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The Definition of Malays in Malaysian Legislations: A Historical Perspective

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Abstract

Article 160 of the Federal Constitution of Malaysia defines a Malay as an individual who professes the religion of Islam, habitually speaks the Malay language, and conforms to Malay customs. However, this definition, central to the allocation of certain privileges to the Malays based on their special position as natives in Malaysia, is subject to ongoing debates and challenges. The issue of Malay indigeneity is frequently raised, therefore prompting this study to examine the formation of Malay ethnic identity within Malaysian legislation from the historical perspective. The findings found that the definition of Malays in Article 160 of the Federal Constitution was established based on the parameters outlined in the Federation of Malaya Agreement 1948. Prior to that, the definition of Malays was articulated according to the Malay Reserve Enactments. However, the definition of Malays in the Federal Constitution is more flexible compared to the Malay Reserve Enactments because the requirement of Malay descent is not stated as a condition for determining the characteristics of Malays. Therefore, the definition of Malays in the Federal Constitution has enabled the descendants of other ethnic groups of the Malay Archipelago and foreign ethnic groups who also adhere to the Islamic religion to be considered as Malay together with the original Malay inhabitants in the Malay Peninsula.

Keywords: Federal Constitution of Malaysia, Definition of Malays, Malays Ethnicity, Ethnic Relations

INTRODUCTION

The Malays, an indigenous ethnic group in Southeast Asia (Zainuddin 2023) exhibit a widespread presence across several different countries. In terms of population demographics, the Malays are the majority population in Malaysia and Brunei. The Malays also exist as minority groups in several neighbouring countries such as Singapore, Indonesia and Thailand. In Singapore, the Malays constitute the second largest ethnic group and considered as indigenous to the city-state. In Thailand, the Malays are mostly concentrated in the southern region and are the majority population in several regions and districts that once belonged to the former Malay polities that once existed there (Chapakia 2005). In Indonesia, the Malays are the third largest ethnic group in the republic after the Javanese and the Sundanese (Ananta et al. 2015). Ethnographic studies in Indonesia by Hidayah (1997) and Melalatoa (1995) classify various Malay-Muslim sub-ethnic groups, use the Malay language in diverse local dialects, and live along the coastal areas of the islands of Sumatra and Kalimantan.

Just like the Malays in the neighbouring countries, the Malays in Malaysia, specifically in the Malay Peninsula, have their distinctive historical heritage. The uniqueness of the Malays in Malaysia is encapsulated in their identity as defined by the law. According to the Federal Constitution of Malaysia, Article 160 defines a Malay as an individual who professes the religion of Islam, habitually speaks the Malay language, and conforms to Malay customs. In addition, a person born before the Merdeka Day in the Federation or in Singapore or born to parents one of whom was born in the Federation or in Singapore, or is on that day domiciled in the Federation or in Singapore, or is the issue of such a person.

Nevertheless, the definition of the Malays as enshrined in the Federal Constitution undergoes periodic debates and faces challenges to its legitimacy. This scrutiny arises due to the Federal Constitution's grant of certain privileges to the Malays, especially in terms of quotas rooted in their special position as natives in Malaysia.

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Therefore, this study focuses on the formation of the Malay ethnic identity preserved in Malaysian legislation from a historical perspective.

ATTEMPTS TO DISPUTES THE INDIGENEITY OF MALAYS

The Federal Constitution of Malaysia provides a special position for the Malays and natives of Sabah and Sarawak through Article 153. Within this constitutional framework, the characteristics of the Malays are explicated as explained previously. The conferred special position of the Malays and natives of the states of Sabah and Sarawak is considered to be part of the Malaysian social contract. However, according to Balasubramaniam (2018), the social contract became an issue in Malaysia especially in relation to the designated special position to the Malays and natives of Sabah and Sarawak as stipulated in the Federal Constitution. This dispute arises due to varying beliefs regarding the position of the Malays as natives in Malaysia based on the historical assumption.

