

THE POSITION OF *AL-QURAN* AS A SOURCE OF LAW UNDER THE MALAYSIAN LEGAL SYSTEM

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ABSTRACT

Al-Quran was revealed to the prophet Muhammad Sallallahualaihiwasallam (SAW) for more than fourteen hundred years ago to be a book of guidance and a supreme authority in Islam and nothing can be above the holy al-Quran. Islamic jurist unanimously agreed that al-Quran is a primary source of law and the most authoritative, which is definitive (qat'i). In the context of Malaysia as an Islamic state, there is no clear provision stating that al-Quran is a source of law under the Malaysian legal system. Article 4 (1) Malaysian Federal Constitutions provides that the constitution is the supreme law and any law, which is contrary to the constitution, shall be void. In fact the constitution does not define the Islamic law and does not touch even a single word on al-Quran. This article focuses on the position of al-Quran in the eyes of Malaysian legal system with reference to the Federal Constitution, statutory legislations and relevant cases related with the subject. Although al-Quran is not expressly stated in the statutory legislation in Malaysia except in certain Enactment of the state, it has been proven that the Malaysian courts have referred to al-Quran in several cases involving Muslims. It is firmly believed that with the study on the subject will provide better understanding and clarification on the exact position of al-Quran from the legal perspective specifically in the context of Malaysia, which has been declared as an Islamic state by former Prime Minister Tun Dr. Mahathir Mohamad in year 2003.

1.0 INTRODUCTION

Malaysia is a multi-religious state in which Muslims constitute 53%, Buddhists 17.3%, Confucians, Taoists and etc. 11.6%, Christians 8.6%, Hindus 7.0%, Folk/Tribals 2%, and unclassified 0.5%. The religions or faiths professed and practiced are Islam (*ahli sunnah wal jamaah*), Hindus, Buddhists, Sikhism, Christians, Baha'is and non-believers¹. In 2003, former Prime Minister Tun Dr. Mahathir Mohamad has announced that Malaysia as an Islamic state. This announcement creates various perceptions amongst the Malaysian society as well as people all over the world especially by the opposition political party. Some of them claimed that Malaysia is not an Islamic state yet since the Malaysian constitution does not put Islamic law or the holy book of al-Quran as a

¹ Malaysia 1992-93, (1993) at 79-88 in Muhammed Imam, *Freedom of Religion under Federal Constitutions of Malaysia: A Reappraisal*, [1994] 2 CLJ lvii

primary source of law. Since Malaysia is an Islamic state it is important to know the exact position of al-Quran as a source of law under the Malaysian legal system.

Literally al-Quran derives from the word *qara'a* which means reading or recitation². Technically al-Quran can be defined as the book containing the speech of god revealed to the prophet Muhammad (SAW) in Arabic and transmitted to us by continuous testimony or *tawatur*³ to be the light to all human beings till the judgment day. Muslim jurists either traditional or contemporary unanimously agreed that al-Quran is the most authoritative source of law, which is unquestionable and definitive as Allah *Subhanahu Wataala* (SWT) says in *surah al-Baqarah* verse 2: “*This is the Book in which there is no doubt (Since its author Allah the Creator of Universe possesses complete and perfect knowledge, there is no room for doubt of its content)*”.

The main question here is the issue of position of al-Quran under the Malaysian legal system. The discussion in this article explores the applicability of the al-Quran as a reference and source of law as practiced in the civil courts as well as the Syariah Courts of Malaysia. This article is intended to provide an overview on the position of al-Quran under the Malaysian legal system.

2.0 AL-QURAN AS A SOURCE OF LAW UNDER THE ISLAMIC LAW

The inimitability of al-Quran is considered as the miracle of the prophecy of Muhammad (SAW), the most authoritative guide for all human beings and the primary source of the shariah. The revelation of al-Quran began with the first five verses of *surah al-Alaq* and ended with *surah al-Maidah* verse 3⁴. There are 114 surah with 6666 verses comprising of various areas including in the matter of worldly life and hereafter. Al-Quran was revealed purely in Arabic within 23 years in relation to particular events or *asbabun nuzul*

² There are other names of Al-Quran such as *Al-Kitab, Al-Kalam, Al-Nur, Al-Huda, Al-Rahman, Al-Furqan, Al-Shifa, Al-Mawidah, Al-Dhikr, Al-Karim, Al-Aliy, Al-Hikmah and Al-Muhaymin*.

³ Muhammad Hashim Kamali, *The Principles of Islamic Jurisprudence*, 2nd Ed, Ilmiah Publishers Sdn Bhd, Kuala Lumpur. 1998, p 14.

