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## Originators: Transformation and Collaboration in the Production of Original Written Artefacts

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## Article

# Abu Bakar, the Temenggong of Johor, and the Creation of a Unique Type of Malay Land Deed

## Elsa Clavé | Hamburg

### 1. Introduction

In the second half of the nineteenth century, a new type of document appeared in the Malay manuscript culture, which recorded agreements related specifically to gambir and pepper plantations.<sup>1</sup> At the time, the plantation economy extended from the Riau archipelago to Singapore and Johor on the neighboring Malay peninsula (Fig. 1). The development of this new type of written document - the surat sungai ('river documents') - was linked to the arrival of large numbers of Chinese Teochew,<sup>2</sup> whose presence in the Malay states, and whose occupation as coolies on plantations, created a need to produce and record legal documents regulating their rights, duties, and activities. At the origin of this practice was the dynasty of the Temenggong,<sup>3</sup> the rulers of the state of Johor, and in particular the figure of Abu Bakar (1833-1895), who took charge of state affairs from 1862. Abu Bakar's role in the modernization of Johor is well-known in the historiography, where he is often presented as the father of the modern Malay state. To reach a fast pace of development of the land, which was still covered with jungle when he took over, Abu Bakar surrounded himself with legal advisers, family members, and other officials. This article examines the role of those people, each considered for their own contribution, as being at the origin of the creation, composition, and institutionalization of the surat sungai, a unique form of Malay legal document used for the administration of land rights and shaped over several years.

Behind those legal documents, which became one medium of Johor modernization, were specific knowledge and traditions, as well as the hands of the contributors who participated in creating them and giving them their final form. Considering the *surat sungai* through the different originators who contributed to making those documents authoritative is important on several counts. First, it shows that the story of modern Johor, often presented as the result of a one-man policy, was actually more complicated than that. Second, it highlights the complexity of the socio-political relationships in nineteenth-century Singapore and Johor, through a close look at the written artefacts that resulted from it.

## 2. Plantations and agreements: the sociocultural setting of the new legal written artefacts

Traditionally, in the Malay-speaking world and in most of Southeast Asia, political power relied more on people's allegiance than on the control of a territory. While an idea of a state's limits existed in the precolonial period, borders were considered not as a continued line separating two entities but rather as a zone indicated either by stone markers placed at distant intervals on the land or, more frequently, simply by landmarks such as a river, mountains, or a prominent tree. While private and public spaces existed, the terms differed from those implied by property. Cultivated spaces were most often demarcated by fences, which indicated that the place had been worked by people, and that it was therefore not free of use. Opening and cultivating lands created rights to use it, but not to own it.<sup>4</sup> In the Malay peninsula, the concept of land ownership appeared progressively between the end of the nineteenth and the beginning of the twentieth

<sup>&</sup>lt;sup>1</sup> Gambir (*Uncaria Gambir*) was cultivated for the brown dye and tanning agent produced from its leaves, Fontaine 1926. Pepper, as a seasonal and slow-to-mature plant, was profitable only when combined with gambir, which was harvested all year around, Andaya and Andaya 2001, 139.

<sup>&</sup>lt;sup>2</sup> The Teochew form a large part of the Chinese diaspora in Southeast Asia. They come from the Chaoshan region, in the Fujian, Southern China.

<sup>&</sup>lt;sup>3</sup> The dynasty of the Temenggong started in the eighteenth century with Tun Abdul Jamal (d. 1762) who created that office, which became hereditary after him. Initially, in the Malay sultanate of Malacca, Temenggong was a title given to the third man of the state, who had the role of a minister of justice, Trocki 1979, 24.

<sup>&</sup>lt;sup>4</sup> The importance of fences to mark work and not space remained largely unnoticed, but appeared in several Malay legal codes.

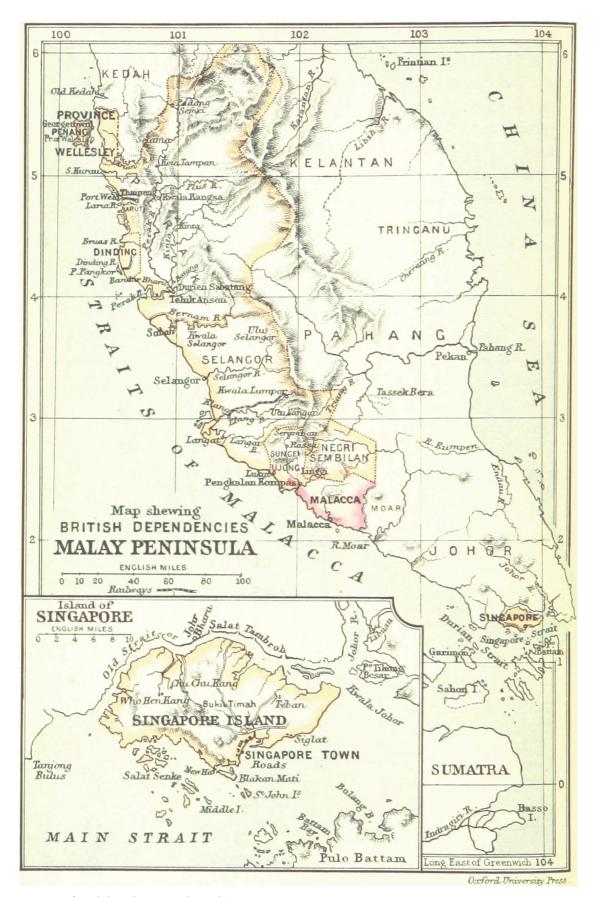


Fig. 1: Map of British dependencies in Malaya and Singapore, 1888 CE.

century in the Straits Settlements,<sup>5</sup> which were under direct British rule, and in the Malay states, which were under local (Unfederated Malay States) and British (Federated Malay States) administrations (Fig. 1).

