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3rd March 2017

CFM FACT SHEET ON THE PROPOSED BILL TO AMEND ACT 355 AND WHY IT SHOULD BE OPPOSED

It is a fact that Islamic law or the Syariah has had an impact on the lives of non-Muslim Malaysians. There are many examples over the decades, including enactments – both State laws and in the Syariah - that forbid the use of certain words or even of greetings such as "Peace be with you" or "Assalaamualeykkum". There are frequent uproars over what is deemed "halal" which even some Muslims find debatable, and which are divisive as well as disruptive.

The most serious or most talked about recently would be what is generally referred to as "Hudud Law". Although non-Muslims keep being reassured that they will not be affected, this is untrue.

This CFM Fact Sheet on the Proposed Amendments to Act 355 is to provide details about these Hudud Enactments and especially the latest Bill to amend Act 355 which will likely be voted on in the next session of Parliament. Non-Muslim Malaysians need to be aware of the implications of this Bill and ask one's relevant Member of Parliament to vote against the Bill.

It is important to note that UMNO, the ruling party in the current government coalition has joined forces with PAS to present this Bill in Parliament, and UMNO leaders have openly expressed their support for this Bill. The implications of the government of all Malaysians supporting such a Bill are considerable.

An amendment such as those proposed to Act 355 have grave consequences and would affect the fundamental principles of justice, freedoms and rights of all Malaysians, As such, they must be thoroughly and responsibly discussed openly and honestly. This has not happened.

The amendments proposed by Dato' Seri Hadi Bin Awang's private member's bill should no longer be solely in the domain of Muslims alone or a compulsive duty by Muslims as asserted by the PAS President, even to the extent of claiming this small element of the Syariah as "Divine Law" which it is not.

The proposed amendments should only be initiated by the Government after a thorough study of its impact and gravity on Malaysians of all walks of life. Any intended increase of the punishments prescribed should be in accordance to sound principles of laws and our Constitution.

The Christian Federation of Malaysia calls upon members of the Malaysian Parliament, both in the Dewan Rakyat and Dewan Negara, not to approve either version of the proposed amendments to Act 355.

We call upon all Malaysians to contact their Member of Parliament the addresses of the Members of Parliament service centres can be found on the Parliament website http://www.parlimen.gov.my/ahli-dewan.html?uweb=dr& to ensure that their Member of Parliament attends the sitting of the Dewan Rakyat that votes on this matter, and to ensure that s/he does not vote in favour of the amendments.

Yours Sincerely,



Rev. Dr. Eu Hong Seng,
Chairman and the Executive Committee,
The Christian Federation of Malaysia.

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Introduction

1. The Syariah Court (Criminal Jurisdiction) Act 1965 ("Act 355") was first passed by Parliament in March 1965. Act 355 did 2 things. Firstly, it authorised a Syariah court set up by a state to mete out punishments not exceeding 6 months in jail or a fine not exceeding RM1,000 or both for offences against the precepts of Islam that had been created by state law (known as "enactments"). Secondly, it validated all the punishments that had been meted out by Syariah courts prior to the coming into force of Act 355. This was because the Syariah courts had been operating since Merdeka (independence for Malaya on 31 August 1957) without any authority to mete out punishments.

2. Act 355 has been amended twice before. In 1984, the limits of the punishments were increased to a term not exceeding 3 years in jail, a fine not exceeding RM5,000 or not more than 6 strokes of the cane. In 1989, the jurisdiction of Act 355 was extended to Sabah and Sarawak.

3. PAS President Dato' Seri Hadi Bin Awang's private member's bill to amend Act 355 was first listed in Parliament's Order Paper on 7 April 2015, but was not debated. It appeared again in June 2015, but again it was not debated. Finally in May 2016 the Government made way for the bill to be debated. However, Dato' Seri Hadi Bin Awang requested for the debate to be deferred to October 2016, and this was granted. In October 2016, Dato' Seri Hadi Bin Awang again asked for the debate to be deferred, this time to March 2017. Again this was granted.

4. In the meantime, the nature of the proposed amendments by Dato' Seri Hadi Bin Awang changed. His initial proposals were to give the Syariah courts:

   4.1 jurisdiction over all persons professing the religion of Islam and in respect of offences against the matters listed in paragraph 1 of the State List of the Ninth Schedule to the Federal Constitution; and

   4.2 to mete out any punishment permissible under Syariah law in relation to these offences except for the death penalty.

5. **It must be made clear that these proposed amendments did not mention the word "hudud". However these were far-reaching provisions which would permit the introduction of hudud law and hudud-prescribed punishments in Malaysia.**

This was not part of the framework anticipated in the Federal Constitution at the time of Merdeka. The history of the negotiations for Merdeka, and the drafting of the Federal Constitution by the Reid Commission, clearly show that we were all to be governed by secular laws, except in the limited area of personal law for those professing the religion of Islam. The same principles applied when Sabah and Sarawak joined Malaya to create Malaysia. So if these proposals remain, Parliament should reject them.

The revised proposed amendments

6. When the proposed amendments were re-tabled in Parliament on 24 November 2016, they were significantly amended.

7. The current proposed amendments deal only with the increase in the existing punishments. It is proposed that the current maximum sentences of imprisonment for a period not exceeding 3 years, a fine not exceeding RM 5,000, or not more than 6 strokes of the cane, or a combination thereof, be increased to imprisonment for a period not exceeding 30 years, a fine not exceeding RM100,000, or not more than 100 strokes of the cane, or a combination thereof.