In relation to the question of the position of the Malays as natives in Malaysia, Balasubramaniam (2018) contends that there are those who insist that the Malays are natives in Malaysia, especially in the Malaysian peninsula. This perspective is grounded in the historical nomenclature of the Malaysian peninsula, originally called Malay land (Tanah Melayu), signifying the homeland of the Malays. Meanwhile, the influx of immigrants especially from the mainland China and India is the result of British colonialism. In exchange for the granting of more than one million citizenships to the non-Malays at the time of independence on a jus-soli basis, the recognition of the position of the Malays as natives was imperative. However, there are other parties who have criticised the statement because they believe that the position of the Malays as natives is not an absolute truth. Instead, these critics claim that only the Orang Asli groups are the true natives of Malay Peninsula.

For examples, David (1989) claims that the Malays are indisputably an immigrant race, citing the migration of Sumatran and Javanese populations to the Malay Peninsula during the rubber industry boom around the year 1911. While Thomas (2008) supports this perspective by asserting that almost half of the Malays who lived in the Federated Malay States during the colonial era were either first generation arrivals from the Netherlands East Indies or descendants of Indonesian migrants. Kua (2015) asserts that the Orang Asli are the true natives in the Malay peninsula compared to the Malays, but he only mentioned the Negrito and Senoi groups and deliberately did not mention the Melayu Asli or Proto-Malay groups that also form part of the Orang Asli community in Malaysia.

Attempts to deny the position of the Malays as natives in Malaysia, specifically in the Malay peninsula as their de facto and de jure homeland, have been made openly since the early days of Malaysia's establishment. For example, during Singapore's inclusion in Malaysia, its main leader, Lee Kuan Yew, disputed the status of the Malays as a natives by claiming that none of the three main ethnic groups, namely the Malays, Chinese or Indians, could claim to be more native to Malaysia compared to the others because all of their ancestors came to Malaysia not more than a thousand years ago (Putra 1977). In this matter, Lee Kuan Yew accused that the Malays only started coming to Malaysia about 700 years ago and a third of them were new immigrants such as Syed Jaafar Albar who is of Arab descent.

The Malays see Lee Kuan Yew's discourse as an attempt to challenge the position of the Malays as natives and the idea that the Malay peninsula or Malaya is the homeland of the peninsula Malays (Sopiee 1974). This pseudo-history understanding by Lee Kuan Yew had been criticised by Putra (1977). He argued against the use of minority Malay sub-ethnic groups, such as those of Arab descent, to categorise the entire Malay community as immigrants with a status equivalent with the other immigrant groups. In order to assert the status of the Malays as natives, Putra (1977) pointed his own example as a prince from the state of Kedah, the oldest kingdom and sultanate in the peninsula, with a history extending over 1,200 years ago. According to Sopiee (1974), Lee Kuan Yew's attempt to dispute the status of the Malays as natives contradicts his own speech during a speech given at Canterbury University Christchurch, New Zealand on March 15, 1965. In that speech he clearly states that the indigenous people in the Malay Peninsula were principally Malays along with a few original tribes, namely the Orang Asli groups.

Propaganda disputing the position of the Malays as natives did not stop after Singapore was expelled from Malaysia, instead the idea was always raised from time to time by various political figures. For instance, former Deputy President of the Malaysian Chinese Association (MCA), Lee Kim Sai, in an annual convention of the Selangor MCA in November 1986, passed a resolution that all the three main ethnic groups in Malaysia are made up of immigrants, namely the Chinese from China, the Indians from India and Malays from Indonesia. The statement was considered to be insulting to the Malays and caused racial riots to almost break out for the second time (Wan Teh 2011). The statement was made following a dispute against Article 153 of the Federal Constitution involving the special position of the Malays. The action caused his Dato'ship title, which was bestowed by the Sultan of Selangor to be revoked (Wan Husain 2012) and he then moved to Australia in 1987 (Suryadinata 2012).