⁴ Thameem Ushama, *Sciences of Quran: An analytical study*, International Islamic University, Kuala Lumpur, 1998, p 96-105.

and it is unanimously agreed by all Muslim jurists that the entire text of al-Quran is *mutawatir* (continous narration)⁵.

It is also agreed by consensus that al-Quran is a primary source of law. This is based on the fact that Islam urges its followers to refer to al-Quran in solving problems that occur in daily lives as commanded by Allah (SWT) in *surah al-Nisa'* verse 59 where He says: “*O You Who believe! Obey Allah and obey the Messenger and those charged with authority among you. If you differ in anything among yourselves, refer it to Allah (Quran) and his Messenger (Sunnah), if you do believe in Allah and the Last Day: That is best, and most suitable for final determination*”.

In another verse Allah SWT says: “*This is the book in which there is no doubt (Since its author, Allah the creator of the universe, possesses complete and perfect knowledge, there is no room for doubt about its content)*⁶”.

In famous hadith of Muaz bin Jabal⁷, the Prophet Muhammad (SAW) had confirmed the methodology in giving any *hukm* or rulings, when Muaz had the conversation with the Prophet before leaving for his appointment as governor of Yemen. In this hadith the Prophet reminded us to refer to al-Quran then al-Sunnah in solving any issue and any problem. In fact all four of *khalifa al-Rashidin* used to decide every issue by looking first into the Book of Allah and next they would refer a sunnah of the Prophet.

If any one rejects al-Quran or part of it he will be in the ranks of those who have lost (all spiritual good) as Allah (SWT) says in *surah al-Maidah* verse 6:” *Muslims’ duty to obey the injunctions of the Quran and Sunnah, the duty to propagate Islam, and the duty to order, and the right to be enabled to order life according to Islamic Injunctions*. There is a duty on Muslims to obey, and conduct oneself according to the injunctions of the al-Quran in its totality. This applies to each individual, group and the state regardless of races, customs and etc.

⁵ The authenticity is proven by universally accepted testimony.

⁶ Surah Al-Baqarah verse 2.

⁷ Riwayat Imam Ahmad and al-tarmidhi.

3.0 AL-QURAN IN THE EYE OF MALAYSIAN LEGAL SYSTEM

Historically, Hukum Kanun Melaka proved that Islamic law has been administered since Kesultanan Melayu Melaka⁸. During that time syariah law is the law of the land and shariah courts were placed at high position. Unfortunately, Malaysia has been colonised by Portuguese, Dutch, British and Japan for more than 500 years. British influence most of the legal system in Malaysia whereby they have introduced English Law since the acceptance of the First Charter of Justice in 1807 and Second Charter of Justice 1826. Islamic law then had lost its significant and was only applied in the area of Islamic family law.

In discussing the position of al-Quran under the Malaysian legal system, it is undeniably to say that we have to refer to the Federal Constitution. Article 4 (1) of the Constitution provides that the Federal Constitution is the supreme law of the Federation. The effect of this provision is that all laws must conform to the provisions of the Federal Constitution and if not such law will be considered void and unenforceable.

In contrast, the situation is different if we refer to the constitution of other Islamic countries such as Saudi Arabia, Islamic Republic of Iran and Pakistan. For example Article 1 of Saudi Arabia Constitution provides that The Kingdom of Saudi Arabia is a sovereign Arab Islamic state with Islam as its religion; God's Book and the Sunnah of His Prophet, God's prayers and peace be upon him, are its constitution. This provision clearly stated that al-Quran as the reference for its constitution⁹. Article 227 of the 1973 Constitution of Pakistan required all laws to be brought in conformity with the injunctions of the al-Quran and al-Sunnah and no law should be enacted repugnant to such injunctions (in matters of personal law such injunction mean as interpreted by the respective sect)¹⁰.

⁸ Ahmad Ibrahim and Ahilemah Joned, 2nd Ed, *The Malaysian Legal System*, Dewan Bahasa dan Pustaka, Kuala Lumpur, 1995 p.14.

⁹ in http://www.oefre.unibe.ch/law/icl/sa00000_.html.

¹⁰ Mohammed Imam, *Making Laws Islamic in Malaysia: A Constitutional Approach*, [1994] 2 CLJ vii

Similarly with the Islamic Republic of Iran, Article 4 provides that all civil, penal financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic criteria. This principle applies absolutely and generally to all articles of the Constitution as well as to all other laws and regulations, and the wise persons of the Guardian Council are judges in this matter¹¹. This provision placed Islamic law, which is based on al-Quran and al-Sunnah as the highest authority in their legal system.

