



Majlis Perundingan Malaysia Agama Buddha, Kristian, Hindu, Sikh dan Tao

Malaysian Consultative Council of Buddhism
Christianity, Hinduism, Sikhism and Taoism

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MCCBCHST STATEMENT ON THE CASE OF IKI PUTRA BIN MUBARAK V. KERAJAAN NEGERI SELANGOR & ANOR.

The Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism (MCCBSHT) welcomes the unanimous decision of the 9 (nine) Federal Court Judges in the case of **IKI PUTRA BIN MUBARAK V. KERAJAAN NEGERI SELANGOR & ANOR.** The decision to a large extent demarcates the boundaries between the Federal & State Legislatures. The Learned Judges of the Federal Court held whilst list II Para 1 gives the state legislature the power for "...the creation and punishment of offences by persons professing the religion of Islam against the precepts of that religion, except in regard to matters included in the Federal List". The words "except in regard to matters included in the Federal List" is the preclusion clause which clearly shows that the state power over Islamic Law is subordinated to federal power and is residual and not inherent.

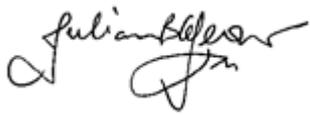
The Federal Court in its decision stated that "the primary power of legislation in criminal law resides in Parliament. This is further borne out by the state list in terms of the power of the state Legislature to enact criminal Law, namely that the powers are subjected to the preclusion clause in item 1 of the state list and item 9 of the state list". In view of this, the Federal Court had rightly ruled that Section 28 of the Syariah Criminal Offences (Selangor) Enactment 1995 touching on the criminalization of unnatural sex, is one that Parliament is empowered to act on and the state has no power to enact such law.

The MCCBCHST had issued a statement in the form of a booklet titled "Hudud Law would undermine the Federal Constitution" dated 26th June 2014 which had similarly stated as has the Federal Court decision now that the state power to enact Syariah Criminal offences is limited to schedule 9, list 1 and Article 74(2) of the Federal Constitution which provides that "...a state may make laws with respect to any of the matters enumerated in the state list (that is to say the second list set out in the schedule) or the concurrent list (see page 3 of MCCBCHST BOOKLET).

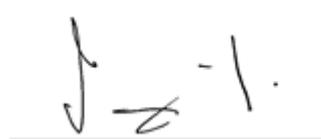
The booklet further at the page 3 stated that Article 74 (1) of the Federal Constitution provides "Parliament may make laws with respect to any of the matters enumerated in the Federal list or the concurrent list (that is to say, the first or third list set out in the Ninth schedule).

The MCCBCHST welcomes the Federal Court decision as it has very ably explained the Federal Constitution position on the demarcation of jurisdictions between Federal and state legislatures.

<STATEMENT ENDS>



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