



فجابت مفتي ولايه فرسك ووزان
PEJABAT MUFTI WILAYAH PERSEKUTUAN

BAYAN LINNAS NO. 67
ACT 355 AMENDMENT PROPOSAL: AN OPINION

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Honoring the speech of Seri Paduka Baginda Yang Di-Pertuan Agong, Tuanku al-Haj Abdul Halim Mu'adzam Shah Ibni al-Marhum Sultan Badlishah conveyed in the Opening Ceremony of the First Meeting of the Fourth Quarter in the 13th Parliament on 7th March 2016:

“I hereby fully support all initiatives to uphold Islam as the religion of the Federation; and at the same time, other religions may be practiced in peace and harmony in this country. I hope that all the ways and means TO STRENGTHEN THE ROLE OF RELIGIOUS INSTITUTIONS AND THE EFFICIENCY OF THE IMPLEMENTATION OF ISLAMIC LAW THROUGH THE EMPOWERMENT OF SYARIAH COURT COULD BE EXPEDITED. Religious issues need to be referred to religious authority and should not be interpreted individually or in communally for it will cause confusion, dispute and conflict within the society.”

1.0 Introduction

Alḥamdulillah, praise be to Allah subhanahu wa taala for His boundless and countless blessings. Praise be to Him for the bounties He grants; the peace, security, harmony and independence we all relish up to this day. These blessings prompt us to proclaim our thankfulness and our feelings of grateful towards Him.

In this edition of Bayan Linnas, we feel the urge to advance our point of view with regards to the Private Motion to propose a Private Member's Bill named Syariah Court Act (Criminal Jurisdiction) (Amended) 2016, after this is referred to as "Act 355 Amendment Proposal". This Private Bill proposes an amendment to *Syariah Court Act (Criminal Jurisdiction) Act 1965*, after this is referred to as "Act 355". Ever since the Private Bill was motioned by the now Marang Member of Parliament (MP) in the *Dewan Rakyat* (House of Representatives) on 26th of May 2016, Malaysian citizens from diverse backgrounds have commented on the issue. Those who took part in the hype created by the issue ranges from some ordinary citizens; i.e. fishermen, farmers, villagers to distinguished academicians, professionals, intelligentsias, legal practitioners and politicians, all with their own views and opinions, either supporting or going against the proposed amendment.

After quite some time since the issue first surfaced in May, we now feel the responsibility to put forward an opinion on our behalf to represent our stance with respect to the current issue in question. Throughout the process of coming up with this opinion, we have consulted various academicians and people with authority to speak of the issue we inquire into, as well as we did an extensive research into it from various fields of knowledge relevant to the issue, apart from doing literature and field researches.

We would grab the opportunity here to express our gratitude towards our colleagues and friends of whom contributed massively to assist our inquiry into the 'Act 355 Amendment Proposal' issue, by providing some concise perspectives (*tasawwur*) and understandings (*mafhum*). To all of you, jazākumullahu khayral jazā'. We hope that this edition of Bayan Linnas would provide an answer to the general public perplexed with the issue in question.

2.0 Some Important Remarks

Syeikh Muhammad al-Ghazali once said,

If you are keen on safeguarding Truth and determining the limits of it, you should at first know the nature of the Truth and other matters pertaining to it. You might question why would these matters be important? Why would ignorance towards matters pertaining to the Truth results in a misunderstanding of the Truth? The answer is, a pure understanding must have its own limits. For that, your knowledge and understanding of a thing would never be complete unless you recognize other things pertaining to the truth [of the thing you are studying] or those other things that is similar to it. In that respect, [knowledgeable] people of the past have said; a thing could be understood vis-à-vis other things in contradiction to it.¹

We start off with some important remarks on this topic

First: Guidelines on Expressing One's Opinions



We observed that different parties belonging to different layers of society has responded to this issue, be it in favour of the Private Bill or against it, all with their own arguments and reasons.

We duly recognize the unique practice of our democracy in Malaysia where people are given the right and liberty to

voice out their own ideas in permitted domains. This right is written in Article 10 (1) (a) of the Federal Constitution of Malaysia which says:

“... every citizen has the right to freedom of speech and expression;”

We are in no way against a healthy intellectual culture, in fact, we endorse it dearly. At least ideas and thoughts can be exchanged and a *hiwar ilmiah* (intellectual discussion) can take place.

Nevertheless, any ideas or opinions expressed should have a sound foundation, proofs and arguments either in the form of *naqli* (extracted from the revealed knowledge) or *aqli* (acquired through logical reasoning) with the proper *istinbat* and *istidlal* methods. On the contrary, if the arguments are based upon paranoia²,

¹ Al-Ghazali, Muhammad. *Jaddid Hayatak! : Petunjuk Islam untuk Hidup Lebih Tenteram dan Bahagia*. Rejuvenate your life!: An Islamic Guideline on How to Live in Tranquility. (Jakarta: Penerbit Zaman, 2015), pg. 451.

² Paranoia involves intense anxious or fearful feelings and thoughts often related to persecution, threat, or conspiracy. Paranoia occurs in many mental disorders, but is most often present in psychotic disorders. Paranoia can become delusions, when irrational thoughts and beliefs become so fixed that nothing (including

desires, emotional and group sentiments, beyond the shadow of a doubt, it would never bring about an accurate and precise conclusion.

At the same time, any discussions and deliberations should be infused with the proper conduct (*adab*) and manner (*akhlak*). There is no loss in respecting other people's opinion. We adhere to the general principle in the ethics of disagreement - 'We agree to disagree'. To build a civilised nation towards success, this is how our mentality should be.

