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RESEARCH ARTICLE

MODIFICATION OF LAWS ENACTMENT FOR COUNCIL OF ISLAMIC RELIGION (NEGERI SEMBILAN) TOWARD EMPOWERMENT OF MUSLIM ECONOMIC INSTITUTIONS

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Abstract

In the year 2015, Majlis Agama Islam Negeri Sembilan (MAINS) or Negeri Sembilan Council of Islamic Religion introduced a piece of legislation known as Baitulmal Corporation Enactment 2015. It was an effort to empower the administrative machinery of the Council (MAINS), namely, the Baitulmal which is responsible for the Muslim Community's economy and sources of wealth. However, a few issues are submitted, namely, the effort of legislating the source of authority or Enactments relating to MAINS for a duration of almost 66 years and the role of the Negeri Sembilan State Government in introducing a specific and latest Enactment. The objective of this study is to examine the modification of MAINS's source of authority or enactments and uncover the philosophy for establishing the Baitulmal Corporation through Baitulmal Corporation Enactment (Negeri Sembilan) 2015. The research methodology used is qualitative through literature review of state legal documents, departmental official documents, minutes of meetings, annual reports, books and published articles relevant to research topic. Research results find that the legislation known as the Baitulmal Corporation Enactment (Negeri Sembilan) 2015 is the result of modification and consolidation of previous enactments, relating specifically to the field of Islamic economics. This 2015 Enactment is a source of authority for establishing the organization known as the Negeri Sembilan Baitulmal Corporation. It is hoped that the incorporation of Baitulmal is realized based on the philosophy and clear objective, specifically to increase revenue from the Muslim community's wealth, namely zakat, wakaf and general sources, and that this Corporation may become the highest national treasury institution implementing the Islamic economic system.

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Introduction:-

The highest law in Malaysia is the written Constitution which enshrines legal principles and legal provisions that elaborate on the formation of government institutions including administrative powers through statutes (Acts) approved by Parliament. State legislation or enactments are passed by the State Assembly of the respective States (Abdul Aziz 2008). The Acts and enactments are then implemented by the executive institution or ruling

government and if a dispute arises concerning the said legal framework, the judiciary or court functions to interpret the law and make a ruling or judgement.

Thus, the Malaysian Constitution provides the powers to manage and administer Islamic religious affairs to be under the absolute jurisdiction of the Malay Rulers, while for the states without a Sultan, the responsibility lies with the Yang di-Pertuan Agong. Administration of Islamic religious institutions is also provided for in the respective State Constitutions (Undang-Undang Tubuh Kerajaan Negeri) (Hasnan 2006). This is reinforced by Administration of Islamic Religion Enactments passed by the respective State Assemblies.

In Negeri Sembilan, Islamic religious affairs are administered by the Negeri Sembilan Council of Islamic Religion (Majlis Agama Islam Negeri Sembilan or MAINS) by virtue of the Council of Islamic Religion Enactment (Negeri Sembilan 1949), Administration of Shariah Law Enactment (Negeri Sembilan) 1960, Administration of Shariah Law Enactment (Negeri Sembilan) 1991, Administration of Islamic Religion Enactment (Negeri Sembilan) 2003 and the latest, the Baitulmal Corporation Enactment (Negeri Sembilan) 2015. Hence, the latter enactment, proclaimed by the Yang di-Pertuan Besar and Royal Chieftains of Negeri Sembilan on 2nd October 2015, provides for the establishment of the Baitulmal Corporation with powers to manage the Baitulmal and wealth of Muslim community.

Methodology:-

This qualitative research used literature review by reference to State legal documents, departmental official documents, minutes of meetings and annual reports. Reference was also made to relevant secondary sources such as books, published articles and newspaper clippings related to research topic. Literature review is suitable for the research issue because it involved review and examination of departmental official sources of information. Through this method, relevant data were collected and studied in detail. References are primary sources that reinforce in terms of documentation. Secondary sources facilitate data analysis and interpretation and its relevance to some contemporary issues in the legal context itself.

