

Time for non-Muslims to get the true picture of hudud law

By: Muhammad Fathi Yusof

I respond to the writing that purports to represent MBBCHST published by TMI on May 12, 2014.

I respect the writer's views which touch not only upon hudud law, but also on the constitutional position of Islamic law, but as a person who reads both Islamic and civil laws, I believe that points raised in the article need to be further scrutinised.

On hudud law being able to change the basic structure of the Federal Constitution and change our legal system.

Just like any other country in the world, the Federal Constitution informs the legal system of our country, but I believe that the Federal Constitution does not have a basic structure.

Ours is not like the Indian Constitution which clearly mentions being secular as its basic structure.

We can refer to the case of *Loh Kooi Choon v. Government of Malaysia*. It can be understood from that case that basic structure is an alien notion as far as the Federal Constitution is concerned.

If it were to have one, such a concept must have been reflected in the words of the Federal Constitution themselves.

If some people insist that a structure is needed, it should be less than basic. And the structure must be flexible enough to support the parallel existence of federal and State laws – Islamic law is part of the latter.

There have been claims that reforms of Islamic law, including the codification of hudud law, will pose a threat to the character of the existing legal system.

My answer, it (the system) is dualist. Whether we like it or not. The two sets of law, one for Muslims and the other one for non-Muslims, have been the legal norm that has passed the test of time.

On hudud frustrating the secular intention of the framers of the Constitution, can we prove that that would be the 'delete button' – something that has erased the dynamics of the political organisation that characterises the country?

The Federation of Malaya was not created out of a vacuum. It was the result of a group of decolonised States which exercised their right to self-determination to be part of a new entity via a treaty.

And the creation of the country required the religion of Islam to be institutionalised and this manifests in Article 3 of the Constitution which says that Islam is the religion of the Constitution.

We may also say that this is something that the country might have imitated from its colonial master.

Is England a secular State when the Archbishop of Canterbury has a great role in the secular life of ordinary Englishmen? Can we explain why bishops sit in the House of Lords, which is akin to our Dewan Negara, as lords spiritual? Should this conflict with the secular character of the country?

On whether introduction of hudud will be against the constitution, I believe that we can read both the Federal and State lists in harmony and such reading will allow Islamic law to be appreciated in its true spirit.

The only obstruction to that is a federal law that limits the power of the Shariah courts.

Thus there should be very little reason why non-Muslims should fear the hudud as violating their rights. Because of the indigenous character of the constitution, Islamic law becomes an integral part of an exclusive system of jurisdiction overseen by the States. Due to this, Islamic law will only be imposed on Muslims.

Be that as it may, if truly implemented, the hudud has its built-in safeguards. The standard of proof is so high, it is almost impossible to convict a felon, unless someone commits any of the prescribed crimes in public.

In such a case, the Islamic civil law that is ta`zir will be used. The ta`zir crimes can be the same as penal code crimes. – May 13, 2014.

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