The propaganda disputing the position of Malays as natives resurfaced in October 2008 by the former Women's Leader of the Malaysian People's Movement Party (GERAKAN), the former Deputy Minister of Information, Tan Lian Hoe. Her statement caused anxiety and anger among the Malays, but it was quickly calmed down (Wan Teh 2011). In this case, Deraman (2005) explained that the effort to equate the Malays as immigrants is not necessarily because they are culturally illiterate, but rather just a trick to test the level of patience of the native population.

In this matter, Malaysia cannot be considered a terra nullius because the institutions of Malay rulers already existed and were sovereign when the Western colonialists started to make contact in the Malay Archipelago. According to Bari (2001), the institution of Malay rulers is a symbol of customs that not only reflects the identity and history of the Malays, but also explains the status of the Malays as natives in Malaysia. This is because the monarchy system is often associated with the origin of the existence of a country and its indigenous inhabitants (Bari 2008). The institution of Malay rulers has a very close relationship with the Malays and the terminology used to describe the political situation of the Malays is *Kerajaan*, which means the condition of having a Raja (Milner 2016). The Malays existed in the past through several Malay polities (*Kerajaan-kerajaan Melayu*) without any fixed territorial boundaries, distinct from the concept of state boundaries understood and practised in the West (Milner 2016). The institution of Malay rulers is pivotal, as being considered a Malay necessitates adherence to Islam and allegiance to Malay rulers (Wan Husain 2018). Therefore, any anachronistic attempts to describe the Malays as immigrants are inappropriate because Deraman (2005) asserts that the Malay realm involves related ethnic groups that share the same geo-cultural characteristics, while modern geopolitical changes occur due to the division of borders unilaterally carried out by Western colonialists.

THE BACKGROUND OF THE FORMATION OF MALAY ETHNICITY

In discussing the formation of the Malay ethnicity, particularly in the Malay Peninsula, it is important to understand that the region's historical boundaries beyond the current modern political borders, extending to areas as far as Kra isthmus. For example, Begbie (1834) states that the geographical limit for the Malay peninsula is between latitude 8° north, near Junk Ceylon or Hujung Salang (Phuket in Thailand), and latitude 1° north, close to Point Romania or Teluk Ramunia in Johor. The boundaries of the Malay Peninsula area are in line with the notes of Manuel Godinho de Eredia in 1613 which also states that throughout the Ujontana region, which is the Malay Peninsula, the Malay language is used and the natives identify themselves as Malayos (Cheah 1997) signifying the Malays.

While the Kra isthmus down to the southern Thai today is under the Thailand administration and predominantly inhabited by Buddhist-Thai speakers, Miksic (2017) explains that only in the 13th century there is evidence that Thai speakers moved to the southern part of the peninsula. Therefore, there is a possibility that the Malay language was spoken in the 5° north latitude area in the past. Thus, he assumed that the people who founded the kingdom of Tambralinga, located in Nakhon Si Thammarat today in Thailand, spoke Malay as they belonged to the mandala of the Srivijayan empire where its realm lay firmly in areas which was historically associated with the Malays.

Omar (2015), categorises the Malay language within the Austronesian family language or Malayo-Polynesian which was a term widely used before. Although the development of the Malay language was more concentrated

in the Malay Peninsula and Sumatra Island, Collins (2006) explains that there are some scholars who suggest that the Borneo Island is actually a pre-historic site of the Malay language. The development of the Malay language has gone through a long period and can be divided into five phases, namely the ancient Malay language, the old Malay language, the classical Malay language, the pre-modern Malay language and the modern Malay language (Melebek and Moain 2005). The spread of the Malay language occurred since the old Malay phase and can be traced through the remains of various stone inscriptions especially during the era of Srivijayan empire. However, the Malay language reached its peak during the classical Malay phase, which was during the era of Malay sultanate in Melaka and its successor polities.

