

# Hudud: Is UMNO goading PAS?<sup>1</sup>

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THE KELANTAN STATE ASSEMBLY passed the Kelantan *Syariah* Criminal Bill (II) to introduce *hudud*<sup>2</sup> law in the state of Kelantan on 25 November 1993. This Bill was passed unanimously by all 36 State Assembly members, including two from the Barisan Nasional (BN). That was more than 20 years ago.

But the law could not be implemented because it required an amendment to the Federal Constitution. For under Schedule Nine of the Constitution, “civil and criminal law and procedure, and the administration of justice”—except in the case of “Islamic personal law relating to marriage, divorce, guardianship, maintenance, adoption, legitimacy, family law...” etc.—falls under the purview of the federal, not the state government.

Back then, Parliament, which was dominated by United Malays National Organization-Barisan Nasional (UMNO-BN), was not in favor of amending the Federal Constitution to facilitate the implementation of hudud laws by the Pan-Malaysian Islamic Party (PAS) government in Kelantan. So the PAS government did not try to introduce a private member’s bill in Parliament then.

Admittedly, after its improved performance in the 1999 general elections, PAS tried to implement hudud laws in the states of Kelantan and Terengganu, which had fallen under its control following the elections. This attempt led to divisions within the Barisan Alternatif (BA) coalition and ultimately to the withdrawal of one of its partners, the Democratic Action Party (DAP) from the BA. Perhaps drawing from this experience, PAS hesitated to push for hudud laws in the intervening years, until now.

### **Unconstitutional and discriminatory**

However then, like now, much public debate occurred that resulted in acrimony over the matter. For the late Karpal Singh, the matter of introducing hudud law should not have arisen in the first place because Malaysia is a secular state. For Karpal, the Federal Court had ruled in 1988 (*Public Prosecutor v. Che Omar Che Soh, with Tun Salleh Abbas presiding*) that Malaysia operated on the basis of secular laws. Introducing hudud laws contradicted the present constitution. Accordingly, the implementation of hudud laws required rewriting the entire constitution. Karpal reiterated this stance in an interview—apparently his last—with his party’s organ, *The Rocket*, just before his untimely death.

Sisters in Islam (SIS) and other women’s groups, then and now, have argued that the implementation of the Kelantan Syariah Code, as proposed by the PAS government, infringes upon Article 8(1) of the Constitution, which declares that: “All persons are equal before the law and entitled to the equal protection of the law”. Furthermore, Article 8(2) provides that “there shall be no discrimination against citizens on the grounds of religion, race, place of birth or gender in any law...” The presumption of *zina* (illicit sex) in the case of a woman, who cannot find four male witnesses to back her allegation of rape, is just one example which highlights how women can be discriminated against under the proposed Code. This certainly goes against the principle of justice that Islam (as in other revealed religions) categorically champions.

Medical practitioners have also been dragged into the debate this time. In response to the comments made by Kelantan state authorities that surgeons would be responsible for amputating limbs as required once hudud is implemented, the Malaysian Medical Association (MMA) has unequivocally voiced its opposition to surgeons getting involved in the matter, stating that it goes against the Hippocratic Oath to which all doctors subscribe. The MMA’s position has been supported by Dr Ahmad Farouk, a surgeon and leader of the Islamic Renaissance Front. But groups like the Islamic Medical Association of Malaysia (IMAM) and Ikram Health have come out to state that it is the duty of Muslim doctors to facilitate the implementation of hudud.

### **Non-Muslims also affected**

The implementation of hudud law—we have been told by its supporters—will not apply to non-Muslims. That might be so, theoretically speaking. In fact, however, there's no doubt that the implementation of hudud laws will also impact upon the lives of non-Muslims, who comprise about 38 per cent of the population, on several grounds.

What happens if both Muslim and non-Muslims are involved in a crime, say zina? Where will such a case be heard—in the civil or the sharia court? Will hudud law or civil law apply? Or two separate courts—which might result in two different court rulings and punishments? What kind of justice is this? Wouldn't this go against the principle of equality before the law as enshrined under Article 8 of our Constitution?

And suppose it is decided that a crime is to be heard in the sharia court and there are non-Muslim witnesses to the crime. Will non-Muslim witnesses be able to testify on behalf of a rape victim? What would be the weight of the evidence presented by a non-Muslim witness? A male one? A female one?