Second: Ignorance

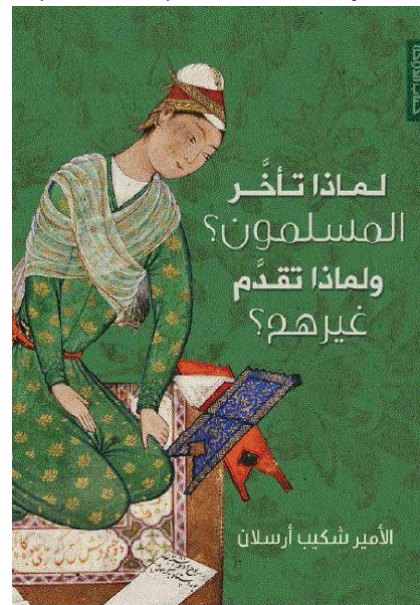
This is by far our biggest issue that have veiled us from our own selves, and from each other. It is indeed true what the great thinker (*mufakkir*) of Islam, Syeikh Muhammad Al-Ghazali once remarked, "Our biggest foe is our own ignorance."

This is in turn parallel with the sayings of the learned:

الْجَهْلُ عَدُوٌّ لِنَفْسِهِ

"Ignorance is an enemy towards one's self"

Syeikh Amir Syakib Arsalan in his book *Li Maza Taakhkhara al-Muslimun wa Li Maza Taqaddama Ghayruhum?* (Why are the Muslims Backwards, and Others Advance?) suggested, the main factor contributing to the decline of the Muslims is the atrocious ignorance of the Muslims – which is so perverse – that we can find among Muslims those who could not distinguish between wine and vinegar. As a consequence, unintelligent people would openly accept any opinions given to him without knowing the proper way to critically assess them.³



Ideas which are not grounded in reality would result in misunderstandings and confusions. Failure to understand any issue properly has its roots in improper employment of informations by the 'seekers of truth' who lack the proper *adab* by seeking knowledge from people who has no authority in the field or discipline of inquiry.

These would later produce statements on the Act 355 Amendment proposal, of which we regard them to be analogous to the *Socratic Ignorance* (Ignorance as Socrates understood it);

- Claiming that the Act 355 Amendment Proposal is the backdoor to implement hudud;

contrary evidence) can convince a person that what they think or feel is not true. <http://www.mentalhealthamerica.net/conditions/paranoia-and-delusional-disorders>

³ Al-Amir Syakib Arsalan. *Li Maza Ta'akhkhara al-Muslimun wa Li Maza Taqaddama Ghayruhum* (Beirut: Dar Maktabah al-Hayah, t,t.), pg. 75.

- The Act 355 Amendment Proposal is a political tool employed for the benefit of a certain political party;
- Considering the Act 355 Amendment Proposal to be one form of a draconian, radical and extreme law proposed to create terror within the non-Muslim community as well as their Muslim counterpart, in addition to create anxiety among individuals in the society.

The solution to this problem of ignorance is thus proposed, on our behalf, by referring to and seeking answers as well as discussing with the authorities of knowledge in this field and the party who has presented the Act 355 Amendment Proposal in the Parliament for the proper explanation. This noble intention would never be realised if the Act 355 Amendment Proposal is continuously rejected [without proper understanding of the proposal] and is prevented from being discussed in the Dewan Rakyat by those who do not understand the educational spirit of the constitutional democracy being practiced in our country. One must never forget, misunderstandings and ignorance would serve as the cause of discordance in our society. Any hard earned successes in the future that is supposed to be enjoyed together would be forfeited.

Third: Discussion on the Islamic Syariah

We purposely insert discussions on some basic conceptions of Islamic Syariah to minimize any 'allergic reactions' and baseless accusations on the matter. What more important is for people to understand that these explanations are not only the rethorics of some parties with interests of their own; nevertheless, are the manifestation of justice with an ideal and practical basis given by the Almighty Creator of the World to regulate the lives of His creation in a just and ethical manner.

For that purpose, we quote a saying by one famous Islamic teacher (*murabbi*), Syaikh Abdullah Nasih Ulwan in his work, *al-Madkhal Ila al-Syari`ah al-Islamiyyah*:

"It is satisfactory for us to cite the conclusions made in several international congresses that we had in the last century, (to validate our need to return to religious *fitrah*) in which;

- An International congress which discussed on comparative law, conducted in Lahai Village, Morocco in 1938⁴. Representative from the University of Azhar was also invited to join the congress, apart from two *Ulama* representatives to discuss "The Responsibility on Development and Crimes in Islamic Syariah" and "An Islamic Jurisprudence Which is Free and Not Influenced by The Roman Law".

⁴ See also International Congress of Lawyers in Lahai, 1984. The Resolution of The Congress of the Dean of Faculties of Laws and Syariah in Universities in Beirut 1973, Universiti Baghdad 1974, The Resolution of the Congress of Tasyri' Islami in the City of Baidha' Libya 1972, dan The Resolution of the Muktamar Fiqh Islami in Riyadh 1976. Refer to *al-Fiqh al-Islami wa Adillatuh* oleh Dr Wahbah al-Zuhaili (4/3220) Dar al-Fikr publishing 2006.

'The Congress left its influence in history by including the interaction between the Islamic Jurisprudences and the contribution made by western scholars in the field'. Among the matters discussed in the Congress were:

- Islamic Syariah is considered to be one of the sources of syariah;
- Islam is a living Syariah which is prone to changes to include any new developments; and
- Islamic Syariah is the true syariah, not modelled from any other syariahs.

