

June 2016

YB Hadi Awang's "Hudud" Bill

THIS DOCUMENT IS PREPARED BY THE MEMBER OF PARLIAMENT FOR KELANA JAYA



1.0 Introduction

- 1.1 The so called “Hudud bill” read in Parliament by YB Hadi Awang on Thursday 26th May 2016 was an attempt to amend the Syariah Court (Criminal Jurisdiction) Act 1965 (“the Act”).
- 1.2 Currently, the Act limits punishments for Syariah offences up to three years imprisonment, a fine not exceeding RM5,000, and whipping up to a maximum of six strokes. These limitations are commonly known as the “3, 5, 6 formula”.
- 1.3 If YB Hadi’s private members bill is passed in Parliament and becomes law, it will allow all state governments to carry out some “Hudud-like” punishments beyond the “3, 5, 6 formula”.

2.0 Why is my office involved?

- 2.1 I am a Buddhist. I am a person who respects all religions and in the matter of Islam, my upbringing in Kelantan allows me to understand and empathise with the Muslim community.
- 2.2 My views in this paper, are based on what I have been told by many pious and religious Muslim friends. I do not profess to be an expert but I am happy to learn about aspects of Islam from them.
- 2.3 When this matter first surfaced last year, I was advised by a Muslim constituent that I should not be involved in this debate, since it will be applicable to Muslims only. He also stressed that it will be politically risky for me and that I may end up alienating my Malay support base in Kelana Jaya.
- 2.4 I thanked him for his concerns but this is a matter of great national interest that requires my attention. It is also not absolutely true that

the bill affects Muslims only, as long as the issue of unilateral conversion remains unresolved.

- 2.5 In addition, since the bill involves law making in Parliament, irrespective of my personal religion, I have a duty as a Member of Parliament to consider and vote on the matter.

3.0 The approach

- 3.1 Immediately after the bill was read in Parliament, I was in a lengthy meeting with several Muslim MPs from PKR and Amanah. I took a lot of notes from the discussion, including political, theological and societal issues from YB Dato Dr. Mujahid Rawa, YB Khalid Samad and YB Dr. Ramli Hatta.
- 3.2 I also immediately instructed my Muslim research staff to prepare detailed research on the theological aspects of Hudud and positions adopted by Islamic scholars and different schools of thought. She also did research on the existing (but inoperable) Hudud enactments of Kelantan and Terengganu.
- 3.3 I did extensive readings on the history of Islam in Malaysia and also pondered over socio-economic policy impacts.
- 3.4 Lastly, we also decided to get direct feedback from several religious community leaders of Kelana Jaya by holding a meeting on 30th May 2016.
- 3.5 This position paper on this bill is therefore a result of research, much discussion, and community feedback. It is also based on my personal convictions on what is in the best interests of my constituents of Kelana Jaya.

4.0 Is YB Hadi Awang's bill really Hudud?

- 4.1 The short answer is no. What YB Hadi proposes is partial Hudud and therefore cannot be considered as actual Hudud. In the matter of Islam, I have been told by a Muslim scholar that it is not proper to propose Islamic laws in half-measure.
- 4.2 A closer study of the bill suggests that the bill will only allow 4 out of 6 or 7 Hudud punishments to be enforced (see Appendix 1 for details).
- 4.3 Therefore at a theological level, the bill is in fact a compromise. What is crystal clear then is YB Hadi Awang cannot take the religious high ground that he is trying to implement the laws of God as prescribed in the Holy Koran.
- 4.4 Many Muslim scholars also take the view that at the most fundamental level, Islam preaches peace and fairness, as per the philosophy of Maqasid Syariah.
- 4.5 It is in this context that Islam prioritises socio-justice ahead of the Hudud punishments. The Hudud punishments are also meant primarily to be deterrents, not as the foundation source for the administration of Islamic justice.
- 4.6 Progressive Muslim scholars argue that pursuing Hudud without first addressing socio-inequality is therefore unsound theology that preaches form over substance.
- 4.7 We can all agree that the overwhelming majority of crimes are committed by desperate people. The link between economic inequality (resulting in poverty) to that of crime rates are proven.
- 4.8 As such, Muslim scholars have pointed out that during the rule of Saidina Omar al Khattab, it is wrong to amputate the hand of a thief

under Hudud if the thief stole out of desperation to feed his starving family.

- 4.9 Because YB Hadi's bill is not really Hudud and there exist sound counter arguments by Muslim scholars on the issue of priority, we must therefore be careful not to be entrapped into allowing this bill to be transformed into a theological argument about Islam.
- 4.10 To put it simply, this position paper is not meant to question Islam as a religion but to expose the fact that the bill is not strictly about Hudud, but is about getting political mileage.
- 4.11 Muslims believe that Hudud is a gift from God and therefore it is wrong for politicians to use it for political purposes, what more to create and cause confusion to the people.
- 4.12 In a time of heightened religious and racial sensitivities in Malaysia, I condemn any man who uses religion to further his political agenda.