Source of Authority for Council of Islamic Religion (Negeri Sembilan) 1949, 1957, 1960, 1991, 2003:

Council of Islamic Religion Enactment (Negeri Sembilan) 1949:

A directive for the establishment of Council of Islamic Religion was already stated in the State Constitution (Undang-undang Tubuh Kerajaan Negeri Sembilan 1948). However, the Council was only officially established in the year 1949 by virtue of the Council of Religion Islamic Enactment 1949 (Enactment No.5/1949). This Enactment contained only 4 Parts and tenure of appointment as Council Members was a one year term.

A resolution regarding a proposal for restructuring administration of religion was presented and approved by the State Government Council on 4th August 1954 and on 27th August of the same year with the consent of the Yang di-Pertuan Besar Negeri Sembilan, to establish a committee for proposing matters relating to streamlining management of Islamic affairs in Negeri Sembilan. Another committee was established on 15th September 1956 to study legal provisions and rules and regulations pertaining to *zakat* and *fitrah*. According to Kamal (2017) results of studies and proposal of both committees were collected and made as guideline in drafting the new Council of Islamic Religion Enactment at the time.

Council of Islamic Religion Enactment (Negeri Sembilan) 1957:

On 6th February 1957, the Council of Islamic Religion Enactment (Negeri Sembilan) 1957 (Enactment No.3/1957) (Enakmen Majlis Agama Islam 1957), upon the consent of Yang di-Pertuan Besar Tuanku Abdul Rahman ibni Almarhum Tuanku Muhammad and Royal Chieftains, began to take effect. Following that, the Council was restructured based on this Enactment. It only contained 4 Parts and 63 Sections. The First Part contained 3 Sections covering the preamble and interpretation of the important terms in the Enactment. The Second Part contained 37 Sections covering matters relating to the Council's Constitution. The Third Part contained 17 Sections that cover matters relating to finance, accounts, Baitulmal, *zakat* and *fitrah* and collection of contributions. And the Fourth Part contained 6 Sections covering matters relating to General Provisions (BAIT-NS 100-16/2 MAINS).

Administration of Shariah Law Enactment (Negeri Sembilan) 1960:

On 6th October 1960, the Administration of Shariah Law Enactment (Negeri Sembilan) 1960 (Enakmen Pentadbiran Hukum Syara' 1960) was introduced to replace the entire 1957 Enactment (Enakmen Agama Islam [Negeri Sembilan] 1957). The 1960 Enactment was more comprehensive than the 1957 Enactment and contains additional provisions to streamline the Islamic administrative system at the Negeri Sembilan Department of

Islamic Religious Affairs. It later became the basis for another more organized Council of Islamic Religion Enactment and other related enactments (Annual Report [Laporan Tahunan] MAINS 2008).

This Enactment has 10 Parts and 172 Sections. The First Part contains 3 sections (Sections 1 to 3) covering the preamble and interpretation of key terms in the Enactment. The Second Part contains 35 Sections (section 4 to 38) that cover matters relating to the Council's Constitution. The Third Part is a new addition which provides for matters relating to the establishment of the Shariah Court. The Fourth Part contains 17 Sections (section 89 to 105) covering matters relating to finance, accounts, Baitulmal, *zakat*, *fitrah* as well as collection of contributions. The Fifth Part contains 8 Sections (Sections 106 to 113) that cover matters relating to Mosques, not mentioned in previous Enactments. The Sixth Part contains 18 Sections (Sections 114 to 131) covering matters relating to marriage and divorce affairs. The Eighth Part contains 3 Sections (Sections 138 to 140) covering matters relating to affairs of *Muallaf* (Converts). And the Tenth Part constitutes General Provisions containing 5 Sections 5 (Sections 170 to 174) giving powers to the Council to make relevant rules and regulations.

After the 1960 Enactment was introduced several rules and regulations were added to streamline administration of Islam in Negeri Sembilan. The regulations introduced include the following (Hussin1985):

1. *Zakat* Regulation 1962.
2. Marriage, Divorce and *Ruju'* Regulation 1963.
3. Shariah Committee Regulation 1965.
4. Negeri Sembilan Council of Islamic Religion Meetings Fixed Regulations 1964.
5. Kariah Committee Regulations 1965.
6. Mosque Officers Regulations 1965.
7. *Tauliah* (Credentials) Teaching of the Religion of Islam Negeri Sembilan Regulations 1965.
8. *Muallaf* (Converts) Registration Regulations 1967.