In the same city in 1948, an International Congress of Lawyers attended by 53 world nations was conducted. Among those who turned up during the congress was a group of professors and lawyers from different races and districts. In 1950, lawyers from the east part of the Department of International & Comparative Law had conducted their own congress to confer upon Islamic Jurisprudence in a law faculty of a University in France. The conference was conducted as one of the programs in the 'Islamic Fiqh week'. It was attended by Professors from various law faculties and lawyers from numerous nationalities. A few University representatives including those from The University of Al-Azhar as well as some orientalist even joined the congress. Their discussion was focused upon 5 main issues on fiqh which was chosen by the international congress. They were:

- Individual property rights
- Public property rights
- Criminal responsibility
- The theory of *Riba* in Islam

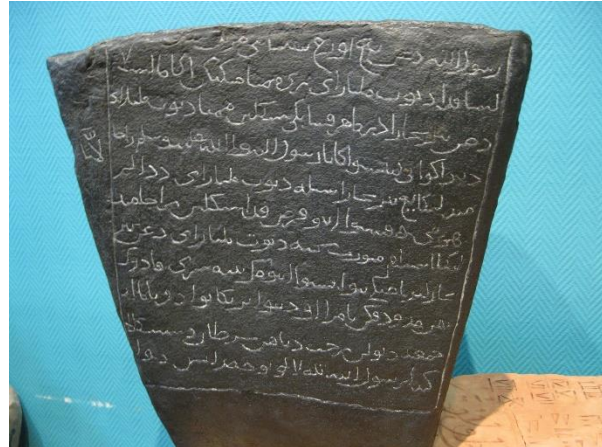
Some resolutions were passed during the week, in which several papers were presented, and is relevant into our inquiry:

- It is undeniable that each and every foundation of Islamic Syariah has their own legal value
- Differences of opinions from diverse school of thought (*mazahib*) portrays an ever expanding understanding of the Syariah

The International Congress have shown that the Syariah is ever relevant, and prone to changes as well as developments along time, but retains its property of being complete and permanent."

The above conclusion displays the acceptance of Islamic Syariah as a legitimate legal system by both Muslim and non-Muslim figures. It also proves that the Islamic legal system does not have the characteristic of being stagnant and literal, but flexible and comprehensive in its practice, for the Syariah is guided by universal values that is fathomable to any individual in possession of a healthy intellect. Any discussions on what would be the process to implement the Syariah is very encouraged and contributions from non-Muslim intellectuals are also very much appreciated.

It is worth mentioning here that in the Malay states in which political power rests upon the sultanate or Malay kings, any effective legislations and customs has their foundations in the Islamic Syariah. Numerous written laws have been studied and investigated by historians such as the inscription found on the Batu Bersurat Terengganu dated Friday 4th of Rejab 702 Hijrah or 22nd of February 1303 A.D. to validate this claim.⁵ The fact that the Malay/Islam sovereignty has existed firmly for centuries is affirmed by the usage of codes from the sharia-based Kanun-Kanun Negeri-Negeri Melayu (Malay Digest) in the practice of the judicial system of the day. In fact, in the introduction of Perak's Undang-undang 99 it is mentioned that a country will be peaceful if the ruler practice a governance based upon the Quran -⁶ –



“Whenever the laws in a country is based upon the Quran, the country would be at peace. Whoever does not adhere to the Quranic laws, he or she should be banished, and live in the forest. And so be at peace whoever rules the country. If one does not want to comply to the Quranic laws and injunctions, he or she can never rule the country.”

It is therefore clear to us that customs and codes that are based upon the Syariah is nothing alien to this land and is not new. In fact, it has long been the *law of the land*, far longer than the English Law introduced by Francis Light in Penang late in 1807.

Fourth: Important Muslim Rulers

As a matter of fact, there are a lot of authoritative Muslim figures in the past whom have led the *ummah* and worked hard to improve the wellbeings of their people and their respective countries under their rule.

Among them would be the Caliph Umar Abdul Aziz *Rahimahullah* (May Allah Bless his soul). Studies about his life have demonstrated the transformation he implemented (when he first came to power) to safeguard justice among his people regardless of their religious affiliations. We bring upon two examples of the commendable attitudes of Caliph Umar Abdul Aziz:

- **Safeguarding Justice**

⁵ Al-Attas, Syed Muhammad Naguib. *The Correct Date of the Terengganu Inscription*. (Kuala Lumpur: Museum Department, States of Malaya, 1984), pg. 23-24.

⁶ Jelani Harun, (2008) *Undang-undang Kesultanan Melayu dalam Perbandingan*. The Laws of the Malay Sultanate in Comparison (Gelugor: Penerbit USM Pulau Pinang, 2008), pg. 310.

This is a very obvious feature of his rule, in which Caliph Umar Abdul Aziz inherited the unfettered spirit to uphold justice from his own grandfather, Saidina Umar Ibn al-Khattab RA. Caliph Umar has inscribed upon the gold currency used during his era with the words; *amarallah bi al-*



wafa' wa al-'adl (وَالْعَدْلُ بِالْوَفَاءِ اللَّهُ أَمَرَ) which means, "Allah has commanded that we be just and trustworthy." This symbolism clearly portrays the philosophy of the Caliph's rule which campaigned the importance of integrity, trustworthiness and fairness as the basis of economic justice.

The Caliph once wrote a letter to his governor named al-Jarrah bin Abdullah al-Hakami who was in charge of Khurasan⁷ in which he said:

"O you Ibn Ummi Jarrah, don't you ever blow the people of faith and kafir mu'ahad (disbelievers in covenant with the Muslims) with your cane or stick except to uphold justice. Be wary whenever you carry out the qisas as it would lead to many treachery and hidden agendas. Read all letters and do not hide or ignore any small or large matters, unless is calculated upon [the risks and benefits]."

This statement depicts the acknowledgment given by Caliph Umar Abd Aziz towards human dignity, integrity and accountability of the judicial system that safeguards justice among his people.

These characteristics of a just ruler would never be 'rejuvenated' these days except through the means of empowering the Sharia Court together with a comprehensive *taqnin* (codification of the laws) process according to the proper democratic channel agreed upon in the Federal Constitution.