Based on above comparison, it is observed that the Article 4 (1) of the Malaysian constitution did not put al-Quran as the highest authority in the administration of the state. This is the general understanding on the Article 4 (1) of the Federal Constitution. The negative attitude towards this provision is to say that the Federal Constitution is not in accordance with the Islamic law. The rationale behind it refers to the historical background of the Constitution. It was drafted by a Constitutional Commission whose majority of the members were not Muslims. The first prime minister of Malaysia himself claimed that Malaysia is a secular state¹².

In fact, in the case of *Che Omar Bin Che Soh v Public Prosecutor* {1988} 2 MLJ 55, Tun Salleh Abbas, Lord President applied the historical approach and decided that the meaning of Islamic religion in Article 3 (1) in the context of the Malaysian Constitution only refers to the rituals and ceremonies. Lord President said:

“We have to set aside our personal feelings because the law in this country is still what it is today, secular law, where morality not accepted by the law is not enjoying the status of law. Perhaps that arguments should be addressed at other forums or at seminars and perhaps, to politicians and Parliament. Until the law and the system are changed, we have no choice but to proceed as we are doing today”.

¹¹ http://www.oefre.unibe.ch/law/icl/ir00000_.html#A002_

¹² Ahmad Ibrahim, *The Principles of An Islamic Constitution and The Constitution of Malaysia: A Comparative Analysis*, (1989) 1 (2) IIU Law Journal 1, at pp 6-10.

However, late Professor Ahmad Ibrahim had insisted that Malaysian constitution should be given a positive approach and to try to the utmost in order to uphold the principles of Islamic government, which is based on al-Quran¹³. The interpretation of Article 3 (1) should be sufficient in upholding the principles of Islamic law in the Malaysian legal system. It provides that “Islam is the religion of the Federation: the other religions may be practiced in peace and harmony in any part of the Federation”. This provision provides special position to Islam and then we may further interpret that Malaysian legal system should be in tandem with the principle laid down in al-Quran. The failure to insert word al-Quran in the Constitution shall not be a reason to the legislature to enact any law, which is in contrary to the al-Quran. Even Medina Charter 622h did not provide specifically the word al-Quran¹⁴.

The positive approach on the interpretation of Article 4 (1) of the Federal Constitution also refers to the extension of the rule of interpretation. Article 4 (1) only invalidates 'written law passed after Merdeka' if it is inconsistent with any provision of the Federal Constitution. Meanwhile, Islamic Law is not a written law and neither did Parliament or the State Legislative assembly passes it after Merdeka day. Islamic law has been available since the time of the Prophet Muhammad (SAW) for more than fourteen hundred years ago. Thus, the Federal Constitution should not affect Islamic Law, which is based from the principles in the holy Quran¹⁵.

In addition, the words 'law' and 'written law' in article 160 of the Federal Constitution may include 'Islamic Law' as well since article 3 (1) states that Islam is the official religion of the Federation. Article 3 (1) could be considered as the provision, which gives special position, full, and effectual privileged application to the Islamic law.

To sum up, Article 3 (1) should be enough in putting al-Quran as a source of law since the said article provides that Islamic law is the law of the federation. By extending the

¹³ Ibid

¹⁴ However Article 23 of the Medina charter provides that whenever you differ about a matter it must be referred to God and to Muhammad. in A. Guillaume, *The Life of Muhammad — A Translation of Ishaq's Sirat Rasul Allah*, Oxford University Press, Karachi, 1955; pp. 231-233 in http://www.constitution.org/cons/medina/con_medina.htm.

¹⁵ Nuarrual Hilal Md Dahlan & Associate Professor Hj Hairuddin Hj Megat Latif, *Wakaf: Conflict of Jurisdiction Between Civil and Syariah Courts in Malaysia*, [2003] 3 CLJ xiii

interpretation of the said article may entail that Islamic law is the law of the land and it evidences that al-Quran is recognized as one of the sources of law under the Malaysian legal system¹⁶. This interpretation may be regarded as the effort in developing the Malaysian legal system. In fact some scholars insisted on the development of Malaysian common law, which is based on the Islamic law, customary laws and other laws that based on the principle of al-Quran.

This tendency can be evidenced by referring to the *Che Omar's* case, Tun Salleh Abbas Lord President quoted S. Abul A'la Maududi's explanation about Islam in his written judgment which read as follows: "*For Muslims, the religion of Islam is not just a mere collection of dogmas and rituals but it is a complete way of life covering all fields of human activities, may they be private or public, legal, political, economic, social, cultural, moral or judicial*"¹⁷. This interpretation was clearly different with the mundane interpretation to the meaning of Islamic law as understandable by most of the legal personnel.

