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Media Release

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PENANG'S HISTORY AND RIGHTS DOCUMENTED IN TREATIES, AGREEMENTS AND THE FEDERAL CONSTITUTION

PENANG, Monday, 10.1.2022 : Penang's past was shaped by historic treaties and agreements; and its rights are enshrined in the Constitution of Malaysia.

For 131 years, in the period 1826 to 1957, Penang was acknowledged to be one of the British "Straits Settlements". Kedah, on the other hand, was recognised separately as a "Malay State" during the British colonial era.

https://en.wikipedia.org/wiki/Straits_Settlements

In more recent times, on 31.12.1985, the Kedah and Penang (Alteration of Boundary) Act 1985 (Act 325) was gazetted and included as an Act in Article 2 of the Constitution of Malaysia. This Act realigned one of the states' boundaries to the "centre line" of Sungai Muda.

http://www.commonlii.org/my/legis/consol_act/kapoba1985328/

British acquisition of Penang

On 17.7.1786, Capt. Francis Light of the British East India Company (EIC) landed on Penang Island after negotiating an agreement with Sultan Abdullah Mukarram Shah of Kedah. Back then, the island was described as "one vast jungle of nearly 107 square miles (277 sq. km), with a population of only fifty-eight souls".

The Sultan had agreed to cede Penang Island to the EIC in exchange for British military assistance when Kedah is attacked by enemies and a lease amount of 6,000 Spanish dollars per year.

In 1786, Siam defeated the Sultanate of Patani and reclaimed Kedah as a tributary state. Sultan Abdullah had demanded military assistance from the EIC when Siam attacked Kedah. The EIC did not provide assistance. In 1791, the Sultan decided to mount an attempt to retake Penang from the British.

https://en.wikipedia.org/wiki/Francis_Light

https://en.wikipedia.org/wiki/History_of_Penang

Treaties, agreements and the Federal Constitution

The subsequent reality behind Penang's history is reflected in the following official documents:

1.5.1791: Kedah-British Treaty of Peace and Friendship

(Sultan Abdullah Mukarram Shah of Kedah and Capt. Francis Light)

The East India Company (EIC) officially annexed Penang Island ("Prince of Wales Island") after British military forces foiled the Sultan's attempt to retake the island. In return, the EIC agreed to pay up to 6,000 Spanish dollars per year to the Sultan.

https://en.wikipedia.org/wiki/Abdullah_Mukarram_Shah_of_Kedah

http://hids.arkib.gov.my/#/index_peristiwa?q=Perjanjian%20Inggeris%20Kedah%201791&day=&month=&year

6.6.1800: Kedah-British Friendship and Alliance Treaty

(Sultan Dhiauddin Mukarram Shah II of Kedah and Lieutenant-Governor Sir George Leith)

The first Lieutenant-Governor of the Prince of Wales Island gained a 189.3 sq. km strip of land from the Sultan of Kedah. This treaty gave the British permanent sovereignty over Penang Island and the newly gained mainland territory, which was subsequently named "Province Wellesley" (Seberang Perai). In return, the annual payment to the Sultan was increased to 10,000 Spanish dollars per year. This treaty was rectified by the EIC in 1802.

https://en.wikipedia.org/wiki/History_of_Penang

http://hids.arkib.gov.my/#/index_peristiwa?q=Perjanjian%20Inggeris%20Kedah%201791&day=&month=&year

<https://www.penang.gov.my/index.php/en/pengumuman/5-general/discover-penang/9-history>

6.5.1869: Treaty respecting Kedah between Great Britain and Siam

(Chao Phya Sri Suriwongsa Phra Kalahome, Prime Minister of Siam and British Consul-General Sir Thomas George Knox)

In 1869, Kedah was under the influence of the Kingdom of Siam. The Governor of the Straits Settlements agreed to pay Kedah 10,000 Spanish dollars per year as long as the British Government occupied Penang Island and the mainland area adjacent to it. Marker stones were set up to outline the boundaries of Kedah and Penang. One of the boundary stones still stands in Pinang Tunggal, Seberang Perai, today, and is being conserved by the Penang State Government as a historical relic.

