

## DON'T MEDDLE WITH THE DIVISION OF JURISDICTIONS OF THE CIVIL AND SHARIAH COURTS

By  
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I am writing this article based on the facts as reported in Utusan Malaysia dated 23 November 2016. According to the report, arising from the proposal to amend Act 355, a *"Select Committee consisting of members of Parliament, Muslims and non-Muslims from the government as well as the opposition parties will be established to refine matters which are not clear on the division of powers of the Shariah and the Civil courts."*

*"The Select Committee is expected to refine all aspects of concern to non-Muslim MPs whether in Barisan Nasional (BN) or the opposition so that both parties can debate and discuss."* (My translation).

It is clear that the Select Committee will be established because it is perceived that:

1. The amendment will affect the division of the jurisdiction of the Civil Court and the Shariah Court;
2. It raises concerns amongst non-Muslims.

The truth is that both the assumptions are incorrect and unfounded. They arise from a misunderstanding of the effect of the proposed amendment.

The amendment has nothing to do with the division of the jurisdiction of the Civil Court and the Shariah Court. The amendment is merely to allow the State Legislative Assembly (SLA) to make laws:

- (a). To increase the jurisdiction of the Shariah Court in respect of punishments for offences within the jurisdiction of a State (List II of the Ninth Schedule of the Federal Constitution.)
- (b). To increase the penalty for offences within the jurisdiction of the State (List II of the Ninth Schedule of the Federal Constitution.)

The amendment and the subsequent laws to be made by the SLA, if any, will only involve offences within the jurisdiction of the Shariah Court. Jurisdiction of the Civil Courts is not affected at all. The division of jurisdiction between the two courts is also not affected. Where is the need to "refine" the jurisdiction of the two courts?

On the concerns of non-Muslims, it is also unfounded. Even if the amendment is passed and, subsequently, the SLA were to make laws as stated in (a) and (b) above, the law will only affect Muslims. Why should non-Muslims be concerned about it?

Our Constitution was drafted by experienced judges from four countries. As a judge who has extensively written (judgment, working papers, articles and speeches) on it,

I am very impressed with their expertise and wisdom. They understood the division of powers between the Federation and the States, which they drafted, and drafted the jurisdictions of the Civil and the Shariah courts accordingly.

Two examples are:

1. The division of jurisdiction regarding "criminal law" (which is given to the Civil Court) and offences concerning "the precepts of Islam" (which is given to the Shariah Court) ; and
2. The division of jurisdiction to issue Letters of Administration and Probate (which is given to the Civil Court) and the power to determine the "Islamic law" in the division of inheritance, in particular, the determination of the beneficiaries and their respective shares in accordance with *faraid* (which is given to the Shariah court). (Please refer to my judgments and papers in my website.)

Problems arise because of misunderstanding, failure to understand or deliberately wanting to usurp the jurisdiction of the Federation and the Civil Court.

The division of the jurisdiction of the Civil Court and the Shariah Court is a matter of law, not politics. Most members of parliament do not have the expertise and experience in the drafting of the Constitution or the law. They are bound by their party's stand on an issue. Their discussion and debate on the issue will follow their party lines.

Interpretation of the Constitution is a matter for the Judges of the Civil Court, not members of Parliament. Judges have been doing it. I myself have done so in a number of cases, from the High Court to the Federal Court. Members of Parliament should not usurp to power of the Judges.

Actually, there is no problem in the interpretation of the provisions of the Ninth Schedule. Please, do not create problems.

The Government and the Parliament should instead concentrate on the proposal I made 20 years ago to address the issue of jurisdiction arising from:

1. One of the parties in a civil case within the jurisdiction of the Shariah Court, is a non-Muslim;
2. In a case in the Civil Court where there are issues of Islamic law;
3. In a case in the Shariah Court where there is an issue of civil law.

(Please contact me if you need further information on it.)

I hope YB Datuk Seri Dr. Ahmad Zahid Hamidi will not proceed with his proposal. Please do not shoot the wrong target. You may end up with more problems.

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