5.0 The manner the bill was read in Parliament

- 5.1 At around 3.00 p.m. on Thursday 26th May 2016, Minister in the Prime Minister Department YB Azalina Othman suspended government bills and made way for Hadi Awang to read his motion.
- 5.2 At the material time, the BN government still had three more bills to debate and 14 other motions ahead of Hadi Awang's motion. The only way that Hadi's bill could have possibly leapfrogged 17 places is with the BN government's full support.
- 5.3 The timing to spring this on the last two hours of the last day of the Parliamentary session is also very important. The timing ensured that most Sabah and Sarawak BN MPs (many were non-Muslims)

were no longer in the hall as they head towards the airport to return to their home constituencies.

- 5.4 What ensued the day after were “crocodile tears” flowing from MCA and MIC Ministers threatening to resign their ministerial posts over the issue.
- 5.5 Thanks to the recent revelation by the MCA Minister Ong Ka Chuan that the bill was actually discussed in a cabinet meeting prior to YB Hadi reading it in Parliament, we now have confirmation that all component party members of BN were in fact in the know and were therefore complicit in the matter.

6.0 The political agenda

- 6.1 Since the death of the much loved Tok Guru Nik Aziz, there has been a clear and decisive move by PAS under YB Hadi Awang to befriend and cooperate with UMNO.
- 6.2 After Amanah splintered from PAS, PAS became even closer to UMNO.
- 6.3 Members of the PAS faction led by Hadi Awang officially became advisors to Prime Minister Najib Razak on Islamic matters as of December 2015.
- 6.4 The reading of the bill is a step towards formalising greater cooperation between PAS and UMNO.
- 6.5 The motivation that led to the reading of the bill may have been related to the upcoming by-elections of Kuala Kangsar and Sungai Besar.

- 6.6 The two by-elections are very significant because (a) they have direct impact on the Parliament boundary re-delineation exercise, which requires two-thirds majority in Parliament and; (b) they are a bellwether to Malay grass roots support for UMNO, PAS, and Pakatan Harapan.
- 6.7 PAS and UMNO obviously played this trump card to try and affect Malay sentiment in the two by-elections.

7.0 The bigger picture

- 7.1 Historically and traditionally, Malaysia practices a more rich, pluralistic, and moderate form of Islam. The Islamic discourse in Malaysia has been confined to two groups, the “*sekolah pondok*” and “*orang muda*” groups.
- 7.2 Of late, the *sekolah pondok*, the more radical group, are firmly in charge of PAS. Overall, Malaysia is trending towards a more radical interpretation of Islam. This trend is also perpetuated by the religious institutions created by the UMNO BN government.
- 7.3 Experts in the political Islamic studies note that proponents for the implementation of Hudud are influenced by the idea of a more complete Islamic state which combines religion and the state, rather than separating religion from the state.
- 7.4 This desire for an Islamic administration has some traction in Malaysia as Malaysia’s democracy continues to fail and become decidedly more draconian.
- 7.5 The failure of our current legal and governance system to curb corruption and deliver socio-economic justice feeds the growth of radical views.

- 7.6 There is an extremely urgent need to eradicate corruption, curb massive inequality, and improve governance to win back the trust of the people in our secular system.
- 7.7 We also need to reframe and return Malaysia to a more inclusive nation by supporting greater openness in theological discourse. So long as these needs are not fulfilled, we will from time to time face versions of YB Hadi Awang's bill.

8.0 The position of Kelana Jaya

- 8.1 I am not an expert on Islam but I will continue to better understand and empathise with my Muslim constituents in Kelana Jaya.
- 8.2 I have been advised by Muslim leaders and agree that the bill is not Hudud. If it is not Hudud, then it is but a political bill with a political agenda.
- 8.3 I am therefore opposed to the bill and if the matter ever comes to a vote, I will vote against it.
- 8.4 I am worried that if the bill is passed by PAS and UMNO BN, it will create a dangerous trajectory towards radical Islamic thoughts and practices.
- 8.5 This trend towards more radicalisation will have grave impact on women's rights and the overall economy.
- 8.6 Therefore, I appeal to the Muslim community to put greater efforts to regain its traditional Malay stand of moderation and continue the intellectual path of a more inclusive form of Islam.

Kelantan and Terengganu

Note: Syariah Criminal Code (II) (1993) 2015 (Kelantan) and Syariah Criminal Offence (Hudud and Qisas) Terengganu Enactment 2004

