

The Terengganu State Legal Text of 1911 Analysis of Islamic Influence in Statecraft and the Authority of the Ruler in a Malay State

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ABSTRACT

The Terengganu state legal document *Itqân Al-mulûkbi Ta`dîl Al-sulûk: Undang-Undang bagi Diri Kerajaan Terengganu* is a printed text ordered to be written by the then ruler of Terengganu Sultan Zainal `Abdin the Third, dated 11th Zulqâ`idah 1329 (H) or 2nd November, 1911. It comprises of an introduction, 53 articles and a conclusion. The contents clearly show a strong Islamic influence in the formulation of legal text pertaining to statecraft, while still maintaining some forms of Malay state tradition in several features. It also clearly indicates that this particular law was ordered to be written by the Sultan to resist the encroaching influence of the European colonial powers in the Malay world, particularly in the state of Terengganu at the end of the 19th Century and early 20th Century. This paper will not seek to discuss details of the contents of the legal text but focuses on only two aspects, namely, the extend of the Islamic influence in the legal text, and the particular clauses that gave the full authority and legal right to the present Sultan vis-a-vis the Constitution of Malaysia to appoint or reject any candidate to the office of Menteri Besar or the Chief Minister. The research methodology used was the content analysis of the text.

Keywords: Legal text, statecraft, constitution, federation, unitary government, Terengganu state

INTRODUCTION

Purpose of the Study

The laws of the state of Terengganu or the *Itqân al-mulûk bi ta`dîl al-sulûk: Undang-Undang bagi Diri Kerajaan Terengganu* (henceforth referred to as *Undang-Undang Terengganu*) dated back to 11th Zulqâ`idah 1329 H or 2nd November,

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1911 C.E. is a printed text ordered to be written by the ruler of Terengganu Sultan Zainal `Abidin III (1881 – 1918). It comprises of an Introduction, 53 Clauses and a Conclusion. The contents reflect the strong Islamic influence in the formulation of legal statecraft in a traditional Malay state, whilst still maintaining some forms of the Malay state tradition in several features. The Undang-Undang Terengganu was ordered to be written by the Sultan to resist the encroaching influence of the European colonial powers in the Malay world, particularly in Terengganu. This is evident from Article 14 *Prohibition upon the Ruler*:

“It is not permitted and unlawful for the Ruler to come into agreement or contrive to forgo or surrender the State and the government or any part thereof to any foreign government or any European powers or others.”

This is also mentioned in the Article 26 *Prohibition upon the Ministers and State Advisory Councillors* which specifies the prohibition upon all senior office bearers of the state:

“It is not permitted and unlawful for all Ministers and Members of the State Advisory Council to contrive or to come into agreement with any nation or government with the intention to surrender the state and the government or to reduce the power and rights of the government of Terengganu. Should

they contravene this prohibition, then they are considered as traitors and the government shall punish them accordingly.”

The idea to investigate Terengganu’s traditional canon of law was motivated by an interesting event which occurred immediately after the previous Malaysian General Election held in March 2008. The present day Sultan or Ruler of Terengganu rejected the candidate recommended by the Prime Minister and Chairman of the ruling Barisan Nasional (BN) party for the office of Menteri Besar (Chief Minister). The BN had won the majority of seats in the Parliament (140 against 82) and in the Terengganu State Legislative Assembly (24 against 8) and thus formed the government. Even after much negotiation and consultation in and outside the State Assembly, the Sultan (who is also the present King or Yang Dipertuan Agong of Malaysia) refused to budge, forcing the Prime Minister and the State Assembly to propose another candidate to the Sultan for consideration. This person was then sworn into office by the Sultan. The question is whether there is a provision in the *Undang-Undang Terengganu* that gives a complete authority to the Sultan and to override the Federal Constitution as was expounded 32 years earlier, which states that:

“In the exercise of his functions under the state constitution... the Ruler (Sultan or Governor) must act in accordance with the advice of the Executive Council

or a member of the Council acting under its (Council's) authority..." (Tun Muhamed Suffian bin Hashim, 1976, p. 76).

Thus, the first objective of this paper was to examine the particular clauses that gave the full authority and legal right to the present Sultan vis-a-vis the Constitution of Malaysia to appoint or reject any candidate to the office of Menteri Besar or the Chief Minister. The second objective of this paper was to find out the extent of the Islamic influence in the *Undang-Undang Terengganu* and how much of the Malay traditional statecraft was retained.