Recent well-publicized controversies in the past decade over various personal and family matters involving Muslims and non-Muslims have not given confidence to non-Muslims that their lives will not be affected by the implementation of hudud laws either.

The break-up of couples originally married according to civil law, as a result of one spouse's conversion to Islam, which has sometimes resulted in the conversion of minors to Islam without the knowledge and permission of the other spouse, comes to mind. For instance, the recent dispute between S. Deepa, a Hindu, and Izwan Abdullah, the husband who converted, over the custody of their children and the forced abduction of one of them, on the basis of two differing court orders, resulted in the police refusing to act against one or another party. And there have been cases of Muslim authorities carrying out 'body snatching' of deceased persons, who when alive had reportedly converted to Islam without informing their families.

Regrettably, these incidents have caused the sense of religious suppression on the part of non-Muslims. For this reason, non-Muslims believe that the implementation of hudud law, like the increasingly frequent controversies mentioned above, will have spillover effects on non-Muslims too.

It follows that any state government or any party that intends to introduce hudud law is morally bound to engage all Malaysians—Muslims and non-Muslims alike—in public discourse and dialogue to convince them of the merits of hudud laws in a multicultural, multireligious society like ours. As well, we need to be informed whether and to what extent the implementation of hudud in countries, like Saudi Arabia, Pakistan, Afghanistan, Sudan, or in the special region of Aceh in Indonesia and the 12 Sharia states of Nigeria, have stopped crime in those places. After all, isn't this the goal of implementing hudud?

In the event, hudud is only a small part of the Sharia; so why are local ulama putting heavy emphasis into implementing the hudud?

### **Why now?**

Back to our original question: why, therefore, is PAS pushing for the introduction of two private members' bills in the Dewan Rakyat to implement hudud laws in Kelantan in 2014, over 20 years later?

In this regard, it is significant that such a major amendment to our Constitution is being facilitated by a private member's bill in Parliament. Who remembers the last time UMNO-BN, which still commands a simple majority in Parliament, and the Speaker nominated by UMNO-BN allowed the opposition to introduce a private member's bill?

As far as we can recall, the UMNO-BN majority and its nominated Speaker have always dismissed previous attempts by any opposition member of parliament to introduce a private member's bill. Why, therefore, is UMNO-BN acting otherwise now?

This is why we must look beyond the rhetoric and the semantics of the proposed bills themselves. The answer is in politics! Of Old Politics v. New Politics! UMNO, steeped in ethnic-based exclusivist Old Politics, is goading PAS to jettison the Pakatan Rakyat's New Politics, as contained in its *Buku Jingga*,<sup>3</sup> so as to become more exclusivist and ethnoreligious, like UMNO itself! We must be clear about this!

New Politics has resulted in the virtual demise of the BN coalition, which performed poorly in the 2013 general elections. The BN polled fewer votes than the PR Opposition in Malaysia's 13<sup>th</sup> General Elections (GE13) and had to depend on its fractious BN partners in Sabah and Sarawak to win a majority of seats in Parliament. There is really no BN anymore, only UMNO.

The writing was already on the wall with the arrival of Reformasi in 1998. So when Tun Abdullah Badawi took over as prime minister he introduced various reforms within UMNO-BN, as well as within his government. 'Work with me, not for me!' Time to change the 'software' instead of focusing on the 'hardware' of development like his predecessor did. Some of his predecessor's mega projects, which were benefiting certain cronies were set aside. Remember the 'crooked bridge' that was scrapped?

Abdullah also launched the Royal Commission of Inquiry to look into the workings of the Royal Malaysian Police. He called upon the civil service to serve the rakyat better and government departments to be more transparent. He launched several parliamentary select committees which went around the country to listen to feedback from the rakyat, prior to presenting the new laws concerned in Parliament. The media were also allowed to be more critical without threat of closure. And in contrast to his predecessor's arbitrary proclamation of Malaysia as a Muslim country, Abdullah launched his notion of Islam Hadhari.

Before you knew it, Abdullah was out! He was accused of being manipulated by a group of Oxford boys located on the "5th floor" of the PM's Department in Putrajaya, of favoring his own cronies, and of being weak. Thrown out with Abdullah were the attempts to reform UMNO, to

make it more inclusive minded, more CAT-like (competent, accountable and transparent), as the opposition was attempting to be in Penang and Selangor.

