



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

RUU 355 ENABLING HUDUD OFFENCES IS NOT A CONSTITUTIONAL REALITY

1. The Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism is greatly alarmed by the statement of the YAB Prime Minister Dato' Sri Ismail Sabri Bin Yaakob that the Government is intensifying efforts to draft the Syariah Courts (Criminal Jurisdiction) (Amendment) Act 1965, commonly known as RUU 355 to increase the Criminal Jurisdiction powers of the Shariah Courts.
2. Presently, Section 2 of the Syariah Courts (Criminal Jurisdiction) Act 1965 (Act 355) imposes limit on the punishments that can be meted out by the Syariah Courts, that is imprisonment of up to three (3) years, fine up to RM 5000.00 and whipping up to six lashes. Any proposal to amend the Syariah Courts (Criminal Jurisdiction) Act 1965 to provide for higher punishments will enable the Shariah Courts to impose punishments for Hudud offences. Thus, the Syariah Courts (Criminal Jurisdiction) Act 1965 is being promoted to enhance the Criminal Jurisdiction powers of the Shariah Courts is in effect aimed at introducing Hudud Laws.
3. A similar Bill was introduced by Pas President Abdul Hadi Awang in 2017 in Parliament as Private Member's Bill. In earlier years it was referred to as Hudud Bill but over the years it was rebranded and promoted as enhancing the Shariah Courts sentencing powers and upgrading the Shariah Courts. There was tremendous opposition to the Bill including from Sabah and Sarawak State Governments and MPs; from MCA, MIC, Gerakan & SUPP who openly rejected it at a press conference; opposition parties like DAP, Multiple NGOs, 284 Malay NGOs under the Malay Consultative Council, G25 Group - all of these openly rejected the RUU 355 Bill. A Poll conducted showed that only 10.4% Muslims in Malaysia supported the Bill [Source: RUU 355: A bill to Talibanize Malaysia? dated 19 September 2021, Sunday (MalaysiaKini). In view of the rejection of

the RUU 355 Bill earlier, it is beyond comprehension why is this Divisive RUU 355 Bill being introduced again.

4. According to the Constitutional scheme of things, the Federal Constitution does not allow a parallel Shariah Criminal System to operate side by side with the General Criminal Law System. This matter was put to rest by the Federal Court in the case of IKI PUTRA BIN MUBARRAK V. KERAJAAN NEGERI SELANGOR & ANOR [BKA-3-11/2019(W)] and the Federal Court ruled in a unanimous decision of 9 Judges that:

“...It can be postulated that having regard to the preclusion clause in item 1 of the State List, when the two legislatures (Federal and State) legislate a Law concerning the subject-matter of Criminal Law, and the two laws touch on the same matter, the said Laws cannot co-exist even if the said Law is said to be against the precepts of Islam...”

...the subject matter upon which section 28 of the 1995 Enactment was made falls within the preclusion clause of item 1 of the state list. As such, it is our view that the said section (28) was enacted in contravention of item 1 of the State List which stipulates that the State Legislatures have no power to make Law in regards to ‘matters included in the Federal List’. To that extent, section 28 of the 1995 Enactment is inconsistent with the FC and is therefore void.”

Chief Justice Tengku Maimun Tun Mat when reading out the full Judgment of the Court also stated:

“It is because the subject matter of section 28, touching on the criminalisation of unnatural sex, is one that only Parliament is empowered to enact”.

...Parliament has already enacted a Federal Law criminalising unnatural sex via Section 377A of the Penal Code.” [Malaysiakini 25/02/2021 under heading ‘Selangor Syariah Law against unnatural sex is invalid: Federal Court’].

5. The Hudud offences of Theft, Robbery, Adultery Rape, Sodomy etc., are already offences included in the Penal Code. Thus, any Act such as RUU 355 enabling such offences to be tried by the Shariah Court would be void as there is already a Federal Law criminalising them.

6. Finally, we appeal to the YAB Prime Minister not to go ahead with the proposed amendments to Act RUU 355. These were rejected earlier and it should not be reintroduced for possible political expediency. The Constitution does not allow for a Theocratic Islamic State including Hudud. Let us all abide by the Constitution and the consensus contained in the Reid Commission Report and the Cobbold Commission Report. The MCCBCHST categorically rejects any unconstitutional effort to introduce any Hudud offences in Malaysia which will also definitely affect the Non-Muslims although claims are made to the contrary. We should educate the Public and inform them the true position of the Law and that RUU 355 enabling Hudud offences is not a Constitutional reality.

-Statement Ends-

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