

**THE POSITION OF MADRASAH AND COMMUNITY RELIGIOUS SCHOOL (SAR)
UNDER MALAYSIAN LAW**

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ABSTRACT

This research studies law of education, system and policy, relating to the scenario within which the madrasah as Islamic religious educational institutions in Malaysia operate. The study evolves on what are the rules of the existing laws that can assist madrasah education to be at par with national education system? Whilst this system is acknowledged by the modern education system in Malaysia, however there is no specific law that safeguard this system. The objective of this research is to envisage a madrasah education system that is brought under the Ministry of Education's umbrella and national framework. The study limits to Malaysian laws however it also gives reference to international legal instruments. The method of research is done by library research. The results obtained from the research are 1) Madrasah needs to fulfill the conditions sets by the Government although efforts have been made to integrate curriculum and to cooperate actively to reach the minimum required standards; 2) International education legal frameworks from Finland, Indonesia, Singapore, Turkey and Egypt are evident as models for madrasah in Malaysia to improve its system; 3) The rights of education does not exclude the rights to access religious education based upon the examined international legal instruments. Finally, this study anticipates madrasah is prepared to be fully recognized by the Ministry of Education specifically and other international governments. Hence, madrasah will have a better standing in Malaysia National Education system and to qualify its students to compete justly with other students from different types of school.

Keywords: madrasah, Islamic education, education act, education law

KEDUDUKAN MADRASAH DAN SEKOLAH AGAMA RAKYAT (SAR) DI BAWAH PERUNDANGAN MALAYSIA

ABSTRAK

Kajian ini mengkaji undang-undang pendidikan, sistem dan polisi berkaitan senario madrasah sebagai institusi pendidikan agama di Malaysia. Kajian ini juga berkembang melalui apakah peraturan undang-undang sedia ada yang dapat membantu sistem pendidikan madrasah berada dalam kedudukan yang sama dengan sistem pendidikan kebangsaan? Manakala sistem madrasah ini diperakui oleh sistem pendidikan moden di Malaysia, namun sehingga kini tiada undang-undang khas yang mengawal selia madrasah. Objektif kajian ini adalah untuk membawa madrasah ke dalam satu pentadbiran di bawah naungan Kementerian Pendidikan Malaysia dan kerangka Sistem Pendidikan Kebangsaan. Kajian ini terbatas kepada undang-undang Malaysia namun turut merujuk kepada instrumen undang-undang antarabangsa. Hasil kajian mendapati 1) Madrasah masih perlu memenuhi syarat yang ditetapkan oleh Kerajaan walaupun usaha mengintegrasikan kurikulum telah dilaksanakan bagi mencapai kelayakan minimum yang diperlukan, 3) Hak-hak pendidikan tidak mengenyahkan hak dan akses kepada pendidikan agama berdasarkan beberapa instrumen undang-undang antarabangsa yang dirujuk. Akhirnya, kajian ini berharap madrasah bersedia mengambil langkah untuk diiktiraf oleh kerajaan Malaysia dan antarabangsa. Justeru, madrasah mempunyai kedudukan yang lebih baik di bawah sistem Pendidikan Kebangsaan Malaysia sekaligus melayakkan para pelajar madrasah bersaing secara adil bersama pelajar aliran sistem tersebut.

Kata Kunci: *madrasah, Pendidikan Islam, Akta Pendidikan, undang-undang pendidikan*

INTRODUCTION

A formal Islamic education began when the system of pondok education that used an umumi system once changed to a nizami system that is widely known among Malay parents called madrasah. There is also other type of Islamic education that is taught to Muslim parents in Malay school considered formal. The latter is popularly known as Sekolah Al-Quran which is taught after school session in the afternoon. That means two schools operated simultaneously even before Malaya's Independence. The only difference between the two is that the first is made possible by Malay children's need to attend Malay pondok system ahead of the Independence. (Azizi Umar & Supyan Hussin, 2020).

In Malaysia's modern education system, the madrasah system today is known as Sekolah Agama Rakyat (SAR). The reason behind this is because madrasah is developed by local community and for some cases the land where madrasah is built belongs to the chairman of its committee members. However, the existence of this type of school did not go through any registration process because its establishment is similar to mosque and other institutions that once materialized for their own needs at the request of the local community. Now that SAR and madrasah are undergoing transformation, as both the state and federal governments are taking care of these institutions.

First, this research will uncover the various types and definitions of SAR. Secondly, it will examine the registration regulations and what elements need to be fulfilled to enable them to register under the State Islamic Religious Department as well as the Ministry of Education as laid down in the existing law, namely the Federal Constitution, the 1996 Education Act and the Religious School Control Enactment. Lastly, it will summarize the findings and suggestions for future research.

DEFINITIONS

Literal & Non-Legal Definition

The word madrasah is a genuine Arabic formation from the word “darasa” means “to read”, “to study”, taken from Hebrew or Aramaic. (Andrea, Stanton, 2012) The term “dars” means a lesson, and the term “mudarris” means a professor. In the medieval usage, madrasah used to be known as, “A law college that includes only ancillary subjects in other Muslim sciences, including literary and philosophical ones.”