What came first were land tenure regulations, which differed from one state and settlement to another, depending on the history of places. Malacca, for example, had been occupied by the Portuguese and the Dutch before the British, creating a particularly complex case for the administration of rights that had previously been acquired. By contrast, Johor was a new settlement, where the jungle was cleared progressively by the new settlers under the impetus of the Malay ruling family who supported export agriculture. The plantation economy brought changes in land tenure, and along with the change in land use and the increase in population due to the migration of manpower, came the need to register land rights and therefore to expand the use of the Malay written culture.

The local aristocracy had started to grant such rights to Chinese in the second quarter of the eighteenth century, long before Johor was established.<sup>6</sup> However, no written sources have remained about that period, and therefore nothing is known about land transactions, and the possible written practices accompanying it, for the first period of cashcrop agriculture in the Malay states from 1740 to 1784.7 Many Chinese moved to Singapore in the last quarter of the eighteenth century, after the Dutch attack on Riau, which destroyed the port and disrupted food supply to the island.<sup>8</sup> There, they started gambir and pepper plantations organized in settlements named kangkar, which were located in the river watersheds and organized around the house belonging to the head of the community, initially used for storage and as a collective house. Kangkar were sometimes moved upstream, for example when the soil was exhausted or the surrounding woods showed signs of depletion.9

In Singapore and Johor, *surat sungai* were issued, first to the head of the *kangkar*, named the *kangchu* (港主 'lord of the river'),<sup>10</sup> who was responsible for managing the people working on those settlements and the products they cultivated. The *kangkar* were located within the watershed of a particular river and its people worked on *bangsal* (plantation units) of various sizes from 50 to 250 acres. As three to eight men worked on each *bangsal*, the inhabitants of a *kangkar* usually worked on several plantation units. The responsibility for quality checks and price maintenance was entrusted to the *kangchu*, who was also in charge of social and public order. This role, codified in the *Undang-undang Kangchu* ('Laws of the Kangchu')<sup>11</sup> seems to have been increasingly important following the rapid growth of the population.<sup>12</sup>

The kangkar multiplied so quickly that in 1840 available land started to be scarce in Singapore, and border conflicts erupted. Shortly thereafter, the British decided to survey plantations in order to lay down boundaries.<sup>13</sup> The control and the taxes that this implied caused thousands of Chinese to leave for Johor, the neighbouring state. When they moved up north and settled in the new state, the *temenggong* did not follow the system of land tenure used in Singapore and other Straits Settlements, which consisted in renting the land for a fixed number of years, based on English legal technicalities. Instead, he integrated the planters in the existing sociopolitical system, first of all by transferring authority to the kangchu using surat tauliah ('letters of credence'),<sup>14</sup> as was commonly done with Malay penghulu ('headmen'). This letter conveyed rights and duties to the kangchu, including responsibility for cultivation and development of land, respect for Malay law and order in the kangkar, and a monopoly on certain trade, such as opium and rice. The

<sup>&</sup>lt;sup>5</sup> These trading centers were established, or taken over, by the East India Company between the late eighteenth and nineteenth century and comprised Penang (1786), Singapore (1819), Malacca (1824), and Dindings (1874).

<sup>&</sup>lt;sup>6</sup> Malay rulers had already started to implement that type of agriculture to compensate for the decline of trade revenue in the Riau archipelago, which was the seat of the old Johor sultanate. For more details on the relationship between Riau and Johor, see note 49.

<sup>&</sup>lt;sup>7</sup> The second period, in Riau, from 1784 to 1818, was a time of great political instability with apparently no Malay rulers involved, then, the period from 1819 to 1835 marked the shift from Riau to Singapore, and the years from 1844 to 1862 saw a period of important expansion and regulation, see Trocki 1976.

<sup>&</sup>lt;sup>8</sup> Trocki 1975.

<sup>&</sup>lt;sup>9</sup> Jackson 1968, 20.

<sup>&</sup>lt;sup>10</sup> As the Kangchu system was a Chinese system of cultivation, the terms used in Malay came from Chinese and their pronunciation was based on the Teochew dialect, Trocki 1979, 90, n. 12. I use the conventional rendering of *kangchu*, whereas in Malay it should be written without an *h*. For information on the organization and economic aspect of the system, see Coope 1936; Jackson 1968; Trocki 1975, 1976, 1979; and Fauzi 1984.

<sup>&</sup>lt;sup>11</sup> Undang-undang Kangchu 1873, Johor Bahru, ANM-J, J/PU 1. The text is also known as *Qanun Kangchu*.

<sup>&</sup>lt;sup>12</sup> In 1825, only 3,317 Chinese were living in Singapore, whereas ten years later, in 1836, there were 13,000, most of whom had migrated from Riau, Trocki 1976, 139.

<sup>&</sup>lt;sup>13</sup> Singapore was founded, as a Straits Settlement, in 1819 by Sir Thomas Raffles. The first governor surveyor, Thomson, arrived only in 1841, Trocki 1979, 98.