This paper will analyze both the issues and also some aspects of the language usage, especially the use of the Arabic words in the text.

The State of Terengganu in the Later Part of the 18th Century and the Early 19th Century

The famous stone edict or *Batu Bersurat Terengganu*, found in 1887 in the District of Hulu Terengganu, is indeed a very significant legal document to the state of Terengganu (Muzium Negeri Terengganu, 1992, *Memorial Batu Bersurat*).

Most importantly, the stone inscription (dated 702 A.H / 1303 C.E.) is the earliest Malay text written in Jawi. Previously, all the Islamic inscriptions found in the Malay world were written in Arabic, such as the Brunei gravestone (440 A.H./1048 C.E.), the Leran Surabaya gravestone (495 A.H./1082 C.E.), the Pasai gravestone of

Malik al-Salleh (696 A.H./1297C.E.), etc. (cf. Hashim Musa, 2006a, 2nd ed., pp. 84-87).

The second significant fact about the edict is that it is the earliest Islamic law digest written in Malay in the Malay world, implying that the Islamic law and practices had been promulgated in a Malay state specifically in the state of Terengganu about a hundred years before the foundation of the Malacca Sultanate. These two facts have strong impact on the formulation and writing of the *Undang-Undang Terengganu*, which will be discussed in the subsequent section.

In the 18th Century, two major powers, namely Siam and Britain, were exerting their influences in the northern Malay Peninsula. The Siamese-Terengganu relationship was first established in 1765 on a friendly basis and was not political. Initially, friendly gifts were exchanged including the sending of *uftibungaemasdanperakor* golden-silver flowers tribute by Terengganu to the King of Siam. However, the Siamese began insisting that the sending of the tribute to them was a mark of a vassal status on the part of the kingdom of Terengganu in return for political protection and as a mark of suzerainty of Siam. In 1787, Sultan Mansur refused to continue submitting to the Siamese and began to establish a closer relationship with the British colonial power by writing several letters to Capt. Francis Light in Penang requesting him to send war ships to protect Terengganu. When Sultan Omar ruled Terengganu, he stopped sending the golden-silver flower tributes to Bangkok and instead established closer ties with the

British by going to Singapore to meet the British Governor. In 1869, he sent a mission to London to cement the ties and to request for a greater protection from the British against any aggression from Bangkok. In 1887 and 1889, however, during the reign of Sultan Zainal `Abidin III, King Rama III of Siam visited Terengganu for the first time, on the pretext of establishing closer ties and more cordial relationship with Terengganu. The Siamese King managed to exert pressure resulting in the continuation of the sending of golden-silver flower gift by Terengganu (cf. Muhammad Yusoff Hashim, 1991, p. 92).

At that time, the British colonial officers were busy trying to place an advisor in Terengganu in order to place state as a part of the Federated Malay States which came under the British Protectorate. The British were also busy making political and diplomatic manoeuvres with the Siamese in order to have more influence and power over the Unfederated Malay States. This underhanded manoeuvre resulted in the formulation of several treaties with Bangkok, such as the Siam-British Secret Agreement (1887), Siam-British Border Treaty (1899), the British-Siam Declaration (1902), and the Treaty of Bangkok in 1909, which declared that Siam no longer had any form of sovereignty over the northern Malay states of Kedah, Kelantan and Terengganu:

“The Siamese government transfers to the British government all rights of suzerainty, protection, administration, and control whatsoever which they possess over

the state of (Kelantan), Terengganu, (Kedah, Perlis and adjacent island)” (W.G. Maxwell & W.S. Gibson, ed., 1824, p. 55, quoted in Muhammad Yusoff Hashim, 1991, Ibid, 112).

This event cleared the way for the British to enter those states and to exert their influence directly. However, this was vehemently opposed and rejected by the Sultan of Terengganu who remarked to the Strait Settlement Governor in Singapore when he visited the Governor, as reported by J. Anderson, a British colonial officer “...he (the Sultan) claimed that he had not been informed of the Treaty (1909) and he (the Sultan) could not understand how Siam could transfer to Great Britain what it never possessed” (Quoted in Muhammad Yusuf Hashim, 1991, Ibid: 112).

