

**PAPER ON MALAY SUBJECTS.
LAW. PART I. INTRODUCTORY
SKETCH; PART II. THE NINETY-
NINE LAWS OF PERAK**

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Paper on Malay Subjects. Law. Part I. Introductory Sketch; Part II. The Ninety-Nine Laws of Perak by R. J. Wilkinson & J. Rigby

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R. J. WILKINSON & J. RIGBY

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General Editor.

LAW.

PART I.

INTRODUCTORY SKETCH.

BY

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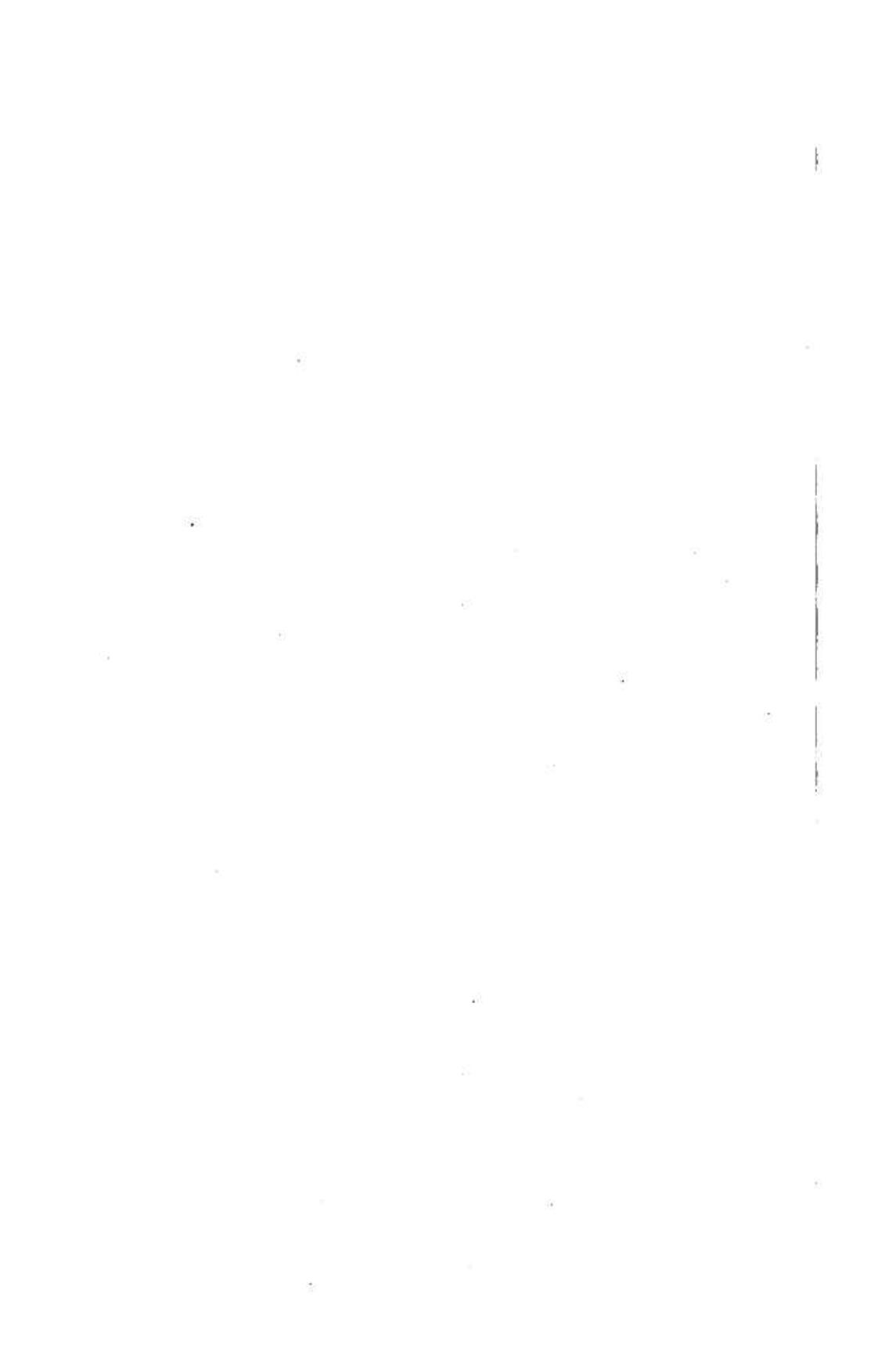
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PREFACE.

THIS pamphlet is only intended to give a brief introductory sketch of the three Malay Schools of Law. Each school will, I hope, be dealt with more adequately in special monographs that are being independently prepared by different writers.

