

“HUDUD CONTROVERSY”: GET THE FACTS AND THE LAW RIGHT

I viewed the “Hudud Controversy” program on Channel NewsAsia. The first thing I would like to point out is that the description of the program which begins with “The tabling of the Islamic Penal Code or the Hudud Bill in Parliament...” is completely wrong.

What the PAS President did was to propose an amendment to of the Syariah Court (Criminal Jurisdiction) Act 1965. The effect of the proposed amendment is to enable the State Legislative Assembly of a state to pass law to confer increased jurisdiction to the Syariah Court and to create offences the punishment for which is permissible by the Syariah, except the death penalty. Of course, that could include hudud punishments other than *rajm* (stoning to death) and *salib* (crucifixion).

It was sad to see a senior Minister in the Prime Minister’s Department, a lawyer and for a long time in charge of legal matters, making mistakes when referring to the relevant law.

First, he made a mistake in saying that limit of the punishments “provided by the Constitution is 5 years imprisonment....” That limit of the punishment is NOT provided by the Constitution. It is provided by the Syariah Court (Criminal Jurisdiction) Act 1965. Furthermore, the correct number of years provided is 3.

Second, he said, the proposed increase in jurisdiction of the Syariah Court (Criminal Jurisdiction) Act 1965, will only apply to Kelantan. That is wrong. The Act is a federal law, applicable throughout Malaysia. An amendment made to it will apply throughout Malaysia, unless it specifically says it is only applicable to Kelantan. The proposed amendment by PAS is not restricted to Kelantan only.

However, the Minister got one important point right: murder, rape, robbery, theft are “criminal law” under the federal jurisdiction and the State Legislative Assembly has no jurisdiction to legislate on them to provide hudud punishments for them.

I hope politicians, especially Ministers, will check the law before agreeing to an interview. Their mistakes will not only confuse and mislead the public but are also detrimental to the Government. More importantly, they must understand the issue, get the facts and the law right to make a decision to support the bill or otherwise.

Another interviewee made a partially correct statement which needs an explanation. He said, “The Constitution does not allow hudud punishment...”

Actually, the Constitution is silent on hudud punishment. It provides that the State shall have jurisdiction with regard to *“creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the Federal List;”*

Since the hudud offences like murder, rape, theft and robbery are under the Federal List, the State Legislative Assembly may not legislate on them to provide hudud punishments for them. But, that is not because the Constitution says hudud

punishments shall not be provided for, but because those **offences** are not under the State jurisdiction. But, for offences which are arguably under the State jurisdiction like adultery and consuming intoxicating liquor, once the amendment is passed, it is open for the State Legislative Assembly to make law to provide hudud punishment for them, so long as it does not include the death penalty.

As I have repeatedly said, I am merely pointing out the law, hopefully the politicians, whether they are in the Government or the opposition will get the facts and the law right, to make their decisions on the issue.

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12 June 2016

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