Sultan Zainal Abidin III received full backing from court officials and also prominent Islamic scholars or *ulama* in his effort to resist the British pressure on him to sign the 1909 Bangkok Treaty and to accept British Advisor to the state. However, the British, using their diplomatic prowess and subtleties managed to convince the Terengganu government of the benefits of having a British advisor in the state, as put forward by Anderson “...that it was not the British intention to assume administration of Terengganu, but rather to protect His Highness from the wile of unscrupulous Europeans and other adventurers who would probably now annoy His Highness with unreasonable demands for concessions...” (Ibid, p.113). Nonetheless, the Sultan and

his advisors were not completely convinced, and thus from 1910 – 1919, Terengganu only allowed one British agent at a time to give whatever suggestions to the Sultan, which carried little weight. Thus, it was in this condition of resistance and reluctance of the British influence on the part of the Sultan and his advisors that the *Undang-Undang Terengganu* was formulated and ordered to be written by Sultan Zainal Abidin III in 1911.

With regards to the character of Sultan Zainal `Abidin III, it was reported that he was a very pious man and deeply committed to the teachings and practices of Islam. The then Governor of Straits Settlement Mitchell remarked in a letter dated 14 September 1896 that Sultan Zainal `Abidin was "...very studious, reading many Arabic works of science, very strict in religious observance" (quoted in Muhammad Yusuf Hashim, 1991, Ibid, 107). He was well-versed in Arabic and had several well-known Islamic scholars as his teachers, among whom were Wan Muhammad Wan Abdullah, the son of Tuk Sheikh Duyung (a venerated ulama) and Engku Syed Keramat (another venerated religious personality of Terengganu) (Haji Buyong Adil, 1982, p. 20).

Hugh Clifford also observed that the Sultan "...does not personally suppress his people...love of justice and the merciful disposition which are popularly ascribed to him." In observing faithfully to the tenets of Islam, the Sultan went for his pilgrimage to Mecca in 1913 and made many committed efforts to implement Islamic religious code in Terengganu (H. Clifford, 1961, p. 1-62).

The formulation and writing of the *Undang-Undang Terengganu* were in line with his vision and mission for the state and the people of Terengganu.

The Contents of Undang-Undang Terengganu

As mentioned earlier, the *Undang-Undang Terengganu* comprises an Introduction or *al-Muqqadimah*, 53 Clauses or *Fasal* and a Conclusion or *Khatimah*. The 1911 printed version has 22 pages, apart from the Preface in which the Sultan in his capacity as the author of the text described in brief its vision, content and the title, namely, the *Itqân al-mulûk bi ta`dîl al-sulûk: Undang-Undang bagi Diri Kerajaan Terengganu* (Excellent Government through Righteousness: The Laws of the State of Terengganu).

Muhammad Yusoff Hashim remarked that the *Undang-Undang Terengganu* was modelled upon the *Undang-Undang Tubuh Negeri Johor* and that it was regarded as the first secular legal document written in the state of Terengganu (Muhammad Yusoff Hashim, Op cit. 109). Another scholar, i.e. Mohd Yusof Abdullah, was of the opinion that the *Undang-Undang Terengganu* was copied from the *Undang-Undang bagi Diri Kerajaan Negeri Johor (1895)* and was modified" (Mohd Yusof Abdullah, 2006, p. 190). Halimah Hassan, in the same volume, has described in full the contents of all the 53 Articles in the *Undang-Undang Terengganu* (Halimah Hassan, 2006, Ibid: 148-187).

This paper does not seek to discuss the details of the contents of Undang-Undang

Terengganu, but focuses only on two aspects, namely, the Islamic influence and the particular clauses that gave full authority and legal right to the Sultan to appoint or reject any candidate to the office of the Menteri Besar or the Chief Minister.

The Rights and Authority of the Sultan or the Ruler to Appoint or Reject a Candidate for the Office of Menteri Besar

There are five Clauses that are relevant to the issue of the legal rights and the authority of the Sultan to appoint or reject anyone to the office of the *Menteri Besar* and other senior appointments in the state. These are Articles six, seven, eight, nine and ten, as described in the following sub-section:

Article Six: For the Ruler to Appoint State Officers

Verily it is the authority of the Ruler to appoint anyone to the post of Ministers and officers and to specify their functions, duties and emoluments, and also to confer any Honourable Titles and acknowledgment to them.