<sup>&</sup>lt;sup>14</sup> Those rights were sometimes temporally transferred through *surat wakil* ('representative certificate').

contracts, which gave rights to the kangchu to open land near a river, were known under the generic term surat sungai<sup>15</sup> but bore different titles such as surat keterangan membuka kebun ('licence to open a plantation') or surat menebang hutan kerana membuat kebun ('licence to clear the forest and to open a plantation'). Other legal documents, such as the surat jual-beli ('bill of sale'), surat serahan bahagian sungai ('certificate of river shares transfer'), surat kongsi bahagian sungai (kongsi 公司<sup>16</sup> 'certificate of river shares') transferred rights initially granted on the rivers to a third party. Finally, a third type of document, related to the surat sungai, was used when land rights were mortgaged or transferred as a repayment of a debt (surat gadai 'mortgage certificate'; surat perjanjian hutang 'debt agreement'). The system of the surat sungai gave authority over a portion of land, initially to a kangchu. However, with time and following the expansion of plantations, the system became more complex. Commercial partnerships were formed to finance the growth of the kangkar and the work on bangsal, giving birth to the different types of agreements mentioned above (bill of sale, certificate of river shares, etc.). Those documents had a single purpose: to be recognized as valid in the eyes of different parties, and to guarantee the respective interests. They therefore needed to be perceived as authoritative documents for Malays, Chinese, and Europeans alike.

The fact that the *temenggong* was the highest authority in Johor<sup>17</sup>, and that value was conferred to his signature and seal, should have been enough to guarantee the validity of the attributed licence. However, in the socio-cultural context described above, his status (traditional and charismatic authority) and acts (signature and seal) were not sufficient to issue a document that would be recognized by the different parties involved in land deals. Given the influence of neighbouring Singapore and its British laws, legal authority became necessary. This type of authority relied on legally established impersonal orders and could be bestowed on a person only by a system.<sup>18</sup>

In the case of the *surat sungai*, it appears that the system – the prototype of the first modern Malay state – was constructed in parallel with the creation of these documents. Several originators intervened at different times of the process through which these documents acquired their particular status. This process was as much administrative as cultural, and it was the combination of the two that made the *surat sungai* a particular type of Malay legal document conferring land rights.<sup>19</sup>

## 3. Creating authoritative legal documents: the gradual process and its different originators

In Johor, as in most nineteenth-century Malay states, land rights were essentially usage rights. In fact, the continuous use of a plot was sufficient to secure rights on it.<sup>20</sup> As property did not exist as such, the written documents stipulating those rights were referred to not as land titles, but rather as contracts or deeds, understood here as legal instruments that allow the transfer of rights from one party to another.

Before the change from a trade to a plantation economy, legally binding documents were unnecessary and land tenure was regulated through royal edicts or local laws, the terms of which were stated in the *Undang-undang* ('codes of law'). Only a few articles concerned land, which was categorized in two types: *tanah hidup* (land collectively or privately used), and *tanah mati* (land left uncultivated). The codes contained general principles to follow in case of dispute.<sup>21</sup>

Answering to new socio-economic conditions, the dynasty of the Temenggong succeeded in creating an original form of Malay land deed in Johor, which borrowed and integrated features belonging to different written cultures. By doing so, they composed documents of which the form and content

<sup>17</sup> See note 3.

<sup>&</sup>lt;sup>15</sup> There is much confusion as to the type of documents covered by the *surat sungai*. In one of the first studies on the *kangchu*, Coope distinguished the *surat kebenaran menebang pohon* ('licence to cut trees') from the *surat sungai*, which he defined as 'document granted [...] a vague area limited only by the watershed of the next two rivers', Coope 1936, 247. Trocki followed the same distinction in his works, see Trocki 1975, 1976, 1979. However, the term *surat sungai* also appears as a term of auto-reference in *surat jual-beli* ('bill of sale'), *Surat-surat jual beli, surat-surat kongsi, surat-surat pajak dan surat-surat perjanjian hutang* 1284–1301 (1861–1882), Johor Bahru, ANM-J, J/SUK 13, letter n°191. For that reason, in this study, *surat sungai* is used as a generic term covering any documents conferring rights on parts of a river.

<sup>&</sup>lt;sup>16</sup> *Kongsi* entered Malay through Hokkien. It refers in this context to different forms of commercial partnership. For a history of the term *kongsi* in Southeast Asia, see Wang Tai Peng 1979.

<sup>&</sup>lt;sup>18</sup> Weber 1980, 124.

<sup>&</sup>lt;sup>19</sup> Archival practices and documents related to land rights are attested in other places in the Malay world. Studies on the Jambi *piagam* and the Aceh 1666 *tarakata* reveal documentary practices conferring land rights, and it is probable that other Malay states had developed their own written tradition to deal with land grants and deeds, Gallop 2009, 2016. While the overall form was different, Malay elements of phrasing appear to be surprisingly stable and could denote a Malay culture more developed on that question than presently thought, due to the lack of studies.

<sup>20</sup> The only agreements concerning land, known in the region for the precolonial period, were written in Thailand and Java, and concerned endowments to religious institutions, Damais 1952.

<sup>&</sup>lt;sup>21</sup> See for example the related articles in Liaw Yock Fang 1976.

were recognized as authoritative not only by the different parties involved in land transactions, but also by those observing them, the colonial empires. Vested with the power of legality for both Malays and foreigners, this new type of document, the *surat sungai*, organized and recorded the affairs of pepper and gambir plantations.

The composition and formulation were neither entirely Malay nor European, and had no apparent features belonging to Chinese culture. They were written in Jawi script – the Arabic alphabet adapted to Malay, in use at that time – and borrowed elements from the European way of wording contracts (used on preprinted forms). The *surat sungai* were also recopied and archived,<sup>22</sup> a practice that existed in the nineteenth century only under that form and to that extent in Johor. Those features, which characterized the documents, had been acquired over time, through a process of cultural negotiation in which various originators – whose identity is sometimes difficult to assess – played a role.<sup>23</sup>

For example, at the bottom of the *surat gadai* ('pawning agreement') one would often find the Arabic formula والله خير الشاهدين *wallahu khayrul shahidin*<sup>24</sup> ('God is the best of all witnesses'), which might have come from the Quranic tradition (Q 17. 96) according to which Allah is sufficient as Witness. The fact that the sentence appeared in contracts where none of the parties was Muslim indicates that it was purely a formality, and seemingly that pawning agreements had a standardized form.<sup>25</sup> As the source of this practice is still to be found, one can only acknowledge here the role of an anonymous originator.<sup>26</sup>