8. **It is clear that while the proposed amendments to Act 355 again do not mention the word "hudud", the fact is that the increase in the maximum punishments will allow for hudud-compliant punishments to be meted out.** The proposed increase in the maximum penalties under the proposed amendments to Act 355 will allow several hudud punishments to be implemented directly, and for other hudud and non-hudud punishments to be indirectly achieved.

9. Using the Syariah Criminal Code (II) (1993) 2015 of Kelantan, which has already been passed in Kelantan (but not in force), as a reference point for hudud offences, the hudud-prescribed punishment for a "ghairu mohsan" (someone who has not previously had sexual intercourse or, if married, has yet to consummate the marriage) who commits the hudud offence of adultery or sodomy would now be possible, i.e. 100 lashes, since the maximum number of lashes would now be increased to 100.

10. Again under the Syariah Criminal Code (II) (1993) 2015 of Kelantan, the hudud-prescribed punishment for the hudud offence of "qazaf" (false accusation of adultery or sodomy), 80 lashes, would also now be possible.

11. Further, under the Syariah Criminal Code (II) (1993) 2015 of Kelantan, the hudud-prescribed punishment for the hudud offence of "syurb" (consumption of alcohol or intoxicating drink), between 40 to 80 lashes, would also now be possible.

12. One of the hudud-prescribed punishments for the hudud offence of apostasy ("irtidad") under the Syariah Criminal Code (II) (1993) 2015 of Kelantan, in addition to a jail term and then the death penalty, is the confiscation of the apostate's property. A fine of RM100,000, the new maximum fine, may for some people be equivalent to the loss of their entire property.

13. Additionally, a jail sentence of the maximum 30 years is greater than many of the punishments under the Penal Code. Under the Penal Code, a jail sentence of up to 30 years is imposed on those convicted of terrorist-related offences, for culpable homicide

not amounting to murder, for kidnapping and for hostage-taking. In countries where the death penalty is no longer applied, a sentence of 30 years in jail is seen as the equivalent of a death sentence. If implemented, the hudud-prescribed punishment for the hudud offence of apostasy would now be possible in principle.

Pressure to apply the same law to non-Muslims

14. Even during the debate on the introduction of Act 355, in March 1965, some of the members of Parliament had called for the provisions to be applied also to non-Muslims. The oft-used rationale is where two or more people are involved in an activity, but only the Muslims are prosecuted, and that this would be unjust. So the pressure is to make the same offences apply to everyone. Overall, the proposed amendments to Act 355 will lead to increased calls for the harmonisation of Syariah law with secular criminal law, and for the extension of Syariah law to non-Muslims. These calls were made right from the very beginning in 1965, even when the limits of Syariah court punishments were low. With these current proposals to make them very high, the pressure will no doubt increase.

15. The argument against the question of applying the law equally is NOT to make Syariah law apply equally to both Muslims and non-Muslims. Instead, we have to look at Article 8 of the Federal Constitution and ask whether there ought to be inequality in criminal law at all. Article 8 (5) (a) of the Federal Constitution only allows for the non-invalidation or non-prohibition of "any provision regulating personal law". "Personal law" should not include "criminal law".

16. Any assurance given to the states of Sabah and Sarawak that Muslim authorities in Sabah and Sarawak need not adopt the increased punishments is illusory. It does not take away from the fact that Muslims from Sabah and Sarawak will NOT be spared punishment under increased penalties, since they would come within the jurisdiction of the Syariah law in another state in which they travel and/or live (e.g. in Selangor, when they fly through KLIA or KLIA2).

Summary

17. The original proposal would clearly permit the introduction of hudud law and hudud-prescribed punishments in Malaysia and are unconstitutional. Parliament should reject them.

18. Under the revised proposals, the increase in the limits of punishments will allow some hudud-prescribed punishments to be meted out. Apart from increasing caning to 100 lashes, a jail term of 30 years is equivalent to the death penalty. Fines of up to RM100,000 could be similar to confiscation of property.

19. The maximum limits of a jail sentence and caning punishments under the proposed amendments exceed most punishments that currently exist under the Penal Code. When the focus was on the "inequality" that non-Muslims could not be prosecuted in the Syariah court (even in 1965), there were already calls for the law to apply equally to both Muslims and non-Muslims. Now that some of the punishments will exceed some of those under the Penal Code, there will be even greater calls in this regard.

20. Any increase in the limits of punishments under Syariah law perpetuates a dual criminal legal system which violates the protection of equality before the law and equal protection of the law under Article 8 of the Federal Constitution.

21. An amendment such as those proposed to Act 355 have such grave consequences affecting the fundamental principles of justice, freedoms and rights of all Malaysians. As such, they must be thoroughly and responsibly discussed openly and honestly. This has not happened.

22. The amendments proposed by Dato' Seri Hadi Bin Awang's private member's bill should no longer be solely in the domain of Muslims alone or a compulsive duty by Muslims as asserted by the PAS President, even to the extent of claiming this small element of the Syariah as "Divine Law" which it is not.

23. The proposed amendments should only be initiated by the Government after a thorough study of its impact and gravity on Malaysians of all walks of life. Any intended increase of the punishments prescribed should be in accordance with sound principles of laws and our Constitution.

Recommendation

24. The Christian Federation of Malaysia calls upon members of the Malaysian Parliament, both in the Dewan Rakyat and Dewan Negara, not to approve either version of the proposed amendments to Act 355.

25. We call upon all Malaysians to contact their Member of Parliament the addresses of their service centres can be found on the Parliament website http://www.parlimen.gov.my/ahli-dewan.html?uweb=dr& to ensure that their Member of Parliament attends the sitting of the Dewan Rakyat that votes on this matter, and to ensure that s/he does not vote in favour of the amendments.

Issued by the Executive Committee of the Christian Federation of Malaysia
3rd March 2017