However, the nomenclature employed by the Malays to refer themselves in the past remains a mystery (Andaya 2008). Based on foreign records, among the names used by outsiders to refer to the Malays in the past is Kunlun (Yaapar 2023; Tarling 1999) and Javaka (Munoz 2006). The earliest recorded use of a Malay name is found in Claudius Ptolemy's second-century map, designating an area called Melayu-Kulon (Reid 2004). The name, which means 'Malay region', refers to the golden peninsula or the Malay Peninsula (Yaapar 2023). Other than that, Godinho de Eredia records that the Malay empire was founded in Patani in the third year before the birth of Jesus Christ by its first emperor named Tuan Malaio (Cheah 1997).

Nevertheless, no hypothesis posits that the Malay ethnic name originated from the name of an ancient place located in the Malay Peninsula, or in conjunction with the name of a local ancient ruler in the past. The generally accepted idea states that the name Malays originally refers to the name of a Malayu kingdom, which was derived from the name of a river. According to Munoz (2006), the Malayu kingdom is believed to have been located in Jambi, on the island of Sumatra and began to exist around the 7th century AD. But the Malayu kingdom later became part of the conquered territory under the Srivijayan empire. After Srivijaya's capital in Palembang was destroyed by the attack of Chola kingdom from India in 1025, the former Malayu kingdom is believed to have been rebuilt in the Jambi area around 1079 and using back their old name. The using of Malayu as the name of this kingdom continued when the centre of their administration then moved to the Minangkabau highlands at the end of the 14th century and at the same time the name was also used in the ports of Jambi and Palembang.

According to Andaya (2017), the practice of naming group of individuals based on their geographical location suggests that the people of the Malayu kingdom are known as orang Malayu, signifying 'the people of Malayu'. The orang Malayu were among the loyal followers of the prince of Palembang named Parameswara who migrated to the Malay Peninsula and founded a new kingdom located in Melaka at the end of the 14th century. When the kingdom was later known as Melaka, the local inhabitants were known as orang Melaka. However, the prestige held by the orang Malayu refugees in the court of Melaka encouraged them to maintain their unique status by the use of orang Malayu identity. The kingdom of Melaka then started to be seen as the standard-bearer of the Malayu culture and eventually became synonymous with the term 'Malayu' (Andaya 2008).

NORTHERN MALAYS AND SOUTHERN MALAYS IN THE MALAY PENINSULA

Andaya (2017), delineates the Malays in the Malay Peninsula into two main groups based on geographical zones, namely the northern Malays and the southern Malays. The northern Malays cover the areas of Pahang, Perak, Kedah, Terengganu, Kelantan, Patani and areas up to the north. From a historical point of view, the northern Malays have a closer relationship with the Kra Isthmus area in the north of the peninsula. Meanwhile, the southern Malays cover Melaka, Johor, and its surrounding areas. Even though today, the northern Malay states are considered to be the Malay heartland, it is the southern Malays that became the foundation of what was regarded as an appropriate Malay culture.

Andaya (2017) further explicates that the difference between the northern Malays and the southern Malays is evident in their royal genealogical myths, which explain the history of the ruler's ancestors. For southern Malays, Sulalatus Salatin or the Malay Annals is the main reference and the Srivijaya empire is considered to be the progenitor of the Malay rulers of Melaka and its successor polities namely Johor, Riau and Lingga. Therefore, the Malay kingdom in Melaka is considered to be the heir of the Srivijaya empire, which at the end of its reign was centred in Palembang in the second half of the 11th century (Wolters 1990). For the northern Malays,

Hikayat Merong Mahawangsa or the Kedah Annals serves as the main reference which narrates that the rulers of the states of Siam, Perak and Patani are sons of the ancient Kedah ruler.

Historically, the main trade route in the Malay Peninsula was concentrated in the northern area of the peninsula extending to Kra Isthmus. The existence of the trans-isthmian/peninsula route contributed to the existence of early kingdoms such as Tambralingga and Langkasuka. Nagara Sri Dharmaraja then replaced the Tambralingga kingdom while the Patani kingdom emerged in the former areas of Langkasuka kingdom. Nagara Sri Dharmaraja is a major kingdom that overshadows the Malay states in the north of the Malay Peninsula. According to the Chronicles of Nagara Sri Dharmaraja, translated by Wyatt (1975), the Malays were sent as rulers to govern several states in the Malay peninsula, including Kedah, Patani and Pahang.