<sup>24</sup> Transliterated according to the system of the American Library Association / Library of Congress 1997. The surat sungai also absorbed, and adapted, several elements belonging to the British legal documentary culture. Printed models of contracts, used in the Strait Settlements, circulated in Malay states to the regret of British administrators who complained that 'land was being transferred and mortgaged [...] by the aid of two or three ignorant scribes who brought printed forms from the nearest British Settlement - Penang!'27 While that was not the situation in Johor, models did circulate in more than one state, and traces of those forms are found in Johor. Very early on, the surat sungai bore, at the bottom and in brackets, the Jawi term ساین (sayn), to render phonetically the English word 'sign'.<sup>28</sup> (Fig. 2, blue arrows) This indicates that the layout was modelled, at least partially, on a printed form, where the signatures of the witnesses where on the left, a characteristic which remained even when the word ساين (savn) disappeared from the formula.

Other features reveal that printed forms served as a basis for the composition of those Malay legal documents. tanda tangan saksi ('signature تندا تاغن سقسى The Malay of the witnesses'), written before (Fig. 2, red arrow) the signature of the witness(es), was the Malay equivalent of the British 'signed, sealed, and delivered in the presence of', which appeared on indentures, also near the signatures. The presence of witnesses is also a fact to highlight. While their presence was not a novelty in the Malay context,<sup>29</sup> their signatures on the document were. Absent on the first surat sungai, they appeared at a following stage, as a feature lending validity to the deal. Signatures doubled the oral and performative role that the witnesses had previously had. The surat sungai, which was sealed<sup>30</sup> and signed by the Malay ruler, or his representative, when it emanated from him, was then validated through the acts of other originators, the witnesses (Fig. 3).

Finally, the sentence 'ketahuilah oleh segala orang yang ada hadzir dan lainnya', which systematically opened the *surat jual beli, surat wakil* and *surat gadai*, is the verbatim translation of the original English 'know all men by these

manuscript cultures

 $<sup>^{\</sup>mathbf{22}}$  The records are kept in present-day Johor archives.

<sup>&</sup>lt;sup>23</sup> As previously mentioned, very few examples of Malay land deeds have been identified and even less studied. However, we know more about *surat* ('letters'), which were a major medium of royal authority, through which land was granted, Adam 2009, 6. Many sources of Malay letters concerned diplomatic correspondence with local or foreign rulers, written according to very specific rules explained in manuals known as *Kitab tarasul*. Letters were also used to transfer political rights between a Malay ruler and his trusted men through, for example, *surat kuasa* ('power of attorney') and *surat tauliah* ('letters of credence'), which can be considered as having served as a basis for the development of the *surat sungai*.

<sup>&</sup>lt;sup>25</sup> Documents of the same type in Malacca do not have the same form nor the exact Arabic formula at the end, but one which is very close and may denote the same tradition. I refer here to records of transactions from 1813 to 1824, transliterations and translations of which have been generously communicated to me by Annabel T. Gallop: London, British Library, IOR Malacca Record, R/9/12/32; R/9/12/41; R/9/22/41, fol. 98° [n°914]; R/9/22/42, fol.168°; R/9/27/3, fol. 8′.

<sup>&</sup>lt;sup>26</sup> The formula does not appear to have been used as *kepala surat* ('letter headings') in Malay traditional epistolary art, Adam 2009, 11–13.

<sup>&</sup>lt;sup>27</sup> Maxwell 1884, 76.

<sup>&</sup>lt;sup>28</sup> Some examples also have the Malay تتدا تاغن *tanda tangan*, likewise in brackets, with the same layout.

<sup>29</sup> Wisseman Christie 2009.

<sup>&</sup>lt;sup>30</sup> The presence of an imprint seal is clearly attested to in some *surat*, with the reproduction of the *cap* in the register. In other cases, it is suggested by the mention, in the document, that these were *surat cap* or *surat cap tanda keterangan*. The position of the seal, which was not adjusted according to the sender and the recipient status, but simply stamped at the bottom of the page, near the signature of the ruler or his representative, appears also to be the result of British influence.

194isin it and such and and ارزيواة والح مل مر عد 6 1 مار معدله ذا مقعدان 13 14 مد بعد وجود الفران الدور الم دان على فالحسوب (دانوا عد) فدوام ب مادل دان م الم عدم اتحاد عد مالي فرعارون فالم علوال فالم فالما فالمع المان فالم المال فالم المالي المال فالم المراح فالم الم القلوعيث والذ حد المحد وان العلد ترين الله حد المعد والقر المعة والمن في فرد وعلي 30 6 1 ولف بالدول مرد معاني دود دواعد بعاني ونفان معدوى لقاغ " عفى يرمد موقف مق الرحوم على الحلى حرالي فان مولى لوالى مورة الدو 28 مارسوان عو 1302 مرين معا در ال مريفان م على والم والله في فار واجوال ا ودان فن هاى مندم المن مر رو حارب مرفذ حال تو مانه مور من رو نام وان معالم تاما ارموم اعل مدال مترسي ماديل فوق م مدار مد مد الله ماية اعاد كا مدر ود اعاد عاد مراكيد اعلى مرالاعن به مدالي. اتعلقت من مراكل من اتحاد من اتحاد من من مداليد مقرمين ، فن مراليد مفخدة مناع دادك مادوا منار ومنات مرداد ومندهدا من معت معافر والدخرال العرق · citotin By sid low معدان سور مداري الموري ولا ماين اوراغية ما فرد عن فاغر وَمِنْ دَايَ مِنْ مِنْ رَوْ مَنْ 13/4 ما رسول ذالقعد ما 13/4 المواجرداني ارداع ادانة بفلو (دانو ، الدوال والاردان والموموالل مراعد مارد در مارد ان در محمد مادع عدم عاوا عد م رافد عل محال فال المان ماد ور المعاد مال المرالي العلى مرارجى فاقد المعد المعاجر المردان المعان بند عد المعد المتح ولا في والس اغ فولد وعك 5860.00 مارة موالما تو معافقة (والمعالية و معان مدوى سية تعكى ما ركم ب مود ترج المحدم على العلى في في في في المراج المراج 22 وهذا 040 م وحد وكان را وكر فان مر موان بدوان فالمان مردا جوا وامران مناحا مند مراست. فردود حاريان والما ومان مرموجدود الردان معار تلعا ارعدم اعلى عدالمد موركون كارداد فول معد مند مادة عامان ورافع مان ورافع مان من المان من الوكي فالمرالي . المان من من المان من من المراجع مرة الكورند من حدالي من محد تعامرة كالمار توساعاد المرا معدوا مناد ومداتا في م د دو الماد فان conscillational and and وزارات ورجوال · 21/3/00)