Article Seven: For the Ruler to dismiss Ministers

Verily it is the right and authority of the Ruler to dismiss ministers and officers from their posts, if they committed any offence against the state law or shari'ah (Islamic) law, and that the offence and the punishment will be according to the consideration of the Ruler.

Article Eight: Incumbent upon the Ruler to have Consultation

Notwithstanding the rights and authority rest wholly upon the Ruler, it is customary and incumbent upon him to have consultation with all the council of Ministers on matters of the state and its laws.

Article Nine: The Authority of the Ruler during the absence of the Members of the Advisory Council

If the Ruler is of the opinion that a certain matter with regard to the welfare and wellbeing or of danger and calamities that requires urgent action, whilst at that material time the Councillors were not present, then the decision to act rest solely upon the opinion of the Ruler. However, when the Councillors are present later, it is customary to discuss again whatever rulings or laws instituted by the Ruler and should the rulings or laws are not agreeable to the Councillors, then it can be annulled.

Article Ten: The Ruler is permitted to pass any ruling on his own authority

Verily, it is provided for the Ruler if he so wishes, to pass a ruling on his own authority, upon his officers who hold state posts and also upon the people of the state; no other person is permitted to do so except those Heads who are vested with those duties.

It is thus very clear that according to Article Five, when combined with Article Six and Article Ten, the Ruler or the Sultan has full rights and authority to appoint or to dismiss any officer holding any senior post of the State, including the Ministers and *Menteri Besar*. However, according to Article Eight, it is customary and incumbent upon the Ruler to consult with the Advisory Council on any matter of the state and its laws. Hence, what transpired in the case of the rejection of one candidate and the acceptance of another candidate for the post of *Menteri Besar* of Terengganu in March 2008 by the Sultan, without the consultation and consensus of Council Members, as some people argued, was not according to the common or customary practices as provided for by the law. Others, however, argued that Article Eight does not cover the matters of the appointment and dismissal of Ministers and the *Menteri Besar*, because these matters are specifically dealt with in Article Six, Article Seven and Article Ten, where the appointment, dismissal and punishment of those office bearers of the state, are specifically mentioned.

Then, in the matter of the Ruler's decision supposedly contravening the Federal Constitution which states that "in the exercise of his functions under the state constitution...the Ruler (Sultan or Governor) must act in accordance with the advice of the Executive Council or a member of the Council acting under its (Council's) authority...", Malaysia being a Federation of Malay States and not a Union provides the exercise and application of the State Constitution by all the states in

Malaysia. When the concept and formation of Malayan Union as proposed by the British Government in 1946 was rejected by the Malay Sultans and particularly by the United Malay National Organization (UMNO), the Federation of Malaya was then formed in 1948 bringing together under a federal government all the Malay States including states without Sultans, namely Penang and Malacca. In the concept and practices of the Federal government, and due to the recognition and acknowledgement, to each state is still given the space to exercise its own state constitution. It was specifically for this purpose that in 1948 the government of the Federation of Malaya directed all the Malay States to formulate and established its own State Constitution modelled upon the *Undang-Undang Tubuh Negeri Johor* and *Undang-Undang bagi Diri Negeri Terengganu*.

Therefore, most people argue the decision of the Sultan of Terengganu pertaining to the choice of the *Menteri Besar* was proper and done within the provisions of all the existing laws in Malaysia.

The Islamic Influence and Retention of Some Malay Traditional Statecraft in the Undang-Undang Terengganu

It is very clear that, on cursory observation, *Undang-Undang Terengganu* is an admixture of Malay traditional statecraft with heavy Islamic influences. The title itself, which in reality is the theme of the law, reflects Islamic flavour, as many titles of the traditional literary works in Malay relating to Islamic discourses at the time were written in Arabic, such as *Bidayat al-*

Hidāyat, Sirāj al-Huda, ʿĀqidat al-Nājīn, Ṣirāt al-Mustaqīm, Sabil al-Muhtadīn, Hidayat al-Salikin, Siyār al-Sālikīn, Furuʾ al-Masaʿil, and many others.