In term of the Federal Constitution itself, almost all of the provisions are consistent with the principles laid down in al-Quran. For example article 11 provides that every person has the right to profess and practice his religion. This principle was stated in *surah al-Baqarah* verse 256: "*Let there be no compulsion in religion: Truth stands out clear from error.* In another verse in *surah al-Kahf* verse (18):29: "*Say, the Truth is from your Lord: Let him who will, believe, and let him who will, reject (it).* Obviously, Islam guarantees freedom of religion as stipulated in al-Quran particularly on the above verse.

Besides understanding the Federal Constitution, it is also important to know the exact position of al-Quran under the court's systems. Actually Malaysia practices dual legal systems namely civil law and Islamic law. Schedule 9 of the Federal Constitution listed

¹⁶ Ahmad Ibrahim, *The Principles of An Islamic Constitution and The Constitution of Malaysia: A Comparative Analysis*, (1989) 1 (2) IIU Law Journal 1 at pp 6-10. See also Ahmad Ibrahim, *Common Law di Malaysia*, (1989) 1 (1) KANUN p 3-25.

¹⁷ This statement was quoted from book written by S. Abdul A'la Maududi entitled *The Islamic Law and Constitution in Che Omar Bin Che Soh v Public Prosecutor* {1988} 2 MLJ 55. However, in this case Tun Salleh Abbas applied the historical approach and decided that the meaning of Islamic religion in Article 3 (1) in the context of the constitution only referred to rituals and ceremonies.

down the jurisdiction of the federal and states government. These both two legal systems have different sources of law altogether.

There are several sources of law under the civil law namely, statutory legislation, English law, principles of equity, reported cases and text book. Under the civil law the primary sources of law is statutory legislation. Statutory legislation passed by the Parliament has a higher position in comparison with the state legislation. Generally, there is no provision under the civil law to say that the source of law referred to al-Quran.

Even though there is negative indication under the civil law regarding the position of al-Quran, it is wrong to say that the civil court blindly rejected reasoning from al-Quran in deciding any court case. There were reported cases whereby it showed that the civil court has referred to *ulama'* or *mufti* in solving several issues involving Muslim affairs¹⁸. The implied understanding from these cases is those *ulama'* for sure will rely on al-Quran and gives their reason on certain issue by referring to it.

For example, in the case of *Commissioners for Religious Affairs Terengganu & Ors v Tengku Mariam* [1969] 1 MLJ 110, where the issue discussed was that of *wakaf*. In the preliminary, the matter had been referred to the Mufti in order to get decision on whether *wakaf* made by Tengku Chik for the benefit of his family was valid or not. The mufti had approved such *wakaf*. However in this case the learned judge refused to accept such *fatwa* but followed decision of the Privy Council and decided that the *wakaf* was therefore void. It shows that the civil court may refer to the opinion of Muslim scholar such as *fatwa* of the mufti but that *fatwa* is not binding. The learned judge said:

“I have given due matter considerable thought and am of the view that even if it had been this court which had sought the fetua, the court yet retains unfettered discretion as to how much fetua it should accept, and may decline to be bound by it. I can find nothing in the

¹⁸ In *Halimatussadiyah* case [1992] 1 MLJ 513, the High Court accepted the opinion of the State Mufti given as a testimony in the Court on the question of the position in Islam as to the wearing of purdah by women.

Enactment which has affected the power of the court to propound Islamic law, which power I now propose to exercise”.

In *Re Dato’ Bentara Luar Haji Yahaya bin Yusof & Anor v Hassan Bin Othman & Anor* {1982} MLJ 264, the appellant claimed that the *wakaf* was invalid and in contrary to the rules of perpetuity. In this case the court held that the law applicable to determine the validity of the *wakaf* is the Islamic law as interpreted by Muslim scholars learned in Islamic jurisprudence and not the English law. Here, Muslim scholars surely will rely on al-Quran before issuing any *fatwa* or opinion. Indeed, there is no verse in al-Quran prohibiting someone to dedicate *wakaf* in perpetuity as Allah (SWT) says in *surah al-Baqarah* verse 195: “*Spend your wealth for the cause of Allah, and be not cast by your hand to ruin, and do good. Lo! Allah loved the beneficent*”.

Based on the above cases, it is submitted that civil law did recognized al-Quran as a reference in deciding any court case. However, al-Quran was not placed as the supreme authority and the most authoritative source of law. The civil court may refer to the reasoning and *fatwa* of the mufti, which is based on al-Quran in any case involving Muslim, but it does not bind the civil court to follow such *fatwa*. Al-Quran only relevant as and when it is necessary especially when it involves the sole issues on the Islamic law.