Fig. 2: Copy of a *surat sungai* with the Jawi ساين *sayn* ('sign') resp. the repetition sign enclosed in brackets, and the label سقني تندا تاغن *tanda tangan saksi* ('signature of the witnesses') above. Marginal notes give information about the record of the copy. *Surat jual beli bahagian sungai Johor*, 1313–1334 H (1896–1916 CE). Johor, National Archives (ANM-J), J/SUK 13.

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Fig. 3: Copy of a *surat sungai* with the signature of Chinese witnesses, in Chinese characters. *Surat-surat jual beli, surat-surat kongsi, surat-surat pajak dan surat-surat perjanjian hutang*, 1284–1301 H (1861–1882 CE). Johor, National Archives (ANM-J), J/SUK 13.

presents', an archaic formula found in the printed forms for land grants in the Straits Settlements.<sup>31</sup> It came directly from the Latin *Noverint universi per presentes*, used since the medieval period in bonds and other legal instruments written in English.<sup>32</sup> As for the final Arabic formula in pawning agreements, one can only infer the identity of the originators who decided on the linguistic form of the *surat sungai*, and on the characteristics which had to be borrowed and adapted. The different actors mentioned in the next part – the *temenggong*, their lawyers, or man of trust – could all have fulfilled this role in selecting and incorporating Britishderived phrasing.<sup>33</sup>

The writing and copying of the *surat sungai*, for archiving purposes, originated in different traditions. While the language remained Malay, and the script Jawi, they borrowed heavily from the British legal culture through elements of language and phrasing such as those used on indenture printed forms. By doing so, the Temenggong adapted their administration to the conditions of nineteenth-century Johor, where multiple transactions needed to be recorded under new terms. The creation of original Malay legal documents in Johor was also an answer to the socio-political situation, which required the Temenggong to demonstrate signs of 'civilization', understood exclusively from a British perspective,<sup>34</sup> while at the same time he had to assert his power as Malay ruler over the other local chieftains.

#### manuscript cultures

4. The office of the Temenggong as the institutional originator

The debate on civilization was a major one in the colonial context of the time. Johor was surrounded by states and settlements under British administration: Singapore to the south, and Malacca and the protected states of Negri Sembilan and Pahang to the north. It therefore constantly needed to demonstrate its capacity to rule on its own, and the adoption of a British-inspired bureaucracy is to be read in that light, as part of the strategy to avoid the imposition of a British resident on Johor affairs.<sup>35</sup>

The Temenggong, as an institution, can be credited with the progressive adaptation of European administrative usage. The earliest example of *sungai surat* kept in the archives is the copy of a certificate allowing the opening of a plantation (*surat keterangan*), dated 1260 H / 1844 CE, the text of which is given below.<sup>36</sup> It was issued by Temenggong Daeng Ibrahim (1810–1862) to a Chinese named Lau Lib Keng who wanted to establish a plantation with twenty-five men on the river Sekudai. The agreement provided a tax exemption (*tidak diambil dia punya cukai*) for the first three years, which corresponded to the usage (*adat*) established by the British in Singapore:

Tarikh kepada tahun 1260 dan kepada dua puluh enam hari 26 bulan Ramadan hari Khamis jam pukul 8 delapan siang dan kepada masa ketika itulah kita Ungku Temenggong Seri Maharaja memberi surat tanda keterangan kepada orang Cina yang hendak berkebun di dalam tanah Johor Sungai Skudai yaitu namanya Cina Lau Lib Keng orangnya 25 orang banyaknya dan perjanjian Cina itu dengan Ungku Temenggong tiga tahun lamanya tiada ambil dia punya cukai lepas daripada tiga tahun tiada boleh [...] Cina itu mesti bayar bagaimana adat yang di

<sup>&</sup>lt;sup>31</sup> See Selling of land in district in Permatang Pauh, Penang, 20 September 1875 (Kuala Lumpur, ANM-KL, 2007/0019391) and Straits Settlements – Statutory Land Grant. Dokumen penjualan tanah Ali bin Abdullah di Lot 238 Daerah Tranquerah Melaka bertarikh 4 Februari 1897 (Kuala Lumpur, ANM-KL, 2010/0001714).

<sup>&</sup>lt;sup>32</sup> Beal 2008.