<https://opil.ouplaw.com/view/10.1093/law-ohr/law-ohr-139-CTS-191.regGroup.1/law-ohr-139-CTS-191>

http://hids.arkib.gov.my/#/index_peristiwa?q=Perjanjian%20Inggeris%20Kedah%201791&day=&month=&year

20.1.1874: Pangkor Treaty

(Raja Muda Abdullah of Perak and Sir Andrew Clarke, Governor of the Straits Settlements)

The southern watershed of the Krian River was declared as "British Territory" in the rectification of the southern boundary of Seberang Perai. In return for this and other concessions, the British officially recognised Raja Muda Abdullah as the Sultan of Perak after the "Larut Wars".

https://en.wikipedia.org/wiki/Pangkor_Treaty_of_1874

http://hids.arkib.gov.my/#/index_peristiwa?q=Perjanjian%20Inggeris%20Kedah%201791&day=&month=&year

10.3.1909: Anglo-Siamese Treaty (Bangkok Treaty)

(Prince Devawongse Varoprakar, Siamese Minister of Foreign Affairs, and Sir Ralph Spencer Paget, British Foreign Service Diplomat)

Siam transferred to the British Government "all rights of suzerainty, protection, administration and control whatsoever which they possess over the states of Kelantan, Terengganu, Kedah, Perlis, and adjacent islands." Penang was not mentioned because Siam had recognised it as a British Straits Settlement. In effect, the 1909 treaty established the modern Malaysia-Thailand border.

https://en.wikipedia.org/wiki/Anglo-Siamese_Treaty_of_1909

http://hids.arkib.gov.my/#/index_peristiwa?q=Perjanjian%20Inggeris%20Kedah%201791&day=&month=&year

21.1.1948: Federation of Malaya Agreement

(Malay Rulers and Sir Edward Gent representing the British Government)

The Federation of Malaya, comprising 9 Malay states (including Kedah) and 2 British Straits Settlements (Penang and Malacca), was formed.

https://en.wikipedia.org/wiki/Federation_of_Malaya

31.7.1957: Federation of Malaya Independence Act 1957

(Act of Parliament in the United Kingdom)

This British Act made provisions for the establishment of the Federation of Malaya (subsequently Malaysia) as an independent sovereign country within the Commonwealth of Nations. The Act also provided for Her Majesty (the Queen of England) to terminate "sovereignty and jurisdiction in respect of the Settlements of Penang and Malacca", and of all power and jurisdiction in and in respect of the Malay States.

https://en.wikisource.org/wiki/Federation_of_Malaya_Independence_Act_1957

<https://www.legislation.gov.uk/ukpga/Eliz2/5-6/60>

31.8.1957: Laws of Malaysia, Federal Constitution

(First introduced as the Constitution of the Federation of Malaya on Merdeka Day: 31.8.1957. Subsequently introduced as the Constitution of Malaysia on Malaysia Day: 16.9.1963)

Article 2, Part 1 states: "The States of the Federation shall be Johor, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Sabah, Sarawak, Selangor and Terengganu."

https://www.jac.gov.my/spk/images/stories/10_akta/perlembagaan_persekutuan/federal_constitution.pdf

31.12.1985: Kedah and Penang (Alteration of Boundary) Act 1985 (Act 325)

This Act altered a part of the states' boundaries to "the centre line of the Muda River (Sungai Muda) channel."

http://www.commonlii.org/my/legis/consol_act/kapoba1985328/

In a related parliamentary debate on 16.1.1985, the (then) Kuala Kedah Member of Parliament (MP) said: *"The State of Kedah had agreed to the agreement to supply water, that is the agreement between the State of Penang and the Asian Development Bank (ADB) that has specified that before the loan is approved for Penang's Water Supply Programme, the State of Kedah has to guarantee water supply from the catchments in Ulu Sungai Muda that is located in Kedah."*

Penang also surrendered part of its territory along the Sungai Muda river bank to Kedah in 1985. In exchange, Kedah provided the required "water guarantee" for the ADB loan, as arranged by the Federal Government for the Sungai Muda Water Scheme.

Legal and riparian rights

Based on the Kedah and Penang (Alteration of Boundary) Act 1985 (Act 325), PBAPP abstracts raw water from the "Penang side" of Sungai Muda daily. Act 325 does not mention payment for raw water abstraction. As such, the State Government of Penang and PBAPP have no obligation to pay the State Government of Kedah for abstracting raw water from Sungai Muda and "from the catchments of Ulu Sungai Muda that is located in Kedah".

In reality, Penang holds both legal and riparian rights to abstract raw water from Sungai Muda without any payment.

Riparian rights are applicable because Sungai Muda flows through Penang territory. The legal right is reflected in the parliamentary debate regarding Act 325; and Kedah MPs agreement to its enactment in 1985.

Some people may seek to claim that "Penang is part of Kedah" or "claim water payments from Penang". However, there are official documents and laws that state otherwise.

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