The title of the *Undang-Undang Terengganu*, that is, “*Itqān al-Mulūk bi Taʿdīl al-Sulūk*” was written in beautiful *Kuffickhat* style, and on the same title page at the bottom was written in Arabic that this Law is proclaimed by the Sultan himself: *Fayaqul al-mutawassil bi Saiyyidi al-Mursalin al-Wathiqbil-Lāhi al-Qawi al-Mātin al-SultānZain al-ʿĀbidin yang Ketiga*. Similarly, in the Preface, the traditional Islamic opening of writing a text was used, starting with the Basmallah, and followed by the formula of glorification to Allah the Almighty and the salutations to the Noble Prophet Muhammad, *sallallhu ʿalihiwasallam*, his family members and companions.

Besides the title in Arabic, the *Undang-Undang Terengganu* also utilises many Arabic terms to describe the general or the legal concepts which are not available or deemed as inadequate in Malay, for example:

Arabic	English
<i>al-muqaddimah</i>	introduction
<i>haq / huquq</i>	rights
<i>jamāʿah</i>	assembly
<i>redhā</i>	pleasure/permission
<i>aula</i>	foremost
<i>itlaq</i>	obligatory
<i>wadzifah</i>	appointment/duty
<i>ijtimaʿ</i>	conference/meeting
<i>muhibbah</i>	goodwill

<i>mafhum</i>	meaning
<i>Ahlu al-Hillwa</i>	committee which appoint, reject or dismiss candidates for paramount posts in the state
<i>al-ʿAqdī</i>	conclusion
<i>khātimah</i>	agreement
<i>ittifaq</i>	by the will of Allah
<i>inshāAllāh</i>	relative/successor
<i>wārith</i>	let it be known
<i>ʿaʿlām</i>	distant
<i>baʿid</i>	excuse
<i>rukhsah</i>	to prosper
<i>mengimarah</i>	to reduce
<i>taqsīr</i>	relative/descendent
<i>nasal/nasab</i>	

The full title of the Sultan was also given in Arabic, as *Syed al-Mursalin al-Wathiq bi l-Lāh al-Qawi al-Mātin al-SulṭānZainal ʿĀbidin III*, which was the established practice of all the Malay Sultans on ascending the throne in the Malay states.

Another clear sign that the *Undang-Undang Terengganu* was greatly influenced by the Islamic tenets is the condition of the appointment of the Rulers, namely, the Menteri Besar and the Ministers that they be Muslims (Article Two, Article Twenty four). The official religion of the state is Islam, although there may be followers of other religions residing or allowed to settle in the state (Article Fifty One).

The formation of the state Advisory Counsellor the “*Jemaah Pangkuan Negeri*”, as termed by the *Undang-Undang Terengganu* comprising the Ministers and Chief Heads and also prominent Islamic

scholars, follows the Islamic tenets of the formation of the “*Ahlu al-illwaal-`Aqdī*” given the task of choosing the rightful Ruler and other paramount positions in the state government. This resembles, perhaps distantly, to the concept of the Council of Shura (*Majlis Shūra*), as described by al-Mawardi when Khalifah Umar *radhiyallāhu`anhu* appointed six prominent companions (Ali, Zubair, Uthman, Abdul Rahman bin Auf, Thalha, and Sa`ad Abu Waqqas *radhiyallāhu`anhum*) to search for Umar’s successor when he was dying [cf. Imam Al-Mawardi, (Tr.) Fadhil Bahri (2000, pp. 16-17)].

Articles Eight, Forty Eight, Fifty One and Fifty Two in particular, are also clear indications of heavy Islamic influences. Article Eight mentioned that although all the powers in the state and the government of Terengganu rested fully in the hands of the Sultan, it is common and necessary, following the Islamic teaching that he confers with all the ministers on the state’s matters and the laws pertaining to them. Article Forty Eight states that it is incumbent upon the government of Terengganu to honour all treaties with any government as long as there is no proven act of treachery or cruelty committed by them, which is also in line with the teaching of Islam that exhorts all to honour promises and agreements as long as there are no default and treachery. As mentioned above, Article Fifty One was clearly derived from the Islamic requirement, namely the state religion must be forever Islam and no other religion can be included as the state religion, no matter

how numerous are their followers residing in the State. Finally, Article Fifty Two which deals with the act of treason to the state, whether they are committed by the Crown Prince or other members of the royalties in direct line to the throne, or by the ministers and other government officials. The act is considered to be the most serious offence to the state and the perpetrators are deemed to be traitors and are punishable either by death penalty or banishment, and all their rights and status are forfeited forever.