Seen from this perspective, the results of GE13—declining performances of the BN, slight advances by the opposition PR but not enough to allow it to displace the UMNO-BN once and for all—was not unexpected; a stalemate of sorts resulted, stuck between Old Politics and New Politics.

### **UMNO re-strategizes: back to Old Politics<sup>4</sup>**

Faced with the possibility that it would suffer even more losses in the next general election, UMNO began to re-strategize. Having rejected Abdullah's reformist option, the only remaining option was to dig deeper into exclusivist ethno-religious Old Politics, some would even say to resort to reactionary fascist politics.

The party began to target the removal of PR leaders, viz, Anwar Ibrahim was once again taken to the courts, the late Karpal Singh was found guilty of sedition; Nik Nazmi Nik Ahmad was charged again under the Peaceful Assemblies Act (though the courts have since acquitted him); Teresa Kok has been charged with sedition; Sosma has been used to detain an activist, etc.

Perhaps less obvious, UMNO's new political strategy called for the breaking up of the opposition Pakatan Rakyat (PR). More than this, it calls for the breaking up of PAS too. As is well known, PAS had succeeded in attracting a younger generation of Muslim leaders, mostly professionals, who have been called 'the Erdogans', in reference to the Islamic prime minister of Turkey, Recep Tayyip Erdogan (until recently, considered a moderate and reformist-minded). PAS was not monolithic; it was not simply dominated by ulama-types. There were progressive Muslims in PAS, who believed in New Politics and looked far beyond hudud.

In the run-up to the GE13, these Erdogans in PAS had pushed for the realization of the Islamic welfare state (rather than the Islamic state

per se as desired by the more conservative ulama in the party's Dewan Ulama). The Pakatan Rakyat's joint programme Buku Jingga had no mention of an Islamic state, nor of hudud. Apart from calling for greater justice, freedom, equality for all, the joint programme called for the promotion of Islamic values in various walks of life, a position that was acceptable because Islamic values, like ushering in a just government, caring for the poor and needy, justice, fighting corruption including in high places and compassion for all, are all universal values that people of other faiths also share.

In fact, egged on from within by the Erdogans and from without by their PR partners, party leaders had taken the public stance that non-Muslims could use the *kalimah* Allah provided they did not misuse and abuse the term.

Put another way, both the PR, and PAS itself, had to be broken up in order for UMNO to recover its electoral losses. And how else to break these two than by pushing for a more exclusivist political agenda based on Ketuanan Melayu on the one hand, and for a more Islamic state on the other!

Indeed, this was already part of UMNO's strategy in GE13 but perhaps not so evident because UMNO was also trying to proclaim Malaysia as a moderate country to the global community and as 1Malaysia to the non-Malays within Malaysia. Now that the elections are over, the more liberal wing within UMNO has allowed the more reactionary wing to set aside all pretenses of being moderate and to sideline attempts at creating a more inclusive 1Malaysia nation.

It was in this regard that Datuk Seri Jamil Khir Baharom, the minister in the prime minister's department, announced on 8 November 2013 that the attorney general's chambers had given the green light to amend the existing "356" maximum penalty under the Akta Mahkamah Syariah (Bidang Kuasa Jenayah) (Pindaan) 1984, to enhance the punishment for crimes against Islam. Under existing provisions, the hukum was limited to three years imprisonment, a RM5,000 fine and/or six strokes of the cane (Utusan Malaysia, 8 November 2013).

Subsequently, Tan Sri Annuar Musa, the member of parliament for Kerteh, and former UMNO Kelantan chief, declared that he would campaign for his UMNO colleagues to support PAS if it introduces a bill in Parliament to implement hudud law in Kelantan.

In response, PAS deputy president Mohd Sabu warned his PAS colleagues not to be persuaded by UMNO's baiting and to continue working with its PR partners, for PAS' biggest victories had come as a result of co-operation among the Opposition (Malaysiakini, 21 Nov 2013).

More recently, deputy prime minister Tan Sri Muhyiddin Yassin visited Datuk Nik Aziz Nik Mat, the Mursyidil Am PAS (or spiritual leader of PAS) and proposed the setting up of a special technical committee between the federal (UMNO) and state authorities to discuss in depth the implementation of hudud laws. YADIM (Yayasan Dakwah Islamiah Malaysia) chief Datuk Dr Asyraf Wajdi Dusuki, also a member of UMNO's supreme council, also visited Nik Aziz. The Dewan Ulama Pas Kelantan welcomed these visits and supported Muhyiddin's call to "duduk semeja"<sup>55</sup> over the issue.