With regard to the administration of Islamic law, Federal constitution placed the Islamic law under the state affairs. The state legislative assembly has power to legislate any enactment relating with the Islamic law within the List II of the 9th Schedule such as the Administration of Islamic law (Federal Territories) Act 1993, Syariah Criminal Procedure Code Enactment (Selangor) 2003, Syariah Civil Procedure Code Enactment (Selangor) 2003. Article 74 (2) of the Federal Constitution provides that without prejudice to any power to make laws conferred on it by any other article, the legislature of a state may make laws with respect to any of the matters enumerated in the State List or the Concurrent List.

The amendment of Article 121 (1A) of the Federal Constitution in 1988 gave exclusive jurisdiction to the shariah Courts over Islamic law. The civil courts then shall have no

jurisdiction to try and decide matters, which fall within the jurisdiction of the shariah court provided that the parties involved are Muslims and the disputed matters are within the jurisdiction of the shariah court as conferred by Schedule 9 List II. The purpose of this amendment is to allow the shariah court to carry out its functions within the jurisdiction conferred by law without any interference from the civil court.

Islamic law as practiced in Malaysia placed al-Quran as a primary source of law¹⁹. All the syariah enactments and the decision of the shariah court must refer to al-Quran. The content of the enactment must not contrary to the principles laid down in al-Quran. Almost all the syariah enactments did not specifically cite the word al-Quran as a primary source of law. For instance the Administration of Islamic Law (Federal Territories) Act 1993 defines "Islamic Law" as Islamic Law according to any recognized *madhhab*. Although the above act did not specifically cite the word al-Quran but it is judicially understood by Muslims and unanimously agreed by all *madhhab* whether *Syafii*, *Hanafi*, *Maliki* or *Hanbali* that al-Quran is a supreme authority of Islamic law.

In the case of *Tengku Anun Zaharah Binte Tengku Abdul Hamid v Dato Dr. Hussein Bin Mohamed Yusof* (1980) JH 125, the learned *qadhi* referred to *surah al-Ahzab* verse 49 in deciding the issue of *muta'ah*. Allah (SWT) says: “*O believers! If you marry believing women and divorce them before the marriage is consummated, you are not required to observe the Iddat which you should count for them, so give them some present and relieve them gracefully*”. The defendant then was ordered to pay *muta'ah* in the amount of RM25,200.

Based on the above facts, it is submitted that al-Quran is the supreme authority and primary source of law in the administration of Islamic law in Malaysia. The state legislature must ensure that any legislation is consistent with the principles laid down in al-Quran. All decisions of the shariah courts must be based primarily on the authority of al-Quran and then followed by *sunnah*, *Ijma'* and *Qiyas*.

4.0 CONCLUSION

¹⁹ The Administration of Islamic law in Malaysia mainly refers to the family matters involving Muslims.

As a conclusion therefore, it is observed that Malaysian Constitution did not put al-Quran as the supreme law of the Federation in comparison with other Islamic country such as Saudi Arabia, Islamic Republic of Iran and Pakistan. By referring to the historical background of the Malaysian legal system, Federal constitution was drafted by a Constitutional Commission whose majority of the members was non-muslims and non-malays and it was not their intention to put al-Quran as the main reference and the supreme law of the land.

Since Malaysia has celebrated independent from British for more than 49 years, there should be a reform in the interpretation of the Federal Constitution. The Malaysian constitution should be given a positive approach and to try to the utmost in order to uphold the principles of Islamic government, which is based on al-Quran.

Although there is negative indication regarding the position of al-Quran under civil law but impliedly it did recognized al-Quran as a reference in deciding the court cases. The civil court does not blindly rejected reasoning from al-Quran and this was supported by several reported cases whereby the civil courts' judges has referred to *mufti* asking for opinion in solving several issues involving Muslim affairs. Islamic law as practiced in Malaysia placed al-Quran as a primary source of law²⁰. All the syariah enactments and the decision of the shariah court must refer to al-Quran. This principle is embodied in all state legislation and practiced by the shariah courts' judges including syarie lawyer, syarie prosecutor, religious enforcement officer and so on and so forth.

Based on the foregoing discussion, we may conclude that the determination of the position of al-Quran as a source of law under the Malaysian legal system is very much dependent on the interpretation and construction of common law principles, provision under the statutory legislation and the understanding on the constitution.

²⁰ The Administration of Islamic law in Malaysia mainly refers to the family matters involving Muslims.

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