- **Respecting the rights of non-Muslims**

This point clearly illustrates the Caliph's commitment to uphold justice. He constantly advises his governors and the Muslim ummah under his rule not to violate other religion's places of worship and never hurt their feelings. Among the words he wrote in his letter sent to his governors were:

*"Do not demolish churches, monasteries and friaries that are used as the places of worship to non-Muslims of whom you have made a covenant with"*⁸

⁷ Also spelled as Khorasaan, Khurasan dan Khurasaan, is the modern name for the eastern district of ancient Iran or the Persian Empire since the third century A.D. Khurasan covers areas which are now districts of the modern state of Iran, Afghanistan, Tajikistan, Trukmenistan and Uzbekistan. See https://ms.wikipedia.org/wiki/Khorasan_Raya

⁸Ibn al-Jauzi. *Sirah al-Manaqib 'Umar bin 'Abd al-'Aziz*, pg. 107-108.

The Caliph also mitigated tax burden and all forms of payments imposed upon non-Muslims by the ruler. Other than that, he gave the liberty to the people to conduct their businesses either on land or at sea.⁹

This is indeed the best attitude the Caliph inherited from our Prophet Muhammad SAW and the Righteous Caliphs before him, in his interaction with non-Muslims who were not at arms against Islam with respect and fairness, not with brute force and prejudices.

This approach is also apparent in Malaysia when Article 3 (1) of the Federal Constitution ensures the freedom of Malaysian citizens to embrace and practice any religions other than Islam, despite Islam being the one and only Religion of the Federation of Malaysia. In fact in specific matters pertaining to the Sharia and Islam, only the Muslims are subjected to the Islamic Laws.

Fifth: The Supremacy of Law in the History of Islam

In contemplating the history of Islam from the era of the Prophet to the Golden era of Islam, we would find rulers upholding and insuring justice through the judicial system. A perfect example would be the case in which Saidina Umar al-Khattab was involved in a business deal involving buying and selling horses, and was defeated in court by the then judge Syuraih¹⁰, despite being the ruler of the Muslims at the time. The same judge also gave victory in court to a Jew and denied the allegations made by Saidina Ali bin Abi Talib RA on the basis of proofs and sound arguments, not based upon sentiments be it religious or racial. This is the true meaning of justice.

These lessons from the past exemplifies the answer to why would the Sharia court need to be continuously empowered, according to the demands and needs of the time, so as to become a credible source of reference for decision making for the society.

The tradition of Islamic Jurisprudence has never been sidelined by the Federal Constitution even after the formation of the Federation of Malaya in 31st of August 1957. It is in fact, embodied within the constitution under Article 74 of the Federal Constitution. Its remit is protected by the Malay Sultans as the heads of Islam in their respected states. Ninth Schedule, State List Item 1 has clearly outlined the subject matter of the Sharia Law and the establishment of the Sharia courts in the Malay states. This also enables a continuous sharia laws codification process to take place in this country to ensure that a fair governance in accordance to sharia would flourish among Muslim ummah in this country

Sixth: Toleration as One of the Attitudes of the Muslim Ummah

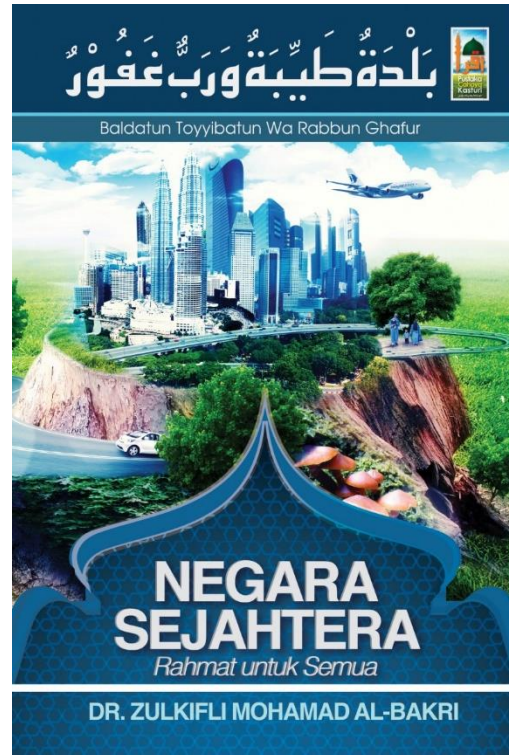
⁹ Zulkifli Mohamad al-Bakri. *Umar Abdul Aziz*, pg. 94-95.

¹⁰ His full name was Syuraih Bin al-Harith Ibn Qais al-Kindi, Abu Umayyah and became the Qadhi di Kufah. Embraced Islam during the time of the Prophet SAW, moved away in the time of Abu Bakar al-Siddiq as the Caliph. He became Qadhi for 60 years. He passed away in the year 78 hijriy at the age of 108. See *Siyar A'lam al-Nubala'* (1/756).

Islam ensures fairness to each and every citizen despite some being non-Muslims. Among the principles that Islam seek to secure are:¹¹:

- The dignity of man (*al-karamah al-insaniyyah*)
- Justice (*al-'adalah*)
- Liberty (*al-hurriyyah*)
- Equality (*al-musawah*)
- Respecting promises (*al-wafa' bi al-'ahd*)
- Proper dealings with others (*al-mu'amalah bi al-mithl*)
- Tolerance (*al-tasamuh*)
- Cooperation (*al-ta'awun*)
- Forbidding evil (*man'u al-fasad*)

The basis of the theories and rulings with regards to dealings between Muslims and non Muslims is the embedded thought and worldview (derived from the Quran and Sunnah) embedded within a Muslim's intellect and heart..¹² Therefore, any Muslims void of adherence to these principles are those in neglect of their true responsibilities of a Muslim.