Administration of Shariah Law Enactment (Negeri Sembilan) 1991:

Discussions were held on the proposal to draft a new enactment in the 79th Negeri Sembilan Islamic Religion Council Meeting on the 14th July 1981 (Kamal 2017). However it was only in the year 1991 that the Administration of Shariah Law Enactment (Negeri Sembilan) 1991 (Enakmen Pentadbiran Hukum Syarak [Negeri Sembilan] 1991 (Enakmen No.1/1991) was introduced to replace the entire 1960 Enactment (Enakmen Pentadbiran Hukum Syarak [Negeri Sembilan] 1960).

The 1991 Enactment has 9 Parts and 102 Sections. The First Part contains 3 sections (Sections 1 to 3) covering the Preamble and interpretation of important terms in the Enactment. The Second Part contains 23 sections (Sections 4 to 26) covering matters relating to the Constitution of the Negeri Sembilan Council of Islamic Religion. Sections 4 to 11 cover the Council's establishment, appointment of Chairman, Members, Council Secretary, Committee and process of their appointment. Newly introduced at the time is the position of Deputy Chairman of the Council. The membership list was also revamped. Besides the Mufti, Council Membership comprise of the State Legal Adviser, State Financial Officer, State Police Chief, 5 Members from the *Ulama* (Scholars) and 5 other members. This 1991 Enactment also provided for the appointment of Director of Islamic Affairs as the Council Secretary.

The Third Part contains 17 sections (Sections 36 to 52) that provide for matters related to administration of justice, including court jurisdiction, court rules and procedure as well as trial process. The Fourth Part relates to Prosecution and Representation and contains 2 sections (Sections 53 to 54). This Part sets out in detail matters relating to prosecution only by the Shariah Prosecutor and matters relating to Shariah lawyers. The Fifth Part contains 17 sections (sections 55 to 71) divided into topics relating to finance, accounts, *zakat* and *fitrah* as well as *khairat* collections. The Sixth Part contains 10 sections (Sections 72 to 81) that provide for matters relating to mosques, among them, management and administration of mosques, officers' credentials and mosque committee as well their responsibilities. The Eighth Part contains 12 sections (Sections 82 to 93) that provide for matters relating to conversion to Islam or affairs of *Muallaf* (Converts). Also included is appointment of a Registrar for New Converts.

The Eighth Part contains 4 sections (Sections 94 to 97) that provide for matters relating to Religious Education. The Ninth Part is the last Part, and touches on General Provisions. This Part contains 5 sections (Sections 98 to 102) providing for power to make rules and regulations, exemptions, and change of name, namely Mahkamah Kadishall be known as the Shariah Subordinate Court and Mahkamah Kadi Besar shall be known as the Shariah High Court. By this Part, previous provisions are also repealed.

Administration of Islamic Religion Enactment (Negeri Sembilan) 2003:

Due to non-uniformity of State Religious Enactments, the Malaysian Islamic Development Department (JabatanKemajuan Islam Malaysia or JAKIM) took the initiative to standardize all enactments regarding religion including Administration of Islamic Religion Enactment (BAIT-NS 100-16/2 MAINS). On 1st March 2004, the Administration of Islamic Religion Enactment (Negeri Sembilan) 2003 (EnakmenPentadbiran Agama Islam [Negeri Sembilan] 2003) (Enakmen No.10/2003) was introduced and the previous 1991 Enactment was repealed.

This 2003 Enactment has only 11 Parts and 122 sections. The First part contains 3 sections covering Preamble and interpretation of key terms in the Enactment. The Second Part contains 41 sections (Sections 4 to 44) covering matters relating to establishment of the Council such as appointment of Chairman, Members and Council Secretary, procedure of Council Meeting and provision for power relating to administration of Islamic affairs, power and duties of Council Members and officers and other related matters. The Third Part contains 10 sections (Sections 55 to 77) covering matters relating to appointment of the Mufti and his powers regarding Islamic affairs, Fatwa (Edict) Committee and Fatwa for matters of national interest. The Fourth Part contains 23 sections (Sections 55 to 77) covering matters relating to provisions for administration of justice, namely, establishment of the Shariah High Court, Shariah Lower Court as well as the Shariah Court of Appeal.