I am indebted to the Resident and to Messrs. Parr, Rigby and Hale for much helpful criticism and to the Hon. R. N. Bland for some very valuable material relative to Menangkabau law.

R. J. W.



MALAY LAW.

INTRODUCTION.

OF all branches of Malay research the study of jurisprudence is the one that presents the greatest difficulties. Malay laws were never committed to writing; they were constantly overridden by autocratic chiefs and unjust judges; they varied in each State; they did not harmonise with the doctrines of Islam that they professed to follow; they were often expressed in metaphors or proverbs that seem to baffle interpretation. The following examples of Malay legal maxims will give some idea of the difficulty of understanding what a native jurist really means:

Kambing biasa mēmbek.
Goats bleat.

Ayam itek itu raja pada tempat-nya.
Poultry are kings in their own domain.

Ēnggang lalu ranting patah.
The twig breaks as the hornbill flies past it.

Kusut mēnyēsaikan,
Hutang mēmbayar, piutang mēnērimakan,
Oleh tempat sēmēnda.
To settle quarrels,

To pay debts, to collect dues:
These things are the business of the wife's relations.

Akar sa-hēlai akan pēngikat,
Kayu sa-batang lēmbing pēnikam,
Dahan sa-kērat akan pēnyalang,
Puchok bērnama pēdang pēmanchong,
Itu-lah kata adat dēngan pēsaka.
The piece of rattan typifies the bonds,
The tree-stem means the spear,
The bough means the *kēris* of punishment,
The shoot is the sword of execution:
So say the law and our ancient traditions.

It is extremely doubtful whether any European will ever succeed in thoroughly understanding every intricacy of the law of Menangkabau; but although sayings like those above quoted may seem to be intended for lovers of the unintelligible, the cryptic doctrines of the old Negri Sembilan jurists are full of meaning and interest if only they are studied in the right way.

The first key to all law is, of course, history.

The Peninsular Malays are believed to have originally come from the Menangkabau highlands of Sumatra, but they did not all come at the same time or in the same way. Some came almost direct; these men brought with them the pure Malay law of Menangkabau, the matriarchal *adat përpateh pinang sa-batang*. Others came by way of Palembang; these men brought the patriarchal *adat tëmënggong*, for the ancient Malay kingdom of Palembang had come under the influence of the old Hindu civilisation of Java and had entirely abandoned its Menangkabau customs. We thus get two absolutely distinct schools of law: the *adat përpateh* in the Negri Sembilan and Nanning, and the *adat tëmënggong* (or its fragmentary remains) in the other Peninsular States. To these two schools we must add a third: the *hukum shara'* or Muhammadan law. The Malays, as good Moslems, profess to accept the legal teachings of Islam even where those teachings conflict with the local *adat*; they pretend, indeed, to regard the *adat* as explanatory of Moslem law or as supplementary to it. All this is mere fiction; the three systems of law are absolutely irreconcilable. The *adat përpateh* is democratic; it addresses itself to the commons and finds expression in quaint sayings that seem to belong to the homely province of proverbial philosophy. The *adat tëmënggong* is autocratic; it is

supported by Malay princes and finds expression in long legal digests (*undang-undang*) drawn up by court scribes for the glorification of the *raja* and (incidentally) for the purpose of displaying their own learning. The *hukum shara'* is, of course, theocratic; it appeals to the educated classes and is embodied in elaborate treatises that have been translated from the Arabic. No three legal systems could be more unlike one another.

The first duty of the student is therefore to clearly understand the composite nature of Malay law. He must not look for uniformity where no uniformity can possibly exist. Above all, he must not allow himself to be blinded by any European preference for written or recorded laws. He should not take the so-called "codes" (*undang-undang*) too seriously. When he reads about the "Malacca Code" or the "Malay Maritime Code" or about the "Laws of Bencoolen and Palembang," he has to remember that these so-called "codes" were never actually enacted by any legislative authority; they are only digests of Malay law. There is a very great difference between a digest and a code. A digest may give a very faithful picture of its subject, but it is, at best, a picture and not the actual law—no man can be charged in court with violating some section or sub-section of a digest. This distinction would not matter so much if the authors of our so-called Malay "codes" were great legal artists who faithfully depicted what they found to be the law, but they were courtiers who were fonder of theories than facts. When, for instance, the author of the "Malacca Code" assures us that a fisherman is entitled to the ownership of his catch, even if he clumsily happen to hook a passing damsel, we need not imagine that there ever was a time when the hooking of casual