Seventh: The Dividing Line between Two Eras

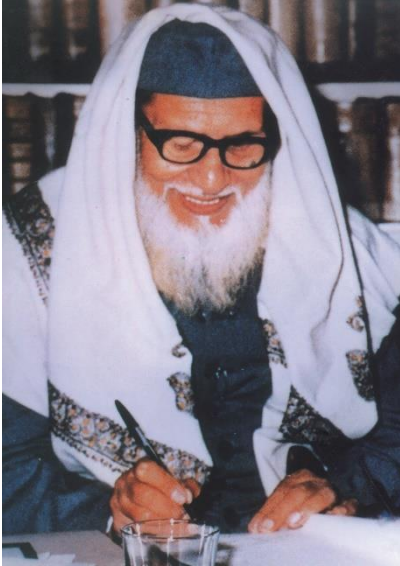
Maulana Abi al-Hasan Ali al-Hasani al-Nadwi in his magnum opus *Maza Khasira al-'Alam bi Inhitat al-Muslimin* remarked:

“A wise man once said, ‘There are two things unbeknownst to anyone on their exact time of occurrence; one’s death and the demise of an ummah. Both would never really be felt unless it happens [before our eyes].”

Indeed, this is the fate of almost all civilizations prior to the Muslim civilization, but our demise is far greater in magnitude compared to the ones before. If we were to draw a dividing line between the pinnacle and the downfall of this civilization, we

¹¹ ‘Abd al-Karim ‘Uthman. *Al-Nizam al-Siyasi fi al-Islam*, pg. 138.

¹² Zulkifli Mohamad al-Bakri. *Negara Sejahtera Rahmt Untuk Semua*, pg. 59-60.



would easily put the dividing line between the era of the Righteous Caliphs and the era of other Arab or non Arab Muslim leaders.¹³

It is therefore imperative for all of us to learn our lessons from our history so that we will not be doomed to repeat it. As the saying goes, "Once is chance; twice, is coincidence, but three times is enemy action." In this regard, our own ignorance is our biggest enemy.

¹³ Al-Nadwi, Abu al-Hasan Ali. *Kerugian Dunia Karena Kemunduran Umat Islam*, diterjemahkan daripada Bahasa Arab oleh Bey Ariffin dan Yunus Ali Al-Muhdlar (Changi Road: Pustaka Islamiyah), pg. 159.

3.0 Maqasid/ Purpose of the Sharia Law

Once we are done with the fundamental remarks on the characteristics and unique features of Islam, we would like to also mention here the aim of Islamic Jurisprudence, or is widely known as the *Maqasid al-Syariah*. This concept is one of the important elements taken into account in the process of determining the injunctions of Syariah for any particular issues and problems in Islam. The scope of *Maqasid al-Syariah* is far from being limited to the determination of injunctions, but according to the scholars of Islam, the importance and role of *Maqasid al-Syariah* extends far beyond it, and is used in the system of development for an Islamic State to codify laws and policies relating to the social, economic and political sphere so that they are in line with the demands of the Syariah.

The Definition of *Maqasid Syariah*

We bring forward several fundamental definitions to assist our understanding of *Maqasid al-Syariah*. Here is mentioned a handful of opinions from various Islamic Scholars (*ulama*) with regard to the definition of *Maqasid al-Syariah*:

- Syeikh ‘Allal al-Fasi¹⁴ in his work *Maqasid al-Syariah* pointed out that *Maqasid al-Syariah* is the purpose of Syariah and the secret the Syariah place upon every Islamic injunction.
- Syeikh Isma’il al-Hasani in his book *Nazarat al-Maqasid ‘Inda al-Imam Muhammad al-Tahir ibn ‘Ashur* explains that *Maqasid al-Syariah* is the objectives of Syariah that bring about benefits warranted by syariah injunctions and at the same time carrying the meanings [of Syariah] intended by the commands of Allah SWT.
- Syeikh Dr. Ahmad al-Raisuni also expounded the meaning of *Maqasid al-Syariah* in his work *Nazariyyat al-Maqasid ‘Inda Imam al-Syatibi* by saying; *Maqasid al-Syariah* is the objectives of the Syariah aimed to bring about goodness and benefits to His servants.
- Syeikh Dr. Yusof al-‘Alim in his work *Maqasid al-Ammah Li al-Syariah al-Islamiyyah* illustrated the meaning of *Maqasid al-Syariah* to be the benefits that is intended for His servants in this world or in the hereafter – either by bringing about benefits or expelling harm to them.
- Syeikh Prof. Dr. Wahbah al-Zuhaili pointed out in his book *Usul al-Fiqh al-Islami* that *Maqasid al-Syariah* is defined as the intended values inherent within a large portion of Syariah injunctions. The values intended are viewed as the objectives and secrets of Syariah set by the *al-Syari’* (one who made the Syariah – Allah SWT).
- Dr Husain Abdul Aziz in his work *al-Usul al-‘Ammah wa al-Qawaid al-Jamiah lil Fatawa al-Syariah* interpreted the meaning of *Maqasid al-Syariah* as the

¹⁴ Muhammad Allal al-Fassi (January 10, 1910 – May 19, 1974), was a Moroccan politician, writer, poet and Islamic scholar. He died in 1974, on a visit to Romania where he was scheduled to meet with Nicolae Ceaușescu. See https://en.wikipedia.org/wiki/Allal_al-Fassi

objectives of which, because of them the Syariah injunctions are being made, to realise these very objectives. It includes the benefits that is intended for His servants, to enable them to experience happiness and tranquillity in this world and the hereafter, be it through attaining goodness or expelling harms. Some scholars expounded the meaning of *maqasid* by saying: “The general purpose of the injunctions of Syaria is the meanings and *hikmah* protected by The One who Make Laws (*al-Syari’* – Allah SWT) in each, or a large part of the Syariah injunctions.