In addition to establishing the Shariah Court, the Fourth Part covers matters relating to appointment of Shariah Chief Judge, Shariah Panel of Appeal Judges, Shariah High Court Judges and Shariah Lower Court Judges. The sections also provide for court jurisdiction, process, rules and procedure and trial process. This 2003 Enactment also includes provision for reciprocal enforcement whereby a Shariah Court decision in Negeri Sembilan may be enforced in another State and vice versa. Part Five relates to Prosecution and Representation and contains only 3 sections (Sections 78 to 80). It sets out in detail matters relating to prosecution cases which may only be done by the Shariah Prosecutor and matters relating to Shariah lawyers. Part Six contains 15 sections (Sections 81 to 95). This Part is not much different in provisions from the previous Enactment in provisions for matters relating to finance, accounts, Baitulmal, *zakat* as well as collection of contributions.

The Seventh Part contains 10 sections (Sections 96 to 105) providing for matters related to mosques. They include provisions concerning management and administration of mosques, officers' credentials and mosque committee and responsibilities. The Eighth Part contains only 1 section (Section 106) specifically providing for collection of *khairat* (Contribution to Welfare Fund for Death). The Ninth Part contains 11 sections (Sections 107 to 117) which provide for matters regarding conversion to the Islamic Religion or affairs of *Muallaf* (Muslim Converts). In line with this, the Tenth Part contains 1 section (Section 118) providing for Religious Education and touching on the need to establish a Committee for *Tauliah* (Teaching credentials). The last part is the Eleventh Part and touches on General Provisions. It consists of 4 sections (Sections 119 to 122) providing power to make rules and regulations, exemptions, and repeal of previous provisions. Among the quite important provisions, not in the previous enactment or any other State enactment, is the provision to renounce the Islamic faith. It is not a provision to facilitate any party to go out of Islam but a mechanism to identify the concerned party and enable taking lawful action through a legitimate procedure in order to overcome the said problem.

Baitulmal Corporation Enactment (Negeri Sembilan) 2015:

The Negeri Sembilan State Government presented the Bill on Baitulmal Corporation (Negeri Sembilan) 2015 at the First Session (Inauguration) of the Third Term at the 13th State Assembly of Negeri Sembilan and the Bill was approved by the State Assembly on 22nd April 2015. The 7th Chief Minister of Menteri Besar Negeri Sembilan at the time, stated that the Enactment was important to strengthen the administrative machinery of Baitulmal, and the Negeri Sembilan Council of Islamic Religion (Mohamad2015). This religious institution will be efficiently managed by experienced staff skilled in their respective fields. This Enactment will also cause a new surge in the Council, at once making it an excellent religious institution and the Enactment also constitutes an effort to strengthen the administrative machinery of Baitulmal, in line with its source of authority, in keeping with the times (MJPMNSDK 2015).

The Baitulmal Corporation Enactment (Negeri Sembilan) 2015 was promulgated by the Yang di-Pertuan Besar Negeri Sembilan and Royal Chieftains on 2nd October 2015. This 2015 Enactment provides for the establishment of Perbadanan Baitulmal Corporation with the power or authority to manage the Baitulmal and related matters. It touches on important matters especially regarding the jurisdiction of the Corporation, affairs of Appointment, administration and finance. The 2015 Enactment has six (6) Parts, namely: Part I - Preamble, Part II -

Corporation, Part III - Function and Powers of the Corporation, Part IV - Administration, Part V - Finance and Part VI - General Provisions.

The First Part (Preamble) contains a brief title, commencement date of coming into force, and includes the interpretation of legal terms in the Enactment. In the Second Part (Corporation) is stated the breakdown into matters such as incorporation (of Baitulmal), seal of corporation, membership of corporation, tenure of positions, allowance for members of corporation, revocation of appointment and resignation from position vacancy of positions, committee, disclosure of interest, legal action and proceedings, corporation not affected by vacant positions, duties of corporation members and meetings. In the Third Part (function and powers of Corporation) are matters relating to corporate functions and powers, delegation of corporate functions, Council directives, function of Chief Operations Officer, temporary travel out of country, appointment of officers and workers.

The Fourth Part (administration) focuses on some administrative matters such as Chief Operating Officer, financial aid to officers, workers and others, payment of pension benefits, Corporation may adopt regulations, corporate funds, maintenance of corporate funds, expenditure and preparation of estimates, bank accounts, limits for contracting, financial procedures, financial year, accounts and statements, reports and information. The Fifth Part (General Provisions) gives the legal authority for matters such as civil services, Public Authorities Protection Act 1948, obligation to secrecy, representation in civil proceedings, power to engage services of agents, authority to set up a company.