Islam then began to spread in the Malay Peninsula, and the local inhabitants began to embrace the religion on a large scale starting in the 15th century, as happened in Malacca and Patani. On the contrary, Islam did not spread widely in the area of Kra Isthmus and its surroundings. This situation can be seen in Tarikh Fathani or the History of Pattani which states that when inhabitants in Patani began to embrace Islam, the ruler of Ligor or Nagara Sri Dharmaraja and the ruler of Chaiya at that time were occupied with constructing a kanisah or a large Buddhist temple. This then led to religious discord among the local inhabitants of the peninsula, resulting in disagreements between the Muslim Malays and the Buddhist Malays because of their religious differences (Wan Abdullah 2018). Nagara Sri Dharmaraja was then subjugated by the Siamese empire through the Ayutthaya kingdom in the middle of the 15th century (Munro-Hay 2001).

According to Al-Attas (2011), Islam spread in the Malay realm at an early stage in a planned and organised manner directly from Arabia and not through India or Persia. The spread of Islam in the Malay realm was carried out by Muslim missionaries descended from the Prophet Muhammad S.A.W., especially Imam Jamaluddin Al-Husayn, also known as Sheikh Maulana Jumadil Kubra who became the ancestor of many clerics, scholars and even rulers in the Malay world. The propagation of Islam in the Malay world was carried out to fulfil the will of the Prophet Muhammad S.A.W. as narrated in Hikayat Raja-Raja Pasai or the Chronicle of the Kings of Pasai.

The success of Islamic spreading in the Malay realm was also driven by the decision of the local Malay rulers in the past to embrace Islam, for example, Kedah in 1136 and Melaka in 1414 and later followed by dignitaries and commoners (Yahaya 2001). This process of Islamisation has brought great changes and become a transformation to the daily thoughts and practices of the Malays which includes all aspects of their lives (Othman 2018). According to A. Aziz (2018), Islam became very synonymous with the Malays and the symbiotic relationship is so deep and obvious. It serves as an integral element of the Malay identity in justifying the position of almost all matters in their lives (Wan Husain 2018). The integration of Islam with the Malay identity acts as a unifying force among the Malays, especially in Malaysia (Tan 2018). Given that adherence to Islam is one of the main criteria for Malay ethnicity, leaving Islam is legally tantamount to forsaking one's ethnic identity (Harding 2012).

DETERMINATION OF MALAYS ETHNICITY DURING COLONIAL ERA

When the Malay Peninsula entered the era of Western colonialism, the northern Malay states that were under Siamese influence, namely Perlis, Kedah, Kelantan and Terengganu were later handed over to the British through the Anglo-Siamese Agreement of 1909. However, several Malay states such as Patani and Setul remained under the Siamese control. Under the British colonial administration, the northern Malays slowly began to integrate politically with the southern Malays. Therefore, it can be concluded that the close relationship between the northern Malays and the Kra Isthmus area resulted in separate historical narratives and a distinct cultural heritage compared to the southern Malays. Despite these distinct narratives, the two groups share many characteristics of Malayness, especially their adherence to Islam (Andaya 2017).

The British colonial who controlled the Malay Peninsula then carried out a population census at the end of the 19th century. Through the implementation of this census, the British colonial classified the population by race and introduced the Malays category (Ismail 2018). Based on the study of British colonial census records carried out by Hirschman (1987), the Malays category covers various ethnic groups considered under the umbrella of

the Malay race, and this includes the Orang Asli groups. However, the Arabs were not categorised under the Malays category even though they are predominantly Muslim just like the Malays.