Based on the above opinions of the scholars, we are keen with the definition given by the past scholars such as Imam al-Syatibi whom was reported saying; “*The final purpose of an injunction is one, which is to bring benefits or goodness and peace for the human race.*” Seen from the perspective of the purpose of God (*iradah ilahi*), *Maqasid al-Syariah* is the benefits intended for mankind in this world and the hereafter. From this point of view, *Maqasid al-Syariah* is said to have four aspects:

- Rulings of syariah is the original purpose by the Ruler;
- Rulings of Syariah as something that must be understood;
- Rulings of Syariah as the taklifi law that should be implemented;
- Rulings of Syariah is intended to lead human under the legal protection

The Syariah that was introduced by Our Prophet Muhammad SAW is all inclusive and covers all forms of benefits in this world and the hereafter. The syariah has a firm connection with *fiqh* and *aqidah* (Islamic creed) as well as it plays a significant role in the lives of the Muslims.

Syeikh Dr. Ali Ahmad al-Qulaishi mentioned the relationship between *aqidah* and Syariah:

“The syariah covers all matters revealed by Allah in the form of injunctions pertaining to aqidah, good deeds and akhlak. And indeed, every injunction revealed by Allah is considered to be part of Syariah. The aqidah is the foundation and guiding principle that incites the implementation of Syariah. The Syariah is [seen as] the bodily action that acts according to the demands of aqidah. Whoever believes in aqidah but rejects the Syariah, or accepts the Syariah but rejects the Islamic aqidah; he or she is not a true Muslim who worships Allah SWT and does not choose the path that exempt him or her from the hellfire.”¹⁵

Syeikh Dr. Yusof Ahmad al-Badwi, after studying numerous works of Syeikh Ibn Taymiyyah *Rahimahullah*, concluded the meaning of *Maqasid al-Syariah* in his work *Maqasid al-Syariah ‘Inda Ibn Taymiyyah* by saying:

¹⁵ Ali Ahmad al-Qulaishi. *Madkhal ila Maqasid as-Syari’ah*, hal.12-13.

- Consequences, objectives, wisdom, intentions, needs and beauty all has the same meaning;
- Allah has His own intention and purpose in His creation and in His revealed laws;
- The objectives of Syariah are the intention of Allah in his revealed Syariah. These objectives are loved by Allah for the fact that they illustrate the submission of His servant to Him and [for that], He grants goodness and bounties for His servants in this world and the hereafter

Based on the above definition, it can be understood that every Islamic injunctions revealed by Allah SWT is intended to yield benefits to mankind or to protect them from harm. *Maqasid al-Syariah* can be defined as **any matters that gives benefit to mankind which becomes the objectives of Syaria in Islamic Laws.** Therefore, benefits (*maslahah*) and goodness has [more or less] similar meaning to the objectives of Sharia.

Prof. Dr. Jasser Auda in his writings once mentioned:

*“Therefore, the approach of maqasid can alleviate fiqh issues to a higher philosophical platform to combat historical differences, around politics between different schools of thoughts in Islam and is able to encourage a much needed culture, which is to have a harmonious co-existence (al-ta’ayush al-silmi) and mutual reinforcement (al-tasalih) among us.”*¹⁶

Thus, we are of the opinion that *Maqasid al-Syariah* is in no way in contradiction with any revealed Syariah covering all injunctions and laws embedded in the Quran and Sunnah, but at the same time enforcing and supporting the Syariah. The *maqasid al-Syariah* also plays its role in providing a clear understanding of the Syariah.

We end our discussion on *Maqasid al-Syariah* by quoting a conclusion written by Prof. Emeritus Dato’ Dr. Mahmood Zuhdi Haji Abdul Majid in his paper *Pelaksanaan Undang-Undang Jenayah Syariah Di Malaysia Ditinjau Dari Perspektif Maqasid Syariah (The implementation of Sharia Criminal Laws in Malaysia from the Perspective of Maqasid al-Syariah)*:

*“The underlying concept that serves as the basis of determining injunctions in the Syariah; to yield benefits and expelling harms is analogous to a vast sea that needs exploration, but not without its shore. Having this limitation in mind, we can claim that ‘yes’, Islamic Criminal Law viewed from the perspective of Maqasid al-Syariah can be implemented in a [neat and] comfortable manner.”*¹⁷

¹⁶ Jasser Auda. *Maqasid al-Syari’ah Dalil lil al-Mubtadi’in*. al-Ma’had al-`Alami li al-Fikr al-Islami, pg. 104.

¹⁷ Mahmood Zuhdi Haji Abdul Majid, “Pelaksanaan Undang-Undang Jenayah Syariah Di Malaysia Ditinjau Dari Perspektif Maqasid Syariah” (The Implementation of Syariah Criminal Laws in Malaysia from the perspective of *Maqasid al-Syariah*) in *Pelaksanaan Hudud di Malaysia: Satu Analisa, The Implementation of Hudud in Malaysia: An Analysos* edited by Asyraf Wajdi Dusuki (Kuala Lumpur: Yayasan Dakwah Islamiah Malaysia), pg. 32.

4.0 A Short Background of the Act 355 Amendment Proposal

From what we understand, Act 355 is an Act passed by the Parliament to confer jurisdiction upon Syariah Courts for the purpose of dealing with offences committed by Muslims against the precepts of Islam. This Act determines the limits of the jurisdiction related to punishment of Syariah offences that can be enacted by the State Legislative Assembly, charged, and implemented by the Syariah Courts throughout Malaysia. Section 2 of the act also stated that:

Section 2. Criminal Jurisdiction of Syariah Courts

The Syariah Courts duly constituted under any law in a State and invested with jurisdiction over persons professing the religion of Islam and in respect of any of the matters enumerated in List II of the State List of the Ninth Schedule to the Federal Constitution are hereby conferred jurisdiction in respect of offences against precepts of the religion of Islam by persons professing that religion which may be prescribed under any written law:

Provided that such jurisdiction shall not be exercised in respect of any offence punishable with **imprisonment for a term exceeding three years** or with **any fine exceeding five thousand ringgit** or with **whipping exceeding six strokes** or with any combination thereof.

