



KERATAN AKHBAR



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FEDERAL COURT RESERVES JUDGMENT

'NO BID TO UNDERMINE SYARIAH COURT'

Competency of Kelantan Assembly to enact law on criminal offences is issue, says top judge

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THE Federal Court is not attempting to undermine Islam or the Syariah Courts while hearing the case of the constitutional challenge to the Kelantan Syariah Law. Chief Justice Tun Tengku Maimun Tuan Mat said the legal dispute concerns the competency of the Kelantan Legislative Assembly to enact state syariah law. She urged people, especially those directly involved in the case, to refrain from disseminating distorted information about the issue to prevent misconceptions among the public. "So much has been said by so

many people on the petition, a lot of which is the distorted version of the real issue.

"It is not about undermining the position of Islam or the Syariah Courts in the country.

"The issue arising out of the petition is simply about the competency of the Kelantan Legislative Assembly to enact the impugned provisions," she said at the outset of yesterday's proceeding.

The nation's top judge made the statement after one of the lawyers involved in the proceedings publicly made controversial remarks regarding the matter.

Tengku Maimun said the statement made by lawyer Yusfarizal Yusoff, who appeared for the Terengganu Islamic Religious and Malay Customs Council, was extremely uncalled for.

On Sept 6, Pas' mouthpiece Harakahdaily quoted Yusfarizal as saying that the case was the final point before a "gravestone" was placed upon the Syariah Court.

Tengku Maimun also reminded all parties to uphold the rule of law and avoid injecting political sentiment in the case.

"We would like to remind

lawyers that you are bound by the ethics of your profession, and you know very well that it is not appropriate to discuss pending cases in a public forum, more so when you fail to disclose the full facts of the case.

"The statement that 'Mahkamah Syariah akan berkubur di Malaysia' (The Syariah Court will be buried in Malaysia) is untrue.

"Counsel failed to disclose the fact that the petitioner had conceded that two provisions out of the 20 impugned provisions are in fact within the purview of the Kelantan Legislative Assembly to enact and thus under the Syariah Court to administer."

In yesterday's proceedings, Tengku Maimun, who leads a nine-member bench, heard submissions from the remaining parties in the case, including the Malaysian Bar, Sisters in Islam, and the Perak and Terengganu state Islamic councils.

The court has reserved its judgment and will set a later date to deliver its verdict.

Other members of the bench were Court of Appeal president Tan Sri Abang Iskandar Abang

Hashim, Chief Judge of Malaya Tan Sri Mohamad Zabidin Mohd Diah, Chief Judge of Sabah and Sarawak Tan Sri Abdul Rahman Sebli, and Federal Court Judges Tan Sri Nallini Pathmanathan, Datuk Mary Lim Thiam Suan, Datuk Harminar Singh Dhaliwal, Datuk Nordin Hassan and Datuk Abu Bakar Jais.

The constitutional challenge was initiated by Nik Elin Zurina Nik Abdul Rashid, a lawyer born in Kelantan, and her daughter, Tengku Yasmin Nastasha Tengku Abdul Rahman, on May 25, 2022.

They utilised Article 4(4) of the Federal Constitution to directly approach the Federal Court, listing the Kelantan state government as the respondent.

The 18 impugned provisions are sections 11, 13, 14, 16, 17, 30, 31, 34, 37, 39 to 45, 47 and 48 of the Kelantan Syariah Criminal Code (I) Enactment 2019.

They deal with destroying or defiling a place of worship; selling or giving away a child to a non-Muslim or a morally-reprehensible Muslim; sodomy; necrophilia; sexual intercourse with a non-human; uttering words capable of breaking

the peace; sexual harassment; possessing false documents, or giving false evidence, information or statement; and gambling.

They also touch on reducing scales, measurements and weights; transactions contrary to syariah law; transactions via usury; abuse of halal labels; vice; incest and pimping.

The mother-daughter duo contend that the power to legislate on criminal matters belongs exclusively to Parliament, with state assemblies only given the right to enact laws concerning the Islamic faith. Article 4(4) enables the court to assess the validity of laws enacted by Parliament or a state legislature if it is believed that these bodies had exceeded their legislative authority. The direct appeal to the Federal Court was chosen due to its exclusive jurisdiction granted by Article 128(1)(a) of the Federal Constitution for such matters.

In the case of constitutional challenges pursued through the Article 4(4) channel, permission or leave from a Federal Court judge is required to initiate the process.

PN will back govt in amending Constitution, says Tuan Ibrahim

PUTRAJAYA: Perikatan Nasional will support the unity government if it wants to amend the Federal Constitution to avoid syariah criminal codes in the country being challenged and voided in the courts.

Pas deputy president Datuk Seri Tuan Ibrahim Tuan Man said the matter needed to be decided upon by the government immediately.

"Before this, we could not bring it (to Parliament) because we didn't have a two-thirds majority, but now there is and PN will support it wholeheartedly if they want to immediately amend the Constitution.

"This has to be a holistic thing, we can't do it piece by piece," he said after the Save the Syariah gathering in front of the Palace of Justice here, where the Federal Court was hearing a constitutional challenge to the Kelantan Syariah Criminal Code (I) Enactment 2019.

Lawyer Nik Elin Zurina Nik Abdul Rashid and her daughter, Tengku Yasmin Nastasha Tengku Abdul Rahman, had challenged 20 points in the Kelantan Criminal Code Enactment (I) 2019.

Tuan Ibrahim also urged the Council of Malay Rulers to immediately act against the efforts of "certain quarters" whom he claimed were trying to threaten the status of the Syariah Courts in Malaysia.

He said the people should also take heed of the decree by the Sultan of Selangor Sultan Sharafuddin Idris Shah that a special committee needed to be set up immediately to study the competency of the various state legislative assemblies in enacting Islamic legislation, as well as the powers of the Syariah Court.

He said if efforts were not taken to prevent legal challenges to syariah criminal codes, it would happen again and again and this would threaten Muslims.

"Today, 20 enactments have been challenged and I am certain that it will not only happen in Kelantan, but in all the states.

"It is not impossible that such challenges will lead to a loss of function and power for the Syariah Courts."

Tuan Ibrahim had earlier joined more than 1,000 people to protest the constitutional challenge.

Among other opposition bigwigs seen at the gathering were



People performing 'solat hajat' during a Save the Syariah gathering in front of the Palace of Justice in Putrajaya yesterday. PIC BY AZUDDIN SAAD

Kelantan Menteri Besar Datuk Nassuruddin Daud and his deputy Datuk Dr Mohamed Fadzi Hassan, Pas secretary-general Datuk Seri Taklyuddin Hassan

and Putrajaya member of parliament Datuk Dr Radzi Jidin.

Earlier, Nassuruddin participated in a solat hajat in front of the building in Presint 2, joined

by more than 800 people.

The building was cordoned off, with several policemen present at the scene to control the crowd.