<sup>&</sup>lt;sup>33</sup> The characteristics of the *surat sungai* clearly appear to have been selected, and the genre of document created, when one compares them with similar documents in other Malay states. To our knowledge, Kedah is one of the few other places under Malay administration that maintained records of documents similar to *surat pajak* in Johor. Named *surat kecil* ('the short letter'), they granted authorization to exploit mines or gave monopolies on alcohol or rice trade, including to Chinese settlers. Valid for a threeyear period, these licences mentioned the total amount to pay for the whole dur-ation, the corresponding amount per month or alternatively the desired payment every five or six months. They differed not only in their composition, but also in their form. They bore no signature, mentioned no witness, and ended simply with the Malay word *tamat* ('end'), which was the traditional way to end a literary work in Malay. See *Surat putus dan geran tanah*, 1216–1218 H (Alor Setar, ANM-K, S 303); *Surat menyurat Sultan Abdul Hamid*, vol. 9, 1318 H (1900 CE) (Alor Setar, ANM-K).

<sup>&</sup>lt;sup>34</sup> Andaya and Andaya 2001, 154. See also Koh 2014 for a full range of the strategies employed by the Johor elites to enhance their status.

<sup>&</sup>lt;sup>35</sup> Established in 1874 through the Pangkor treaty, the residential system introduced British officials as adviser to the Sultan. Started in Perak, it spread to Selangor, Negri Sembilan, and Pahang.

<sup>&</sup>lt;sup>36</sup> See Fig. 4. Coope mentioned an earlier *surat sungai* dated 1245 H / 1833 CE but, as noted by Trocki, the date must have been misread and it is prob-ably the same document as the one dealt with here and dated 1260 H / 1844 CE, Coope 1936; Trocki 1979, 101–102, 247. Before 1890, the Malay nu-meral 5 was not rendered by the circular form  $\circ$  (as in Arabic), which was used for the numeral zero, Gallop 2015, 96–97. Due to the handwriting, it is also possible that Coope mistook the Arabic 6 ( $^{1}$ ) for a 4 ( $^{1}$ ). It should be noted that the translation published in Trocki 1975, 11, 21 mistakenly reproduced the date 1265 H, instead of 1260 H for the oldest surviving *surat sungai*, see note 16 for the reading of the date. The correct year is however given in Trocki's later publication, Trocki 1979.

dalam Singapura dibuat oleh Kompeni begitulah yang diturut oleh Ungku Temenggong kepada segala orang Cina yang berkebun dalam tanah Johor adanya.<sup>37</sup>

The date is the year 1260, and on the twenty-sixth day 26, in the month of Ramadan, and the day of Khamis [Thursday] at eight 8 in the morning, we, Ungku Temenggong Seri Maharaja gave a certificate to the Chinese who wanted to cultivate in the land of Johor Sungai Sekudai, his Chinese name was Lau Lib Keng and he was with twenty-five people and according to the agreement of this Chinese man with Ungku Temenggong no tax can be taken for three years, after three years it is not possible [...] the Chinese man will have to pay as it is the custom in Singapore as made by the [East India] Company and that was followed by Ungku Temenggong with all the Chinese who farmed in Johor lands.

Temenggong Daeng Ibrahim, the second *temenggong* of Singapore-Johor, took over the office following his father, Temenggong Abdul Rahman (1755–1825), who had been instrumental in the establishment of the British in Singapore before being evicted from his position and seeing his influence greatly reduced.<sup>38</sup> At his father's death in 1825, Ibrahim was fifteen, and he was recognized as *temenggong* only eight years later, in 1833. Suffering from a deficit of legitimacy in the succession context (he was the second son), he was also perceived negatively by the British. Governor Samuel George Bonham (1803–1863) described him as being 'idle and completely illiterate' and not higher 'on the scale of Civilisation than the meanest of his followers',<sup>39</sup> which were all considered as pirates.

Temenggong Ibrahim endeavored to secure the position lost by his family, firstly by gaining the appreciation of the British. He collaborated to suppress piracy and, following successful results, was officially recognized as Temenggong of Johor in 1841. This event established him as leader of the Malay community in Singapore and acknowledged his rule on Johor territory.<sup>40</sup> A treaty in 1855 confirmed the territorial basis

40 Suppiah 2006, 48-49.

of the Temenggong family and recognized it as independent. However, the new status was far from being accepted and 'rajahs of the peninsula, [...] refused to acknowledge the Temenggong – because, in point of hereditary rank, he [was] beneath many of them.'<sup>41</sup>

When Abu Bakar took up office as the third temenggong of Singapore-Johor, he inherited the task only half-accomplished by his father: to enhance the status of the dynasty and maintain financial security.42 Abu Bakar had received an education by a Protestant missionary in Singapore, Reverend Benjamin Peach Keasberry (1811–1875),43 and was fluent and literate in Malay and English. He was the first *temenggong* to have been born and raised fully in Singapore, in close contact with the British culture. This heritage explained his ability to navigate different cultures with apparent ease, a talent he would put forward during his many travels to Europe and East Asia.44 But as a Malay ruler, it was still essential to be recognized by the Riau-Lingga sultanate.45 He therefore enquired, in 1869, whether the Temenggong family could assume a royal title. Having received a positive answer, albeit with the interdiction to use the title of Sultan or Yamtuan, he wrote to the British asking for permission to be called Maharaja, which was subsequently granted.46

While the figure of Abu Bakar remained closely related to the institution for the period in which the *surat sungai* came to be used more widely, and is credited as an originator for 'working out the procedure to be employed for issuing

<sup>&</sup>lt;sup>37</sup> Surat keterangan membuka kebun Johor 1260–1360 (1844–1944), Johor Bahru, ANM-J, J/SUK 13, letter n°1. See Fig. 4.

This transliteration is based on the one kindly provided by Carl Trocki, who generously offered me access to his notes and copies of material from the Johor archives. I thank Lew Siew Boon for having provided me with the scanned images.

<sup>&</sup>lt;sup>38</sup> Kwa 2006, 11, 17–18; Suppiah 2006, 37–43.