In this regard, there were two different forms of ideas during the pre-independence era regarding the determination of ethnic groups under the Malays category. Zainal Abidin Ahmad or Za'ba, a local literary figure, represented the idea that considers Arabs and Indian Muslim community, especially the Jawi Peranakan in Penang, as part of the Malays which is based on the principle of Muslim brotherhood (Nawang 2007). This perspective was grounded in the belief that their intermarriage with local Malays resulted in descendants, especially among Jawi Peranakans, whose children spoke Malay and practice Malay customs. Therefore, individuals of Arab and Indian Muslim descent are considered to be part of the Malays.

However, Abdul Rahim Kajai, a prominent local journalist represents an idea that firmly rejects and isolates Arabs and Indian Muslims as the Malays category even though both of the groups are Muslims (Omar 2015). This stance arises from the significant influence the Arabs and Indian Muslims held in the political, economic and social structure in Malaya before the Second World War and often occupying key positions provided by the British colonialists to lead the Malays community. However, those groups are alleged to only claim to be Malays if there are certain interests. Consequently, after the First World War, a small number of young English-educated Malays began to challenge the right of non-Malay Muslims to speak on behalf of the Malays community (Roff 2003).

In contrast to the inclusive definition of Malays that encompasses the Arabs and Indian Muslims, Abdul Rahim Kajai instead called for real Malays (*Melayu jati*), which are the local Malay inhabitants in the Malay Peninsula, to unite with the foreign Malays (*Melayu dagang*), which is descendants of other indigenous ethnics in the Malay archipelago such as Javanese, Bugis and Minang, to strengthen the position of the Malay community as a whole (Abu Bakar 1984). However, Ismail (1993) explained that the action does not mean incitement to hate the Arabs or Indian Muslims, but rather a struggle and awakening of the Malays to find their own identity. It is a movement of the Malays to demand justice in social and economic aspects to be on par with other ethnic groups. However, the idea that Arabs are not recognised as Malays can still be seen in the Malay Reservation Enactment of the state of Johor which remains in force today (Shamsul 2004).

DEFINITION OF MALAYS IN THE PRE-INDEPENDENCE LEGISLATIONS

In the early stages, the Malays were defined according to the law under six Malay Reserve Enactments that came into force in nine Malay states in the Malay Peninsula, namely Kelantan, Kedah, Perlis, Johor, Terengganu and former Federated Malay States, which consist of Negeri Sembilan, Selangor, Perak and Pahang. According to study done by Muda (2009) on the definition of Malays contained in the Malay Reserve Enactments, the criteria set forth included being descendants of Malays or Malayan, adherence to the religion of Islam and habitual use of the Malay language. When the Federation of Malaya was formed in 1948, the legally valid definition of Malays, other than the definition of Malays in the Malay Reserve Enactments, is contained in paragraph (b) subclause (3) of Clause 124 of the Federation of Malaya Agreement 1948 which set Malays as habitually speaks Malay, professes the Muslim religion and conforms to Malay customs (Hashim 2007).

In addition, Section 12 in the 1948 Federation of Malaya Agreement stipulated that the Malays and Orang Asli were recognised as Malay rulers' subjects; thereby granting them citizenship rights (Adam 1998). A key attribute of Malay rulers' subjects was their acceptance of the supremacy of the Malay ruler and their readiness to be deployed at any time when needed. The Malay Sultanates, for example, in Perak, rejected foreign ethnics such as Chinese and Indians to be considered as a part of the local community (Adam 1998). According to Low (2013), Chinese people in Malaya at that time were Chinese citizens regardless of their birthplace, based on the principle of *jus sanguinis* and the Chinese Citizenship Law of 1909. Meanwhile, immigrants from India, especially in the southern areas, which were British colonies, were generally considered British subjects. Abas (1983) noted that the citizenship policy in 1948, which automatically maintains the citizenship status of the Malays, reflects the assimilation policy that defines the Malays according to cultural meaning. In addition, Article 19(1)(d) of the Federation of Malaya Agreement 1948 also places responsibility for protecting the special position of the Malays on the British High Commissioner (Fernando 2015). This affirms that in terms of the constitution, the Federation of Malaya has been recognised as a Malay nation (Comber 2013).