However recently, madrasah has become known as, “The name of an educational institution that teaches Islamic sciences.” A college for education and higher studies, which is opposed to a traditional primary school such as kuttab. Throughout the Islamic history, “The madrasah was one of the most elevated colleges for knowledge seekers and top institutions in the Islamic world”. In classical Islam madrasah was a learning institution par excellence, according to George Makdisi, mainly focusing on Law, the King of Muslim Science. (George Makdisi, 1981).

The Definition of Madrasah Under Federal Constitution and Education Act 1996

Despite the fact that no specific law mentions SAR, we can refer first of all to the Federal Constitution, Article 3(1) provides that Islam is the religion of the Federation, which gives SAR legal access and a proper platform for establishing and operating. This does, in fact, made applicable as Article 12(3) states that, in any law relating to such institutions, or in administering any such law, every religious group has the right to set up and maintain institutions for the upbringing of children in its own religion and that religious discrimination alone does not apply.

According to a data dated 18th October 2019 performs by JAKIM, there are at least 131 SAR registered under the Government of Malaysia The authority is still in operation and is currently monitoring it. It should be noted that this was mentioned also in the 1996 Education Act and not only the Constitution that upholds the rights to religious education. As for Islamic faith teaching, Section 50(1) of the Act stipulates that teachers approved by the State Authority shall teach pupils religious teaching of Islam whereas five or more pupils profess the Islamic faith in an educational institute. In addition, Section 51 of the same act states that the government governors of a government-aided educational institution may make religious teaching available to or from schoolchildren in a religion other than Islam, but(a) no such provision shall be exempt from the money provided by Parliament; and (b) there shall be no other pupil that professes in religion to teach religious teaching.

Returning to the Federal Constitution, we shall have the opportunity to revisit Article 3(2), where it previously mentions that religious affairs fall under the power of the Sultan or the State Authority, as the Article states that the position of the Ruler as Head of Islam in his State is recognized and acquiesced to a large extent in any state other than that of a state.

Only the State has the authority to modify the law relating to Islamic Education via its legislative body as religious matters come under the jurisdiction of the State. The States Religious School's Control Enactment generally states that all schools teaching religious subjects should enroll in the Religious State Department. However, in the Education Act 1996, as referred to earlier under Article 50 of the Constitution, the link between the federal and states regarding education policy especially in preparation for religious education is confirmed and this is underlined in Article 12(2), which every religious group has a right to set-up and maintain children's education institutions. However, it is lawful for a Federation or State to establish or maintain, support or provide instruction on the religion of Islam and make such expenses as may be necessary for the purpose of the establishment or maintenance of Islamic institutions.

In a nutshell, the federal government carries a big responsibility to develop and boost the Islamic educational institutions in this country within the right manners and law.

ADMINISTRATION

Community Religious School (SAR) Management Under State Authority

There is no single and standard way of administering SAR in Malaysia; this is because every state authority follows its prescribed written law or the law of the state. It is also worth noting that this must be registered with the Religious State Authority for SAR to be able to operate. Nevertheless, the Federal Government has the right to ensure that the schools are protected under the law by a well-managed ad. Not only that, as mentioned, the government is also responsible for the welfare of the students and the schools in general. (Nor Raudah Hj Siren, Ilhaamie Abdul Ghani Azmi, Siti Jamiaah Abdul Jalil & Azrin Abdul Majid, 2020).

As defined earlier, SAR is a type of religious and Arabic school that is administered in some respects by certain people, including administration, finance, teaching, curriculum, and few others. According to the Ministry of Education, however, SAR has few categories that SAR is a religious education institution set up by locals or individuals and registered under the Islamic Religious School Enactment Regulations and fully administered by the governors' school board. However, this must be distinguished from the private ones administered by the company or non-governmental institutions and registered under the same Act of 1996 and fully administered by the school board of governors appointed by the company or related non-governmental institutions. (Ahmad Kilani, 2010).

There is also different interpretation of SAR for each state and only through that can it determine the characteristics of SAR. In Selangor, for example, under the Selangor Islamic Religious Department (JAIS), he mentioned that any school that is not under his supervision and administration is called private school, those established by non-governmental institutions such as ABIM, IKRAM & HALUAN; SAR is only intended for SAR KAFA and the same goes for Johor, Terengganu and Negeri Sembilan. Meanwhile all Islamic religious private schools in Perak are also classified as SAR. The effect of differentiation in terms of definition leads to challenges in standardizing SAR administration in Malaysia, which relates to federal government financial support. This is because all SAR information can only be obtained legally through the Islamic State Religious Department, according to the decree.