Table 1:- Modification of Council of Islamic Religion Enactment (Negeri Sembilan) According to Occurrence in Time.

No.	Enactment and Year	Parts and Sections	Matters related and modification
1	Council of Islamic Religion Enactment (Negeri Sembilan) 1949	4 Sections	<ul style="list-style-type: none"> o Appointment Chairman of MAINS o Council Member o <i>Zakat Fitrah</i>
2	Council of Islamic Religion Enactment (Negeri Sembilan) 1957	4 Parts 63 Sections	<ul style="list-style-type: none"> o Course of Council o <i>Fatwa</i>, Mufti and Committee o Baitulmal, <i>Wakaf</i> o Finance o <i>Zakat, Fitrah</i>, Donations o Powers of Yang di-Pertuan Besar
3	Administration of Islamic Law Enactment (Negeri Sembilan) 1960	10 Parts 172 Sections	<ul style="list-style-type: none"> o Establishment of MAINS o <i>Fatwa</i>, Mufti and Committee o Shariah Courts (new) o <i>Zakat</i>, Baitulmal o Marriage and Divorce (new)
4	Administration of Islamic Law Enactment (Negeri Sembilan) 1991	9 Parts 102 Sections	<ul style="list-style-type: none"> o Chairman, Secretary and Council Members o Deputy Chairman Position o Membership of Council o <i>Fatwa</i>, Mufti, Committee o Administration of Justice (new) o Prosecution (new) o Mosques (new) o Religious Education (new)
5	Administration of Islamic Religion Enactment (Negeri Sembilan) 2003	11 Parts 122 Sections	<ul style="list-style-type: none"> o Chairman o Mufti o Administration of Justice o Prosecution o Baitulmal, <i>Zakat Fitrah</i> o Mosques o <i>Khairat</i> (Welfare) (new) o Conversion to Islamic Faith (new) o Religious Education o Teaching <i>Tauliah</i> (Credentials) (new)

6	Baitulmal Corporation Enactment (Negeri Sembilan) 2015	6 Parts	<ul style="list-style-type: none"> o Focus on managing Baitulmal based on Enactment 2003 o Economy, Social, Education, <i>Dakwah</i> (Preaching) and Welfare of Society
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Analysis and Discussion:-

During almost 66 years since the establishment of the Council of Islamic Religion of Negeri Sembilan, there have been five major amendments to the source of authority of the Council to empower and strengthen the role of this Islamic institution of authority to manage Islamic affairs in Negeri Sembilan. This is proven with modifications and enhancements to provisions in Parts and Sections of successive Enactments beginning from the year 1949 to 2015. Thus, the Baitulmal Corporation was established by virtue of the, Baitulmal Corporation Enactment (Negeri Sembilan) 2015 (EnakmenPerbadananBaitulmal [Negeri Sembilan] 2015) which was approved to incorporate the Baitulmal with a particular role namely, to keep and manage the wealth of the Muslim Community.

In line with that, the importance of incorporating the Baitulmal is to make it a stronger institution with a legal entity, its own locus standi and perpetual existence. The right to take legal action is important to enable the Baitulmal to operate more efficiently, independently and promptly, especially in matters of revenue collection, and to function fully as a Council of Islamic Religion in the field of Islamic economy. Through the Baitulmal Corporation, the Council can continue to focus on its main responsibility, namely streamline administration of Shariah law and affairs of justice. In line with that, the Council's responsibility for the Islamic economy is delegated to and implemented by the Baitulmal Corporation so as to be more proactive in generating progress in the Muslim economy. Establishing the Baitulmal Corporation also presents a corporate image and competitiveness capable of becoming an ideal icon in the Muslim economic sector. However, the Council of Islamic Religion will remain the main Islamic executive authority.

Conclusion:-

It is hoped that the establishment of the Negeri Sembilan Baitulmal Corporation is realized with clear philosophy and objectives, particularly toward increased revenue from the wealth of the Muslim community, namely *zakat*, *wakaf* and general sources, capable of becoming the highest treasury agency in the State implementing an Islamic economic system.

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