<sup>&</sup>lt;sup>39</sup> Straits Settlements Records, R3, 23 April 1835 cited in Suppiah 2006, 47.

<sup>&</sup>lt;sup>41</sup> Cameron 1865, 137 cited in Trocki 1979, 120.

<sup>&</sup>lt;sup>42</sup> His father had worked with British merchants and commercial firms to trade the newly discovered *gutta percha*, latex from a tree that was the only substance capable of properly isolating underwater cables, and enjoyed a comfortable fortune. But the participation of the Temenggong family in a conflict with neighboring Malay States had considerably exhausted that fortune, Suppiah 2006, 50–55.

<sup>&</sup>lt;sup>43</sup> While there is no evidence of Keasberry being an originator of the *surat sungai*, an indirect influence remains possible. His printing activities may have put Abu Bakar in contact with forms from an early time.

<sup>&</sup>lt;sup>44</sup> He was the first Malay ruler to visit Europe, to which he travelled in 1866, 1878, from 1885 to 1886, from 1889 to 1891, 1893 and 1895. He also visited India from 1875 to 1876 and made a brief stop at Ceylon on his return from England in 1878. In 1881, he visited Java and then in 1883, Hong Kong, Japan, and China.

<sup>&</sup>lt;sup>45</sup> The sultanate of Riau-Lingga, with its dependencies of Johor and Pahang, traced its line of authority back to the earlier Malay kingdom of Malacca (c.1400–1511), and before that to the mythical place of Bukit Siguntang. Its legitimacy therefore comes from its genealogy that traces a long history. The year 1824, which corresponds to the Treaty of London between the British and the Dutch, is often given as its starting date, and 1911 as its ending date, when the sultan was exiled to Singapore, but its history extends far beyond those dates. On the complex history of Riau-Lingga and Johor, see Matheson 1986; and Trocki 1979, 1–39.

<sup>46</sup> Kwa 2006, 19–20.

summons and warrants, etc.'47, his brother Ungku Abdul Rahman (c. 1815-1876) also played an important role. He was indeed the second man of the state and served as a Regent during the temenggong's absence. His knowledge and role in state affairs were therefore significant. It is very likely that, in 1863, he had been given the responsibility over the surat sungai, which bore his signature until 1876, the year of his death.<sup>48</sup> His personal role in the composition of the documents remains unclear, however, which is why, besides Abu Bakar, I chose to designate as originators the office of the Temenggong, rather than other individuals. There was indeed an active process of reflection to create original Malay legal documents from Johor, since the time of Abu Bakar's father. It is well known that Daeng Ibrahim and his son entrusted the lawyers Simons and Napier<sup>49</sup> with their affairs. Acting as advisers on legal matters, they may have provided expertise related to the borrowing and translation of English contracts. Originators versed in the technicalities of British law must have played a role, but ultimately other hands, who were part of the new bureaucratic apparatus, were the ones who actually wrote the surat sungai.

# 5. Aligning legal system and written practices: the multiplication of originators

Among the most known originators was Muhammad Salleh bin Perang (1841-1915), who occupied the position of Dato Bentara Luar in Johor from 1841 to 1915. His main task was to plan the development of Johor and, to that purpose, he was in charge of opening new settlements and dealing with both Malay and Chinese headmen, to whom he issued surat sungai. Born in Singapore, like Abu Bakar, he was the seventh generation serving the rulers of Johor.<sup>50</sup> He started to work as a clerk at the age of fifteen for the minister (menteri besar) of Temenggong Ibrahim before entering the service of Abu Bakar, then heir apparent. When Johor started to be developed and the capital Iskandar Puteri was founded, he moved there and was tasked with handling correspondence, supervising the farming revenue, and issuing the surat sungai. He had four assistants, one of whom was specifically in charge of the contracts and authorization issued to the kangchu.<sup>51</sup>

Having studied in a Koranic school for two years at a younger age, then in Malay and English at Reverend Keasberry's school, Muhammad Salleh bin Perang learnt Malay letters under Abdullah bin Abdul al Kadir (1796-1854), also known as Munsyi ('teacher') Abdullah, and proved to be particularly gifted.52 His ability in language led him to study not only Chinese but also painting, under a teacher named Chia Ah Sen,53 from 1861 onwards. After two years, he was able to read and write in Teochew,<sup>54</sup> an ability he used to navigate different writing traditions without the service of interpreters or other scribes.<sup>55</sup> Yet, despite his role and linguistic skills, he did not influence the form of the surat sungai as one might assume. The surat sungai bears absolutely no sign of influence from Chinese written culture. Equally surprisingly, his training in land-surveying with a tea planter, a certain Mr. Langley,<sup>56</sup> and a British administrator, Sir Henry McCallum (1852–1919), did not interfere with the form of those legal documents, for no mention of either land measurement or surface areas appears in the surat sungai. In those documents, the area concerned was identified only by the name of the nearby river. The fact that the land deed excluded available information (measurements, sketch, mention of bordering lands) that was deemed important for at least one party, could mean that the Malay conception of a territory, for which the river was essential in the spatial organization of a state, remained more important than the accuracy of land surveys. The absence of numerical elements and drawings should therefore be considered as a conscious choice rather than a lack, and from that point of view should also be seen as one of the defining characteristics of that type of Malay land deed.57

<sup>&</sup>lt;sup>47</sup> Sweeney 1980, 85.

<sup>48</sup> Trocki 1979, 148.

<sup>&</sup>lt;sup>49</sup> Turnbull 1964, 174.

<sup>&</sup>lt;sup>50</sup> Sweeney 1980, 73.

<sup>&</sup>lt;sup>51</sup> Sweeney 1980, 51–52.