Offence	Al-Quran/As-Sunnah	Kelantan	Terengganu	Hudud Bill
1. Sariqah (Theft)	<p>Hand and feet amputation</p> <p>Amputation of the hand begins at the wrist.</p> <p>Amputation of the foot only involves part of the foot so that the accused may still stand/walk.</p>	<p>Section 7</p> <p>Sentence:</p> <ul style="list-style-type: none"> i. First offence: Amputation of right hand ii. Second offence: Amputation of the left foot iii. Third offence onwards: Imprisonment of not more than 15 years as court deems fit <p>Note: Section 8 exceptions</p>	<p>Section 20</p> <ul style="list-style-type: none"> i. First offence: Amputation of right hand ii. Second offence: Amputation of part of left foot iii. Imprisonment as court deems fit <p>Note: Section 21 exceptions</p>	
2. <i>Irtidad</i> (Apostasy)	<p>Execution by beheading</p>	<p>Section 23(1)</p> <p>Definition:</p> <p>“Whoever voluntarily, deliberately and aware of making an act or uttered a word affects or against the aqidah (belief) in Islamic religion is committing irtidad... without any compulsion by anyone or by circumstances.”</p> <p>Section 23(3) and (4)</p> <p>Sentence:</p> <ul style="list-style-type: none"> i. Imprisonment within such a period deem suitable by the Court for the purpose of repentance ii. Once “there is no hope of repentance”, death and forfeiture of property (to be held by the <i>Baitulmal</i>), unless he repents before execution of death sentence 	<p>Section 25</p> <p>Definition:</p> <p>“Irtidad is any act done or any word uttered by a Muslim who is mukallaf, being act or word which according to Hukum Syarak affects or which is against the 'aqidah (belief) in Islamic religion... done... or uttered intentionally voluntarily and knowingly without any compulsion by anyone or by circumstances.”</p> <p>Section 26</p> <p>Punishment:</p> <ul style="list-style-type: none"> i. Repent within 3 days after he has been found so ii. If he refuses/continues, death and forfeiture of property (to be held by the <i>Baitulmal</i>) 	

			iii. If he repents before execution of death sentence, he shall be imprisoned for no longer than 5 years.	
3. <i>Zina</i> (Fornication)	<p><i>Mohsan</i> (Married): Stoned to death</p> <p><i>Ghairu monsan</i> (Not married/married but never had sexual intercourse): 100 lashes</p>	<p>Section 13 Sentence: <i>Mohsan</i>: Stoned to death with medium sized stones</p> <p><i>Ghairu monsan</i>: 100 lashes and one year imprisonment</p>	<p>Section 13 Sentence: <i>Mohsan</i>: Stoned to death with medium sized stones</p> <p><i>Ghairu monsan</i>: 100 lashes and one year imprisonment</p> <p>Note: Section 17 exceptions</p>	✓
4. <i>Qazaf</i> (False accusation of <i>zina</i>)	80 lashes	<p>Section 17 Definition: Similar to Terengganu's + accuser and witnesses have testified in good faith but claims are unproven, they are not guilty of <i>qazaf</i>.</p> <p>Section 18 Sentence: 80 lashes</p> <p>Note: Section 18(2) exceptions</p>	<p>Section 7 Definition:</p> <ol style="list-style-type: none"> i. Accusation incapable of being proven by 4 male witnesses ii. Accusation that one is not the parent/offspring of another particular individual <ul style="list-style-type: none"> - Includes if one or more witnesses decline to testify or their testimonies are against the accusation (in which case each witness who gave evidence in support of accusation commits <i>qazaf</i>) iii. Refusing to perform <i>al-li'an</i> (accusation of <i>zina</i> on oath by husband against wife) iv. Allegation of rape without putting forth evidence of <i>qarinah</i> (akin to circumstantial evidence) or evidence as required by <i>syarak</i>. <p>Section 8 Sentence: 80 lashes</p>	✓

<p>5. <i>Syurb</i> (Drinking intoxicating drinks)</p>	<p>40 – 80 lashes Several schools of thought consider <i>syurb</i> as <i>ta'zir</i> instead of hudud.</p>	<p>Section 22 Sentence: $40 \leq x \leq 80$ lashes</p>	<p>Section 6 Conditions:</p> <ol style="list-style-type: none"> i. Mukallaf; ii. Not under coercion not excusable by Syarak or not under desperation; iii. Has two witnesses or one witness and <i>qarinah</i>; or iv. Is capable of knowing the nature of the offence. <p>Section 5 Sentence:</p> <ol style="list-style-type: none"> i. First/second offence: ≤ 40 lashes ii. Third/fourth offence: $40 < x \leq 80$ lashes iii. Fifth offence onwards: $40 < x \leq 80$ lashes + imprisonment (period at court's discretion) 	
<p>6. <i>Hirabah</i> (Robbery with violence)</p>	<p>Varies</p>	<p>Section 10 Sentence:</p> <ol style="list-style-type: none"> i. If victim is killed and his/other's property under his custody is taken: death and crucifixion ii. If victim is killed but no property is taken: death only iii. If property taken but no harm/death: Amputation of right hand and left foot iv. Injury caused but no property taken: diyat (ganti rugi) and amputation of hand and foot v. Only threat, no harm/death, no property taken: Imprisonment not exceeding 5 years. <p>Note: Section 11 exceptions + section 8.</p>	<p>Section 24 Conditions:</p> <ol style="list-style-type: none"> i. <i>Mukallaf</i>; and ii. There is intention without coercion, not in desperation or in compelling need; and iii. Took place outside the victim's residence; or iv. If offence taken place within victim's compound, where the victim found difficulty to get help. <p>Section 23 Sentence: Similar to Kelantan's</p> <p>Note: Section 24 exceptions</p>	