Section 2 of the Act also explains that only Muslims professing to the religion of Islam are prescribed under this law

According to the chronology of history, the Parliament as the legislator of laws in Malaysia has passed and gazetted Act 355 in the year 1965 by the power conferred upon by the Federal Constitution in Schedule 9, List II of the State List, Item 1. The relevant parts of the item are matters pertaining to Islam and state affairs including, *“...the constitution, organization and procedure of Syariah courts, ...but shall not have jurisdiction in respect of offences except in so far as conferred by federal law;.....”*

The long title and introduction to the Act 355 clearly states that the Act was passed to confer jurisdiction to any courts established under state laws to deal with offences under the Islamic Law. It serves to distinguish offences or crimes between those that fall under the Federal List and those under the State List as well as to put criminal offences under the Federal jurisdiction, with matters pertaining to Islam and Islamic Laws being declared as falling within the autonomy of the state.

The Act was proposed by the then Minister of Lands and Mines, YB Encik Abdul Rahman Yaakub (now Tun Datuk Patinggi Abdul Rahman Yaakub), a Sarawakian by birth. Several Members of Parliament has debated the proposal including the then MP of Pasir Puteh, YB Encik Mohamad Asri bin Haji Muda who asked a question to all members of parliament:

“Tuan Yang di-Pertua, pengemukakan Rang Undang² yang mengenai Mahkamah Shara'iyah ini, pada pandangan saya, ada-lah satu

perchubaaan yang baik dalam langkah awal bagi menyatukan kedudukan perjalanan Mahkamah Shara'iyah di-seluruh negara kita ini. Dalam pada itu, saya suka meminta jaminan daripada Menteri Yang Berhormat bahawa had² sekatan bagi hukuman² yang paling berat di dalam kesalahan jenayah sa-bagaimana yang terchantum di-dalam Fasal 2 dalam Rang Undang² ini bukan-lah sa-bagai satu hak yang mutlak; yang saya maksudkan hak yang mutlak ya'ani mati, yang tidak akan . dapat di-pinda² dan di-ubah² lagi.”¹⁸

The Hansard of the House of Representatives at the time was reported to have recorded:

*“Tuan Yang di-Pertua, ...Ahli Yang Berhormat daripada Pasir Puteh telah menimbulkan satu soalan, ia-itu beliau berharap bahawa tingkatan hukuman yang tersebut didalam Clause 2 dalam Rang Undang² ini tidak merupakan satu tingkatan yang tidak boleh di-pinda dan di-ubah dalam menggunakan perkataan-nya ialah bukan satu Undang² yang mutlak. **Jawapan-nya ya, kerana Parlimen boleh membuat, Parlimen boleh mengubah Undang², Parlimen boleh meminda Undang², Parlimen boleh memansokhkan Undang²; itu jawapannya. Kalau Parlimen berfikir di-masa akan datang hukuman tersebut di dalam Clause 2 itu tidak menchukupi, ia-nya boleh di-ubah.”¹⁹***

After deliberate discussion, the Act was agreed upon by each Members of Parliament in the House of Representatives (*Dewan Rakyat*). With that, the jurisdiction of the Sharia Court at the time renders effective in all state in Peninsular Malaysia, excluding Sabah and Sarawak, with sentencing power limited to imprisonment not more than 6 months and fines not exceeding RM1,000.

19 years later, The Syariah Law Act (Criminal Jurisdiction) (Amendment) 1984 has been presented (second reading), discussed and passed by the Dewan Rakyat on the 10th, 11th and 12th of October 1984 in the Second Session of the Sixth Parliament. The Amendment was proposed by the then Minister in the Prime Minister Office, YB Dr. Mohamad Yusof bin Haji Mohamad Noor who was quoted saying:

“Tuan Yang di-Pertua, saya mohon mencadangkan iaitu Suatu Akta untuk meminda Akta Mahkamah Syariah (Bidang Kuasa Jenayah) 1965 dibacakan kali yang kedua sekarang. Tuan Yang di-Pertua, pindaan yang dicadangkan ini adalah bertujuan untuk memperluaskan lagi bidang kuasa jenayah bagi membolehkan Mahkamah-mahkamah Syariah membicarakan kesalahan-kesalahan yang boleh dihukum penjara selama tempoh tidak melebihi 3 tahun atau apa-apa denda tidak melebihi \$5,000 atau sebat tidak melebihi 6 kali atau apa-apa cantumannya berbanding dengan kuasa sekarang yang menghadkan

¹⁸ Malaysia. Dewan Ra'ayat. Penyata Rasmi Parlimen (3 Mac 1965) pg. 6524

¹⁹ Malaysia. Dewan Ra'ayat. Penyata Rasmi Parlimen (3 Mac 1965) pg. 6550

*kepada penjara 6 bulan atau dengan denda \$1,000 atau kedua-duanya sekali.*²⁰

In 1989, the Act 355 was amended again to broaden its application to include Sabah and Sarawak. Syariah Law (Criminal Jurisdiction) (Amendment and Extension) Act 1989 was read for the second time (without any MPs discussing the proposal) dan was passed by the Dewan Rakyat on the 24th of March 1989 in the Third Session of the Seventh Parliament. Section 1 (2) of the 1965 Act was amended by replacing the words “This Act shall apply to all the States of Peninsular Malaysia.” With the words “to all the States of the Federation of Malaysia.”²¹ This amendment was made to broaden the application of the Act to Sabah and Sarawak and to validate the jurisdictions made by the courts in these two States before the commencement of this Act. In other words, the decisions of the Syariah Courts in Sabah and Sarawak are effective retrospectively.

