

## PRIME NEWS

# 'Upgrading syariah courts is key'

## SHEDDING LIGHT:

Umno information chief Tan Sri Annuar Musa touches on 10 aspects pertaining to Pas's private member's bill

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UMNO information chief Tan Sri Annuar Musa has cleared the air about misconceptions surrounding Pas's controversial private member's bill.

Annuar stressed that the bill was not about paving the way for the implementation of hudud, but to strengthen the jurisdiction of the syariah courts.

"The bill seeks to amend Act 355 (Syariah Courts [Criminal Jurisdiction] Act 1965) that controls the jurisdiction of the syariah courts. This bill is not aimed at creating new laws as claimed by certain people," he said.

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...the punishments (of the syariah courts) are **outdated and do not deter offenders**. What is being proposed is the introduction of **enhanced punishments in line with Islamic law, except the death sentence.**

Tan Sri Annuar Musa

The contentious bill is scheduled to be tabled by Pas president and Marang member of parliament Datuk Seri Abdul Hadi Awang in the next Parliament sitting in October.

**Question: Why is there a need to amend Act 355?**

**Answer:** The proposal to amend the Syariah Courts (Criminal Jurisdiction) Act 1965, or Act 355, is to strengthen the syariah courts which, at present, are limited to meting out a maximum jail-term of three years, RM5,000 fine and six strokes of the rotan. The last time the act was amended was in 1984, when the jail term was increased from six months (to three years) and the fine was increased from RM1,000 (to RM5,000).

Therefore, the punishments are outdated and do not deter offenders. What is being proposed is the introduction of enhanced punishments in line with Islamic law, except the death sentence. The amount of fines, caning and length of jail terms will be decided by the states' legislative assemblies.

**Question: Is 100 strokes of the rotan too extreme?**

**Answer:** Caning under syariah law is different from those meted out by civil courts. Caning under syariah law cannot cause injury. When a person carries out the caning, it is as if he has a book under his arm and the book must not drop when he swings the rotan. Therefore, 100 strokes of the rotan under syariah law is not the same as one stroke of the rotan under civil law, which can cause injury.

**Question: Will Act 355 indirectly affect non-Muslims?**

**Answer:** It is impossible for non-Muslims to be tried under the syariah courts because the Federal Constitution states that the jurisdiction of the syariah courts extends only to Muslims. Section 2 of Act 355 also stipulates that only Muslims can be tried and sentenced in syariah courts.

**Question: Can Act 355 be used as a backdoor to implement hudud?**

**Answer:** Act 355 has nothing to do with the implementation of hudud. The implementation of hudud requires amendments to the Federal Constitution. For example, to implement hudud in Malaysia, at least three amendments must be made to several parts of the Constitution, besides amending Act 355, which is limited to the jurisdiction of syariah courts.

**Question: Can the Federal Constitution be amended?**

**Answer:** Yes, provided there is a two-thirds majority voting in favour of the amendments in Parliament. This equals to 148 out of 222 members of parliament (MPs). In today's political reality, there are only 135 Muslim MPs from Umno, Pas, PKR, Amanah, PBB (Parti Pesaka Bumiputera Bersatu) and DAP; this number does not form the majority needed to amend the Constitution.

**Question: What are the important parts of the Federal Constitution that need to be amended to enable the implementation of**

**hudud in Malaysia?**

**Answer:** At least three parts in the Federal Constitution must be amended:

**LIST II** of the Ninth Schedule needs to include additional criminal jurisdictions into the jurisdiction of the syariah courts, as listed under Item 1. For example, criminal laws on thievery, robbery, rape, murder and offences that cause harm (offences listed under the Penal Code) are currently placed under the jurisdiction of the civil courts;

**BESIDES** amendments to Item 1, an approval from Parliament under Article 76A must be obtained to enable states to enact and implement criminal laws as enumerated in the list of Federal Government powers; and,

**ARTICLE 8** must also be amended so that the issue of discrimination, injustice and equality of Malaysian citizens' rights does not arise. In other words, this is to enable two sets of criminal laws to be applied to Muslims and non-Muslims.

**Question: Will the amendment of Act 355 enable hudud-like laws to be introduced?**

**Answer:** Hudud includes punishments for six kinds of offences, four of which involve the individual or personal sins, like *zina* (illicit sex), slander, consumption of intoxicants and apostasy. The other two involve public offences like stealing or robbing. There are already legal provisions for the first four offences under the states' jurisdictions.

Act 355 does not involve public offences like stealing or robbing as

they are under the jurisdiction of the Federal Government. So, any amendments to the bill will only involve provisions for existing offences under the states' (syariah) criminal enactments.

**Question: Will injustice occur when a rape involving a Muslim and non-Muslim happens? Will the offender be tried in a syariah court or a civil court?**

**Answer:** Rape is not a criminal offence under the states' jurisdictions as it is under the jurisdiction of the Federal Government, that is, the Penal Code.

**Question: The enforcement of hudud will create a situation where the people will face two sets of laws, which goes against Article 8 of the Federal Constitution.**

**Answer:** This question is irrelevant as Act 355 has nothing to do with hudud or criminal punishments under the jurisdiction of the Federal Government. So, there is no issue of going against the Federal Constitution.

**Question: Why won't the Federal Government table the bill to amend Act 355?**

**Answer:** The government is tied to certain processes when it involves strengthening the syariah courts. The priority is to upgrade the syariah courts from level three to five, similar to the civil courts. For that to happen, the minister must have an audience with the rulers and receive their consent because matters per-

taining to religion fall under the rulers' jurisdiction. At present, some states have yet to agree. It is only with the approval of all state rulers can we bring the matter to the Conference of Rulers before tabling it in Parliament.

In other words, even though Act 355 is a federal law, it has a direct relation to the jurisdiction of the syariah courts, which falls under the purview of the rulers.

There are many steps that must be taken by the minister to convince the cabinet, which also has non-Muslim members.

Therefore, to avoid pitfalls that could affect the amendment of Act 355, it is better to table a private member's bill. If Parliament approves it for debate, then it is because it is what the majority of the people want and not because of the government's wishes alone.

This will not involve the rulers' authority because no matter what kind of maximum punishments are approved, the final amendments must be made at the state legislative assemblies. In the context of strengthening the jurisdiction of the syariah courts, the government is tied by similar procedures.

Even though Pas is not tied by this procedure, it is trying to expedite the tabling of the bill. When Marang MP (Hadi) tables it later, all MPs can debate and decide whether to support or reject the bill. For the time being, Barisan Nasional does not have an official stand on the matter, but we have agreed to give way to Hadi to table the bill to be debated.