

7 June, 2016

Withdraw Amendment Bill to Shariah Courts (Criminal Jurisdiction) Act 1965

Gabungan Bertindak Malaysia (GBM) believes Islam is a religion of compassion, peace and justice. While religion is a private matter between the individual and God, religious precepts should be educated rather than imposed by force and harsh punishments, which runs in counter with the teaching of Islam as a religion with no compulsion.

GBM thus expresses grave concerns at the tabling of the Private Member's Bill by YB Abdul Hadi Awang, member of parliament for Marang and president of Pan-Malaysia Islamic Party (PAS), to amend the Shariah Courts (Criminal Jurisdiction) Act 1965 and expand the power of Shariah courts in meting out harsher punishments.

The amendment bill proposes to take away the current limitation of punishment allowed by Shariah courts, namely a maximum sentence of three years' imprisonment, maximum fine of RM5000 and whipping up to six strokes, and replace it with a broad and general clause of "punishments permitted under Shariah laws" in relation to the offences under item one of the State List in the Ninth Schedule of the Federal Constitution, except the death penalty.

GBM is gravely concerned that the broad and general clause of the amendment bill, enabling all forms of punishments permitted under Shariah laws to be meted out, will eventually pave way for hudud punishments, such as amputation for theft and robbery (Sariqah and Hirabah) and stoning for adultery and sodomy to be implemented. If the amendment bill is passed, the last remaining hurdle for the implementation of hudud punishments will be the Ninth Schedule of the Federal Constitution, which requires two-thirds majority in the parliament to pass any amendment.

This would mark the beginning of a paradigm shift from the 1963 social contract of the formation of Malaysia as a liberal and secular state to a theocratic state with the full body of Shariah laws being implemented gradually. Such direction of development is certainly in contradiction with the spirit and principles of the formation of Malaysia and runs in counter with the reality of our multi-ethnic, multi-cultural and multi-religious society.

At this moment, the amendment bill would effectively expand the power of Shariah courts to impose harsher punishments on offences committed by Muslims, save for those criminal offences covered under the Federal List. In other words, this will remove the barrier for the PAS state government in Kelantan, to implement some of the punishments in the Shariah Criminal Code that was passed in the Kelantan state assembly in 2015, including whipping of 100 lashes for unmarried offender for adultery (zina), whipping of 80 lashes for false accusation of adultery (qazaf), whipping of 40-80 lashes for drinking alcohol (syurb), blanket forfeiture of property and imprisonment for an unspecified period for heresy (Irtidad & Riddah). It also opens a floodgate for other states to introduce amendments to their Shariah criminal code to impose harsher punishments for these offences.

While GBM welcomes the dropping of death penalty as punishment in the amendment bill, we maintained that punishment of whipping causes serious bodily harm and constitutes a form of torture, inhuman and degrading treatment that are inconsistent with international human rights law, forfeiture of property is in violation of Article 13 of the Federal Constitution, which protects the right to property. The country has abolished indefinite detention under the Internal Security Act and imprisonment for an unspecified period as a form of punishment is unjust and should no longer be accepted.

GBM is also concerned that more injustices may arise with the evidence requirements as proposed under the Shariah Criminal Code 2015 of Kelantan, which only male Muslims have full competence to testify as witness in all offences and at least four witnesses are required in proving adultery offences. For instance, a woman accusing her husband of adultery may potentially face qazaf offence and be punished with 80 lashes of whipping, if she is not able to produce four male witnesses. Such a demanding evidence requirement poses a high risk of false accusation, especially in a highly patriarchal society. There are also questions as to the weight of scientific evidence and circumstantial evidence given in the Shariah criminal judicial process.

We therefore call on YB Abdul Hadi Awang to withdraw the private member's bill.

The statement is endorsed by the following Member Organisations of GBM:

1. Anak Muda Sarawak (AMS)
2. ENGAGE
3. The Federation of Alumni Associations of Taiwan Universities, Malaysia (FAATUM)
4. The Kuala Lumpur and Selangor Chinese Assembly Hall (KLSCAH)
5. Kumpulan Aktivis Mahasiswa Independen (KAMI)
6. LLG Cultural Development Centre (LLG)
7. Majlis Perundingan Malaysia Agama Buddha, Kristian, Hindu, Sikh dan Taoism (MCCBCHST)
8. National Indian Rights Action Team (NIAT)
9. Negeri Sembilan Chinese Assembly Hall (NSCAH)
10. Partners of Community Organisations, Sabah (PACOS Trust)
11. Penang Chinese Town Hall (PCTH)
12. Persatuan Aliran Kesedaran Negara (Aliran)

13. Persatuan Bekas Siswazah Universiti dan Kolej di China, Malaysia (Liu Hua)
14. Persatuan Masyarakat Selangor dan Wilayah Persekutuan (PERMAS)
15. Pusat KOMAS
16. Saya Anak Bangsa Malaysia (SABM)
17. Suara Rakyat Malaysia (SUARAM)
18. Tamil Foundation
19. Tindak Malaysia
20. United Chinese School Alumni Associations of Malaysia (UCSAAM)

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Gabungan Bertindak Malaysia(GBM)

Plan of Action for Malaysia (PoAM)

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