The definition of Malays, stipulated in the 1948 Federation of Malaya Agreement was later adopted in the Federal Constitution of Malaysia through Article 160(1). The definition of Malays contained in the Federal Constitution is more flexible compared to the Malay Reserve Enactments because it does not set the condition of Malay descent as one of the main criteria for determining the characteristics of Malays. Therefore, the definition of Malays in the Federal Constitution indirectly included the Arabs and Indian Muslims as Malays (Othman 1985). In addition, there were Muslim Orang Asli before 1957, who mainly were placed under the Malays category after the independence of the Federation of Malaya (Nobuta 2008). However, the significance of Islam as an important marker of the Malay identity results in certain communities being strongly influenced by Malay socio-cultural and linguistic norms but retaining their own religious beliefs, examples include the Chettiar, Baba Nyonya and Kristang communities in Malacca, are not considered part of the Malays (Jegatesen 2020).

DEFINITION OF MALAYS IN THE FEDERAL CONSTITUTION

According to Faruqi (2008), the definition of Malays as contained in the Article 160 of the Federal Constitution is a combination of the religion of Islam, the Malay language and customs as well as the relationship with the ancestral connection to the Malays. The interpretation of what constitutes Malay, according to the Federal Constitution, does not refer to biological factors (Bari 2016), instead it focuses more on Malay characteristics rather than solely based on Malay ethnicity (Ismail 2018). However, a Malay in the context of the Federal Constitution must be a Malaysian citizen. At the same time, non-citizens such as Indonesian Malays or Thai Malays are not counted because both countries are not members of the Federation (Bari 2001). Notably, Malays, as per the Federal Constitution, must be Malaysian citizens, and individuals of Malay descent who are not Muslims are not recognised as Malays (Hashim 2007).

Through the inclusive definition of Malay in the Federal Constitution, technically non-Malays can also qualify as Malays if they are Muslim (Bari 2008) and speak the Malay language. Such interpretation is referred to the third condition, which is conformity to Malay customs, whereby the Federal Constitution of Malaysia does not provide any further guidelines on the matter (Othman 1985). Malay customs change according to time, and thus, the use of the term Malay customs created ambiguity and challenges in justification (Muslim 2020).

Although the Malays are defined according to Article 160 of the Federal Constitution, one of the Malay sub-ethnic groups, namely Sarawak Malays, does not fall under the said article. Formerly classified under Article 161A(7) of the Federal Constitution, the Sarawak Malays belong under the natives of the Sarawak state together with other native groups; however, that provision has now been dropped. This exclusion aligns with the Malay Reserve Enactments, preventing Sarawak Malays to own Malay reserve lands in the Malay peninsula due to their non-membership in the Malayan Race, considering that 'Malayan' in the Malay Reserve Enactments specifically refers to the nine Malay states in the Malay Peninsula (Suman 2012).

CONCLUSION

In conclusion, the definition of Malays as outlined in the Federal Constitution of Malaysia is not an anomaly, as supported by a DNA study conducted by Zainuddin (2023). This study reveals that the Malays, including their sub-ethnic groups actually come from the same lineage evident in their physical characteristics, and similar tastes and shared traditions. This is because Malaysia has evolved into a melting pot which has gone through a long period of amalgamation between the original inhabitants in the peninsula, other indigenous ethnics of the Malay Archipelago, and foreign ethnic groups who adhere to the religion of Islam in the formation of the current Malay ethnicity. The intermarriages between the Malays and other ethnic groups are a historical norm as evidenced in Sulalatus Salatin or the Malay Annals (Adam 2013). Therefore, Wan Husain (2018) concluded that the Malays generally are polygenetic, representing a blend of various ethnic groups and lineages shaped by the diverse polities of Malay kingdoms and sultanates.

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