More than that, Perkasa, which has received funds from UMNO and other so-called Islamic groups like Martabat Jalinan Muhibbah Malaysia (MJMM) have been goading PAS on in this endeavor. Perkasa president Ibrahim Ali and secretary-general Syed Hassan Syed Ali, for instance, have challenged PAS to stop its *sandiwara* (play acting), to push for hudud seriously and to break with its PR partners, who reject hudud laws (Utusan Malaysia 9, 12 and 29 April 2014).

Meanwhile, UMNO's mouthpiece, Utusan Malaysia, has been carrying articles daily, by UMNO and PAS leaders, and Muslim NGOs of all hues and colors, in praise of PAS leader Datuk Abdul Hadi Awang and in support of PAS' proposed hudud bills. Those individuals and groups pronouncing that all Muslims are duty bound to support (*wajib sokong*) the bills have been highlighted. Naturally, DAP leaders and a few PKR ones have been consistently condemned, daily.

No doubt, the entire campaign is a well orchestrated one.

### **PAS should push for more inclusive politics**

PAS should be wary of UMNO's political re-strategizing. Beware of the reactionary Old Politics that they are promoting. Do not fall for their bait.

We also call upon PAS leaders not to push for the implementation of hudud laws in Kelantan, not now nor in the future. For Malaysia is a multiethnic, multireligious society and there cannot be two systems of justice.

In this regard, they ought to follow the example of Abdurrachman Wahid (or Gus Dur as he was popularly known), who was the leader of Nahdhatul Ulama and president of Indonesia. He took the stance that it was not appropriate for Indonesia to introduce the Sharia and proclaim Indonesia as an Islamic state in this day and age, and in view of its multi-religious make-up.

This is a stance that the Muhammadiyah, which with the NU, the two largest Muslim organizations in Indonesia also took and continues to do so. Yet, they continued to combat authoritarian rule and KKN (*korupsi, kolusi dan nepotisme* or corruption, collusion and nepotism) and to promote justice and equality.

We appreciate that one reason why PAS is pushing for the Sharia in general is that it is concerned about widespread social ills and the increasing number of political and financial scandals under 50 years of UMNO-BN rule. Consequently, the existing civil-legal system has been found extremely wanting.

All the more reason, therefore, to reform this civil-legal system by pushing ahead with New Politics, characterized by a two-party democratic system under which:

- there will be checks-and-balances between the executive, legislature and judiciary;
- there are free and fair elections;
- ordinary people, public interest societies and free media can participate and have their say;

- the interests of the *rakyat*, not those of the political elites and their cronies, are put on centre-stage; and
- the rights of all peoples regardless of their ethnic and religious backgrounds, race or gender, are protected.

We believe that all these safeguards and aspirations are not only contained in the Federal Constitution but also are in keeping with the teachings of Islam and indeed of all religions.

We wish that PAS would join with all justice- and democratic-loving Malaysians to champion this noble cause, one that is inclusive of all.

### Notes

PAS decided to postpone the introduction of the Private Member's Bill in June, as originally announced, but it has stressed that it intends to do so at a later point in time. The notes below were made and added for journal publication.

- <sup>1</sup> This thinkpiece was originally published as a two-part commentary in the online newsletter of Aliran Kesedaran Negara (Aliran), on May 6 and 7, 2014. URL: <http://aliran.com/thinking-allowed-online/2014-ta-online/hudud-now/>; <http://aliran.com/thinking-allowed-online/2014-ta-online/hudud-part-2-umno-restrategises-back-old-politics/>
- <sup>2</sup> In Arabic, *hudud* is the plural form of *hadd*, which literally means 'hindrance, impediment, limit, boundary, frontier...' It generally refers to 'punishments of certain acts which have been forbidden or sanctioned by punishments in the Kur'an' in B.Lewis, V.L. Menage, CH. Pellat, and J.Schact, *Encyclopaedia of Islam: New Edition, Volume 3*, page 20. Leiden: E.J. Brill, 1986.
- <sup>3</sup> *Buku Jingga* literally means "Orange Book" and refers to the pre-2013 election manifesto of Pakatan Rakyat, the Malaysian opposition party.
- <sup>4</sup> The second article begins here.
- <sup>5</sup> *Duduk semeja* literally refers to sitting together around the same table, connoting dialogue and generating points of consensus.