The Administration of SAR by The Federal Government

There are two central institutions taking care of SAR within this level which are Jabatan Kemajuan Islam Malaysia (JAKIM) and Ministry of Education (MOE).

a. JAKIM

JAKIM is an organization responsible not only for providing and dealing with Islamic related matters, including SAR. The Department of Islamic Development (Bahagian Kemajuan Islam) used to be known as the Bahagian Pembangunan Pendidikan Islam dan Urusetia (LEPAI). Among the functions are:

1. To improve the quality of education including training, teaching, and learning (P&P), fardh' ain basic class (KAFA) and SAR through the effective standardization.
2. To improve the quality of administration & management of KAFA & SAR.
3. To prepare and standardize the curriculum & co-curriculum of KAFA & SAR.
4. To provide the examinations, assessment, and recognition of education for SAR & KAFA.
5. To provide and standardize the curriculum textbooks for KAFA & SAR.
6. To standardize the Enactment

It should be noted that LEPAI is a mere council that standardizes Islamic religious teaching and curriculum for all schools in the country, including SAR. It gives help, subsidies, and teacher training. In addition to the research required, LEPAI also provides advice and counseling to departments of Islamic religious state. All of this is done in accordance with LEPAI's commitment to improving the quality of subjects and Islamic education in schools.

However, LEPAI's weakness is that it has no legal status to enforce its recommendations across the country within states. This legal status issue is thorny, because it involves the Constitution and remains unresolved to this day. LEPAI cannot therefore expect much to be achieved unless the government is willing to institutionalize and strengthen it with the necessary financial budget and staff, at least for monitoring and regulation, and empowers it with the necessary legal authority. (Rosnani Hashim, 2004).

b. Ministry of Education.

MOE has established Islamic Education Division (BPI) to enhance Islamic Education, Arabic Language and Dakwah & Islamic Education Institution. It also carries the same function such as planning, standardizing, administer & evaluate the assistance for Islamic education and SAR and SAR KAFA.

Dr Hassan Hashim, the former Deputy Director of the MOE's Department of Private Education, estimated 2000 private Islamic religious schools that are not SAR. Of these, only 18 primaries and 14 secondary schools have registered with the Division of Private Education while the rest have registered with the Department of State Religions. In 2003 alone, more than 100 applications for the establishment of private Islamic schools were received and processed, but all were rejected because they did not meet the Ministry's standards for qualifications, trained teachers and adequate physical facilities, such as commercial, private schools that flourished after the 1996 Education Act.

Another study conducted by the Ministry of Education's Division of Educational Policy, Planning and Research in 1996 revealed that 192 secondary SARs were then enrolled with 72,324 students and 3,570 teachers employed. All have been registered with the State Department of Religious Affairs. However, only a small number of these schools have been found to have registered with the Ministry of Education and the government of the relevant

state. This situation came about because before the Education Act of 1996, the regulation on registration was not exactly clear on this matter. In a sense, they operated lawfully as they had registered with the Department of State Religious Affairs. In addition, by registering with the Department, this school was able to obtain certain kinds of financial aid for its operation.

The study surveyed the school's conditions, which differ from each other. It discovered that among the common problems they faced were: 1) administrative and organizational weaknesses, 2) lack of trained teachers, 3) low teacher salaries, 4) lack of financial resources, 5) low diversity of educational assessment and review. These schools were offered the status of Government Aided School so that full financial assistance could be given to pay for the salaries of the principal and teachers, as well as the per capita grant-in-aid for students. Government-assisted school status would also have enabled the Ministry to provide textbooks and trained qualified teachers, allowing the schools to become exam centers. That status, however, could only be granted under certain conditions. First, the school principal's appointment should be Ministry prerogative. Second, the school has to adhere to Ministry of Education's curriculum. Third, the school site's ownership title should be converted, and the school handed over to either the government or the ministry, but the existing school board would be retained. However, those in the schools' authority rejected the Ministry's offer, although 94% of the 490 teachers and 85.7% of the principals surveyed agreed with the proposal of the Ministry of Education.

The Ministry suggested that all SAR should register under the 1996 Education Act as private schools because it no longer teaches Islamic studies alone in which case it would be exempt under the Act. This will allow the Government to monitor the performance and activities of the school. Alternatively, these schools could choose to become or be absorbed into the national school system.

The Private Education Department recently made it a policy to maintain control over SAR that any private school that uses the national curriculum must register with it. Otherwise the school will not be permitted to become an exam centre. As a result, all new and existing private Islamic schools which integrate the Islamic curriculum would have to register with the Department of Private Education. This in a way gives the Ministry some form of control over the country's school establishments, including Islamic religious schools. This new policy has also been notified to the State Religious Departments, so that they should advise all schools that register with them. (Azizi Umar & Supyan Hussin, 1996)

CONCLUSION

In conclusion, it is crystal clear that for each state, the Federal Constitution, Education Act 1996, The Religious School Control Enactment has indeed spared some spaces for SAR in Malaysia to monitor them. This is not final and conclusive, however, because the law is unclear whether SAR is fully obliged to register with the State Authority, and then what will be the agreement between the State and SAR.

The next chapter will look at a private Islamic religious registered under the Ministry of Education and the Department of State Religious to get a clearer example of how it operates according to the law.

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STATUTES

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- Article 12(3) Federal Constitution.
- Article 3(1) Federal Constitution.
- Article 3(1) Federal Constitution.
- Section 50 Education Act 1996 (Act 550).
- Section 50(1) Education Act 1996 (Act 550).