

LIMITED HUDUD: UMNO AND PAS ARE IN A POSITION TO SHAKE HANDS
By
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All this while, the biggest obstacle to the cooperation between UMNO and PAS appears to be the implementation of *hudud*. (Actually, the larger obstacle, but not mentioned publicly, is self-interest.)

PAS would not want to budge from its struggle to implement *hudud* as if it is the only benchmark whether a country is an "Islamic state" or not.

UMNO is in a dilemma. On the one hand, it fears of being accused of opposing *hudud* which will cause Malay/Muslim voters to flee to PAS. Therefore, UMNO has to show that it also supports the implementation of *hudud*. On the contrary, it fears of losing its non-Muslim allies which are openly against the implementation of *hudud*. If they withdraw from Barisan Nasional (BN), UMNO will lose the non-Malay/Muslim voters. Both will have serious consequences to UMNO.

Political developments in the country in recent years have shown that PAS is breaking away from the opposition coalition allies. PAS may have also realised that no matter how "un-Islamic" UMNO is, UMNO is certainly the most likely to support PAS in its attempt to implement *hudud*. UMNO is also being threatened by its allies, both in Peninsular Malaysia as well as in Sabah and Sarawak. Therefore, UMNO and PAS began to see the possibility of working together. The way became clearer after the death of Dato' Nik Aziz and Mat Sabu group has left PAS. Majority of Malays/Muslims too like to see the two parties work together.

Apart from the problem of the distribution of seats, UMNO has no problem to cooperate with PAS. It has no ideological problem.

However, PAS has problems. First, PAS is still hurt because of its removal from the BN. (However, this factor is no longer the major obstacle after the death of Nik Aziz.)

Second, PAS' most important political capital is *hudud*. *Hudud* is a cheap political promise. (PAS does not have to spend any money to fulfil the promise and it brings in votes. Even if it could not be implemented because of the Constitutional and legal constraints, PAS can always blame UMNO for it.) So, PAS cannot be seen to give up the struggle to implement *hudud*. PAS must live and die with *hudud*, at least that is the impression that needs to be maintained. So, PAS cannot compromise on *hudud*, even to cooperate with UMNO.

To show its seriousness regarding the implementation of Islamic criminal law (including *hudud* and *qisas*), in 1993, the Kelantan State Legislative Assembly (SLA) passed the Kelantan Syariah Criminal Enactment (Kelantan) 1993. PAS knew that it was unlikely that it could be implemented, but it was an important political capital that would attract the Malay/Muslim voters, especially in Kelantan.

It was in a state of abandonment for 20 years. Then, in 2013, when Brunei gazetted the Syariah Penal Code Order 2013, it drew attention again. For the first time, I read the Enactment. In my speeches, beginning in January 2014, I said that the Enactment was unconstitutional and void because the Kelantan SLA had legislated on criminal law, which is under Federal jurisdiction.

Surprisingly, my view was accepted by PAS. PAS then tried to find a way to overcome the problem. Hence, PAS came out with the proposal to move a private bill in Parliament.

But, before doing so, in 2015, I do not know on whose legal advice, PAS made some amendments to the Act. I repeated that the Enactment was unconstitutional and void on the same ground. In one seminar, I asked the participants, according to the Shafi'i sect, is it valid for a *qadi* to marry a woman without the consent of her guardian, but looks for the guardian later? Participants laugh.

However, now PAS has moved a motion to amend Act 355 to remove the restriction that prevents the imposition of *hudud* punishments, other than death penalty.

Initially, PAS' real intention was not clear. Is it to validate the Enactment retrospectively which includes criminal law offences which are under the Federal jurisdiction or is it to get the SLA to pass the Enactment, or part of it, again?

Besides commenting on it in my speeches, I wrote a few articles about it. Two of them were published in The New Straits Times and Utusan Malaysia. Then, on October 5, 2016, Harakah Daily carried a media statement that begins with:

"Department of Law & Human Rights (JUHAM), PAS Youth Malaysia (DPPM) welcomed the views of Tun Abdul Hamid Mohamad, former Chief Justice, made through 2 articles titled: "Amendment To Act 355; The Real Effect " dated 29.9.2016 and "Thoughts On PAS Private Bill" dated 06.02.2016".(My translation)

and ended with

"JUHAM would like to take this opportunity to thank Tun Hamid for both articles. It is enlightening and easily understood by most people, especially those who do not have a legal background. JUHAM hopes that Tun Hamid has cleared the confusion and contributed to the enlightenment Bill 355 and its successful implementation. "(My translation).

In the statement, JUHAM seems to agree completely with all the points raised by me in those articles, the most important being:

"(e) No new offences may be introduced by any State Criminal Offences Enactment other than those within the State List of the Ninth Schedule of the Federal Constitution. In other words, the type of offences remain the same, but the punishment for the same offences could be increased.; "... (My translation).

"(g) *In any event, Act 355 applies only to Muslims and does not involve non-Muslims ...*" (My translation.)

"(j) *It is not possible to implement Hudud and Qisas in their complete and perfect form even if Bill (amending Act - added) 355 is passed by Parliament. The (implementation of the – added) complete package of the Kelantan Syariah Criminal Enactment 1993 (Amendment 2015) and Terengganu Syariah Criminal Offences Enactment 2001 would not be possible because it would involve an amendment to the Constitution ...*" (My translation).

If that is the stand taken by PAS, PAS appears to understand and respect the provisions of the Constitution and is willing to work within the Constitution. It means that PAS has now taken a realistic position and not rhetoric anymore.

If that is the stand taken by PAS, to me, it is no longer a problem for UMNO to agree to support the proposed amendment to Act 355, subject to correct drafting, if UMNO wants to. By so doing, UMNO will be able to demonstrate to the Malay/Muslim voters that it also supports the implementation of *hudud*. UMNO's allied parties cannot be heard to object because, if after that, the Kelantan SLA makes law to impose *hudud* punishments to those specific offences, the law is only applicable to Muslims.

For PAS, it will be able to show to its supporters that its struggle to implement *hudud* has been successful. That it cannot be fully implemented is not PAS' fault. Instead, PAS can blame the Constitution, the Federal Government and UMNO for it.

Politically, both UMNO and PAS are "winners". For both, it will also be an important step for further cooperation between them. Most Malays/Muslims would welcome that development.

In other words, UMNO and PAS are in a position to shake hands on the issue. If they want me to be a witness, I am prepared to do so.

However, what is more important is the fact that an agreement in this regard will open the way for UMNO and PAS to cooperate in the 14th General Election in order to save the present government at the federal level, and what could be done following that. After that, I hope that both UMNO and PAS will jointly focus their attention on larger issues than the implementation of a type of criminal punishment. They should concentrate on efforts to make Malaysia a model, modern, democratic country with Sharia-compliant laws and practice and with the attainment of the highest level of *maqasid al-shariah* and to make Malaysia the leader of the Muslim world in this century. That is not a dream. We are already at the forefront in many things. Unfortunately partisan politics has led us to belittle our own achievements.

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