 (ii)  
 18. Muhammadan Marriage Enactment No.17, s.11.

presented to the Registrar within two months from the date of refusal. The Registrar may uphold, vary or reverse the Kathi's or Naib Kathi's decision, and the order passed by the Registrar on appeal shall be final.<sup>19</sup> Every Kathi's register and every copy of an entry in a Kathi's register certified under the signature and seal of the office of a Kathi or the Registrar to be a true copy or extract, shall be prima facie evidence in all courts in the state of the dates and facts set out in such register, copy or extract.<sup>20</sup>

The Inspectors of Religious matters, the inspectors of burial grounds and the Naib Kathis, function under the office of Kathis. Apart from his duty as a Registrar of Muslim Marriages and Divorce in his district, a Kathi also perform functions in connection with Baitul-mal and the collection of zakat and fitrah and they also give advice and guidance on religious matters.

#### Inspectors of Religious Affairs.

The Inspector of Religious Affairs acts as a prosecuting officer in the Shariah court for cases like non-payment of zakat, maintenance and divorce. He also acts as a prosecutor in the civil court in cases affecting the religion like adultery and khalwat. The inspector will inspect all matters concerning the Muslim religion both in the rural and the urban areas. If there are cases of preaching of the religion without authority or tauliah, the Inspector has the right to charge the person in court. His other duties include

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19. Muhammadan Marriage Enactment No.17, s.12.

20. Muhammadan Marriage Enactment No.17, s.15.

- a. giving advice to the public concerning the Muslim religion,
- b. inspecting the registration of divorce, marriage or revocation of divorce,
- c. inspecting the total number of fakir and the poor in the area authorised to each Amil,
- d. making general reports concerning marriages, divorces and religious practices of certain communities.

Department of Baitulmal, Zakat, Wakaf and Khairat and Maulud Funds.

In the early times, the Department of Zakat and Baitulmal was administered by the Chief Kathi and assisted by the Kathis of each district of the state. At present this department is administered by the President, Religious Affairs, with the help of an assistant. The office dealing with Baitulmal property is administered by the Amin (Treasurer) of the Baitulmal who performs his functions under the direction of the President, Religious Affairs who is Nathir (Controller) of the Baitulmal; the Amin is assisted in the districts by the Kathis who are Assistant Treasurers of the Baitulmal.

The office dealing with Zakat and Fitrah is administered by a committee which consists of the President, Religious Affairs, the Mufti and Chief Kathi as ex-officio members, an officer nominated by the Ruler and not less than five other Muslims not holding office in the Religious Department, appointed by the Ruler.<sup>21</sup> At district level, Zakat and Baitulmal matters are administered by the Kathi.

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21. Zakat and Fitrah Enactment No. 5 of 1957, s.3.

Wakaf and Khairat is under the supervision of the Kathi of each district. Any Muslim person who wishes to 'wakaf' his property should go to the office of the Kathi and declare his property as a Wakaf after taking necessary oaths in the presence of witnesses.

The funds for Maulud are supervised by the District Kathis and a special committee of Trustees. This committee of Trustees consists of the Mentri Besar of the state, the President, Religious Affairs, the Baitulmal committee and the Chief Kathi.

These funds and properties are used to promote Muslim religion in the state. The Zakat and Fitrah funds are divided into six asnaf or portions and are distributed to the Poor, the Debtors, the Converts, the Wayfarers and the Amil (Collectors). Baitulmal properties and funds are used for building mosques and for scholarships of Muslim students abroad.

Religious schools are under the control of the office of Religious Schools, which is headed by the Inspector of Religious Schools, who is an ex-officio member of the Majlis. The Inspector of Religious Schools is assisted by a member of Assistant Inspectors of Religious Schools. In Johore, religious education is given through afternoon religious schools for children, special religious classes for adults, and Arabic schools. The religious department prepares the curriculum of the subjects to be taught. Most Arabic schools are privately organised.

### Sheikh Al Muqari.

The office of Sheikh Al Muqari is a unique office because it is the only one in Malaysia. He is the head of the reading of the Holy Quran. The officer requires the qualification of a Muslim person who is very conversant with the Quran. All questions concerning the reading of the Quran and the 'Tajwid' is referred to the Sheikh Al Muqari.

The reading of the Quran is of different types of reading or 'Qiraat'. Out of a number of Qiraat, only ten of them are recognised and Sheikh Muqari is conversant with seven of them which include Qiraat like Abi, Umru, Nafi, Ibnu Kathir, Amir, Asim, Manzah and Kisni.

The Qiraat which the Sheikh is not conversant with is the Yaacob, Abi Jaafar and Khalaf. The Qiraat which are not recognised is called Qiraat Ghaz.<sup>22</sup>

Sheikh Al Muqari is also one of the judges in the International Quran reading. He is also qualified to translate and explain the Quran.

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22. Materials obtained from the Mufti of Johore.