Thus, several features in the *Undang-Undang Terengganu* described above clearly point to the fact that Islamic influences played a heavy role in the formulation and writing of the law. In the matters of succession to the throne, however, the Malay traditional statecraft was followed, i.e. the successors must be a Terengganu Malay male who is a “blood” descendant of the Sultans ruling the state of Terengganu. Thus, the succeeding sultans after Sultan Zainal `Abidin III must only be from his progeny. It is not permitted and illegal for others not of his progeny to ascend the throne, except in situations where his rightful progeny is incapable due to physical handicaps, such as being mentally unstable, blind, deaf and dumb, or possessing other disabilities. The procedures for choosing heirs to the throne also followed the Malay tradition of appointing a Sultan’s son as the first heir, with the title of “Yang Dipertuan Muda”, followed by another son as the next-in-line and other close members of the royal family as potential heirs.

The honourable addresses or titles of the Ruler and his royal family members also follow the convention of the Malay tradition. The Sultan is addressed as the *Duli Yang Maha Mulia Sultan Yang Dipertuan Besar*; his son Warith Ganti Raja *Yang Amat Mulia Yang Dipertuan Muda*, while the Sultan's consort is known as *Permaisuri* or *Tengku Ampuan*.

CONCLUSION

The writing of the *Undang-Undang Terengganu* is indeed very significant not only in the legal and administrative aspects of the state but also in the literary development of the state of Terengganu and in the Malay world as a whole. Muhammad Yusoff Hashim remarked that the *Undang-Undang Terengganu* was the first secular legal document written in the state of Terengganu (Muhammad Yusoff Hashim, op cit. 109).

Together with the *Undang-Undang Johor*, the *Undang-Undang Terengganu* became the model of the writing of the *Undang-Undang* of other Malay states when the government of the Federation of Malaya in 1948 requested all the other Malay states to formulate and write their own state laws to be implemented in the governing and administration of their respective states. In the concept and practices of the Federal Government, due recognition and acknowledgement are still given to each state to exercise its own state constitution.

From the discussions above, the issue whether the decision of the Sultan of Terengganu pertaining to the appointment

of the *Menteri Besar* in March 2008 was proper and within the provision of all existing laws in Malaysia, this paper argued that it was indeed within the authority of the Sultan to do so, when the *Undang-Undang Terengganu* and the status of the Federation of Malaya/Malaysia are taken into account. It must be noted that the original *Undang-Undang Terengganu* of 1911 has been revised several times and new Clauses were added on as provided for by the Article 53: *Obligation to add and expand the Law*. The *Terengganu State Legal Text* of 1911 was amended on 1st February 1948 and 14th August 2002, by the current ruler who is also the present Paramount Ruler of Malaysia or *Yang Dipertuan Agong Duli Yang Maha Mulia al-Wathiq Billāh* Sultan Mizan Zainal `Abidin, to improve the power of the Terengganu government, signifying to the fact that the *Undang-Undang Terengganu* is still in operation and binding in matters involving the administration of the state of Terengganu.

The *Undang-Undang Terengganu*, as shown in this paper, is actually an admixture of Malay traditional statecraft with heavy Islamic influences. The title in Arabic being the theme of the Law, the contents of some of the Articles, especially Articles Two, Eight, Twenty-four, Forty-eight, Fifty-one and Fifty-four, the Islamic traditional formula of the writing texts on the Islamic discourses, and the profusions of the Arabic words and the phrases used in the text, all point to the fact that the Islamic influences formed the underlying spirit of the writing of the *Undang-Undang Terengganu*. In the

matters of succession to the throne, however, the procedures of choosing and naming heirs to the throne, and awarding honourable addresses and royal titles, it strictly follows the convention of the Malay traditional statecraft.

Wa l-Lāhu `a`lamu bi s-sowāb, wa l-hamdulillāhir-Rabbil `ālamīn.

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APPENDIX

Title page of the Undang-Undang Bagi Diri Kerajaan Terengganu