<sup>&</sup>lt;sup>52</sup> Sweeney 1980, 76–77. The fact that he studied under the Malay language teacher, scribe, and writer Munsyi Abdullah may certainly have nurtured his talent. In this respect, it is interesting to note that he had the same teacher as Sir Stamford Raffles, whose role in the founding of Singapore was crucial. Munsyi Abdullah was definitely aware of British administrative and legal language, being himself in the service of British officials. However, the question of a possible linguistic transmission through the renowned Malay teacher remains difficult to assess.

<sup>&</sup>lt;sup>53</sup> It should be noted that the rendering of the name is highly speculative, as Jawi does not always mark vowels.

<sup>&</sup>lt;sup>54</sup> Sweeney 1980, 52, 79–82.

<sup>55</sup> Sweeney 1980, 86-87.

<sup>&</sup>lt;sup>56</sup> The Straits Settlements Directory mentions, for the year 1882, two residents named Walter and J. Langley, tea planters. No further information is known about them. Sweeney 1980, 54, n. 13.

<sup>&</sup>lt;sup>57</sup> For a beautiful example of a land lease signed and sealed by Temenggong Abu Bakar, bearing a scale sketch with precise measurements, see *Surat perjanjian menyewakan Tanah Bukit Kurnia, Telok Belanga, kepada Syed Hussin bin Mohamad Alhabshi 20.5.1862*, Johor Bahru, ANM-J, S 13.

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Fig. 4: Copy of the earliest *surat sungai* known, dated 1260 H (1844 Œ). *Surat keterangan membuka kebun*, 1260–1360 H (1844–1944 Œ). Johor, National Archives (ANM-J), J/SUK 13, letter n°1.

While Muhammad Salleh did not intervene in the content or composition of the surat sungai, his hand has been identified in the surat sungai record, together with many others. Clerkscribes whose names often appeared in the margin, along with the number attributed to the document and the date of the copy, were indeed numerous (Fig 2). Those marks left by clerks became another feature of the surat sungai, and can be considered as the latest stage in the process determining its final form. The fact that they were recopied in records, and started to be archived, enhanced their status. Their value to legitimate claims could hardly be contested once they entered the administrative records of the modern state of Johor. Clerk-scribes in charge of recording the deeds were therefore, at their level, among the originators of surat sungai. The importance of that compiling and recording process appeared in 1865, when Abu Bakar enacted rules regarding the registration of land records and the fee to pay for it, as well as the different fees for the writing of land deeds by scribes. The fact that a year later the administrative capital was moved from Telok Blangah, in Singapore, to Tanjung Puteri, in Johor, is certainly no coincidence. With a mature system of surat sungai, relying on a new form of Malay land deeds, and associated documents (such as pawning agreements), Johor could continue to open land and even to do so at a faster pace as the land and its administration were brought close together, away from Singapore.

### 6. Conclusion

Through the *surat sungai*, the *temenggong* of Singapore-Johor showed their ability to implement land tenure through their own system (right of use, and rights on products), and to have it recognized as legally valid by all the parties, including the British colonial power. In the same period, the *temenggong* of Johor used other types of contract to lease land and transfer rights over its products when deals were made in Singapore under British law.<sup>58</sup> Some were written in English, others in Malay using the Latin script, and some were even printed forms with only a few items filled in. While they were all legally valid, and probably authoritative before a court of law in case of dispute, the specific form and formulation of the *surat sungai* as a type of Malay land deed typical of Johor gave it a particular status.

It supported a system relying almost exclusively on Chinese capital and coolies, but did not have in its content or form any particular Chinese features. It borrowed elements of language from British contract law, while very few Europeans took part in the Kangchu system, and found its Malay 'voice' by selecting – incorporating and excluding – the elements deemed essential to land tenure in Singapore.

Abu Bakar was responsible for the creation of Johor land administration. The rules and regulations that led to the formalization of the registration process were his doing. But it was the Temenggong, as an institution, that was at the origin of the *surat sungai*, for it created the administrative and bureaucratic system that allowed its production and the maintenance of its validity over time.

Other people, known or anonymous, participated at their level in the creative process of Malay land deeds. These were lawyers, who allowed a particular legal phrasing to emerge in Malay; witnesses, whose presence and written names, on the *surat sungai*, validated the deal; and copyist-scribes, who put their names in records and enhanced the authoritative status of those documents.

Presented as such, one can see the chain of originators as a top-down production process, with ideas and orders from the head of state and his advisers, down to the practical realization at the very end of the chain of command. The reality was however less linear. For instance, we do not know whether Abu Bakar or his brother Ungku Abdul Rahman were the ones who wrote the surat sungai in the first place, before it was recopied in records. If not, the scribe must have acted relatively early in the creative process, co-creating the surat sungai at the time of its writing, with the witnesses and the different parties who all signed and thus validated the document. Finally, the identification of Muhammad Salleh's hand in the surat sungai records tends also to suggest that until the very last stage, the process was overviewed and that the originators did not always intervene when they might have been expected to, given their rank or status.

<sup>&</sup>lt;sup>58</sup> See Surat perjanjian almarhom Temenggong Abu Bakar dengan Tuan F.G. Jarvis berkenaan Tanah Kampong Baru, Telok Belanga, 1.9.1862, Johor Bahru, ANM-J, S 14, written in English and strictly following the British indenture model, and Surat perjanjian menyewakan Tanah Bukit Kurnia, Telok Belanga, kepada Syed Hussin bin Mohamad Alhabshi 20.5.1862, Johor Bahru, ANM-J, S 13, written in Malay using Jawi script but following another model, tentatively characterized as hybrid (with an enumeration of articles), and a scale drawing of the land plot. Both concern land plots located in Singapore and owned by the Temenggong family.

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