On the 26th May 2016, the MP of Marang, yang Berhormat Dato’ Seri Haji Abdul Hadi Awang was granted the permission by the speaker of Dewan Rakyat (Yang di-Pertua Dewan Rakyat) after the Government agreed to expedite the Private Motion in the Order of Business of the Dewan Rakyat Meeting to discuss a Private Member’s Bill named Syariah Courts (Criminal Jurisdiction) (Amendment) Act 2016 as follows:

(i) to replace Section 2 of the Act with the following section;

“2. The Syariah Courts duly constituted under any law in a State and invested with jurisdiction over persons professing the religion of Islam and in respect of any of the matters enumerated in Item 1, List II of the State List of the Ninth Schedule to the Federal Constitution.”; and

(i) inserting the following after section 2;

“2A. by executing the criminal jurisdiction under Section 2, the Syariah Court has the right to charge punishments permitted by the Syariah law pertaining to offenses listed under the sections mentioned above other than the capital punishment.”

It is important to note that the Act 355 Amendment Proposal is only effective to the existing offences in the states’ criminal enactments and would never include criminal offences under the Federal List.

²⁰ Malaysia. Dewan Rakyat. Penyata Rasmi Parlimen (10 Oktober 1984) pg. 4489 – 4490

²¹ Malaysia. Dewan Rakyat. Penyata Rasmi Parlimen (24 Mac 1989) pg. 2572 - 2576

5.0 The Need for the Amendment of Act 355 from a Law Perspective

Although the amendment will only affect minimal aspects of the Act, **the impact towards the states' jurisdiction on Syariah offenses is very significant.** The limited penal power of Syariah Courts in the current Act 355 (Amendment 1989) is a huge obstacle in delivering charges for Syariah offences, if the Syariah Courts' penal power is to be enhanced.



This is due to the fact that, in the current Syariah Courts (Criminal Jurisdiction) (Amendment) Act 1989, the penal powers of the Syariah Courts is limited to imprisonment for a term not exceeding three years or with any fine not exceeding RM 5,000 or with whipping not exceeding six strokes or with any combination thereof.

Therefore, the Act 355 needs to be amended so that it remains relevant to the current demands of the time and the Syariah. This falls under the portfolio of Dewan Rakyat as the Act is an Act that is applied in all states in Malaysia. The Amendment proposal has to be done at the Federal level, for this Act is a part of the Federal Law, as what is written in Item 1, List II of the State List of the Federal Constitution. Any accusation that this amendment is in contradiction to the Federal Constitution is baseless, for what we have pointed out, the Act is already a part of the constitution. What is really needed in the amendment is to alter the phrase '*as conferred by federal law*'. If in 1984 this Act was revised and have undergone improvements and ammendments, why would a proposal to enhance the Act after 32 years [since the last amendment] can not be done? Only when the maximum limit of punishment for Syariah offences written in Act 355 is amended that the proper charges for Syariah offences can be delivered in Syariah Courts.

In a nutshell, Enactments or Syariah Criminal Acts in different state in Malaysia has the following provisions for criminal offences:

- i. offences relating to 'aqidah,
- ii. offences relating to the sanctity of the religion of Islam and its institutions;
- iii. offences relating to the pillars of Islam, intoxicants, gambling and proper conducts;
- iv. offences relating to decency
- v. miscellaneous offences

Meanwhile the Enactment or Islamic Family Law consist of:

- i. Penalties relating to solemnization and registration of marriages; and
- ii. General penalties

As an example, there are ten different sexual offences under the Syariah Criminal Offences (Selangor) Enactment 1995 which are incest, prostitution, muncikari, sexual intercourse out of wedlock, act preparatory to performing sexual intercourse out of wedlock, sexual relations between persons of the same gender, sexual intercourse against the order of nature, khalwat, male person posing as woman, and indecent acts in public places.

In general, adultery, fornication (zina), Qazaf (false accusation on zina offences), consumption of intoxicants, apostacy (murtad) are the existing offences under the Syariah Criminal Enactments in all states. Therefore the amendment proposed is to allow Syariah Courts to implement charges of greater weights, “**excluding the capital punishment**” – which means penalties, imprisonment and whipping can be increased, for instance, to 100 times according to the tenets of Syariah.

Tun Abdul Hamid bin Haji Omar in his paper²² put forward a proposal allowing State Legislative Bodies to enact laws under the State List (for example adultery and fornication, qazaf, consuming intoxicants) so that the Parliament can amend the Act 355 beforehand. By doing this, State Legislative Bodies can practice laws listed under the State List which are only applied to people confessing to the religion of Islam under the jurisdiction of the Syariah Courts.

If we look into the history of this Act, the Act 355 Amendment Proposal aimed to enhance the jurisdiction of Syariah Courts is nothing alien, for there has been amendments to this Act ever since the year 1984, from imprisonment not exceeding 6 months and fines not exceeding RM 1,000 (prior to the 1984 amendment) to imprisonment for a term not exceeding three years, fine not exceeding RM 5,000, and whipping not exceeding six times as what we have today. In other words, the jurisdiction of the Syariah Courts over Syariah offences as written in the Act 355 **is seen today to be insufficient to achieve justice as one of the objectives of the Syariah.**

We found that the statement made by Assoc. Prof. Dr. Zulfakar Ramlee, a Lecturer in the Ahmad Ibrahim Kulliyah of Law (AIKOL), International Islamic University Malaysia (IIUM) that he made in the ‘*Wacana Undang-Undang Rahmah 2016 Siri 1 bertajuk RUU Akta 355 : Apa Implikasinya?*’²³ to be genuinely relevant.

According to him, the Act 355 Amendment Bill is both **imperative and suitable to the current situation that we have in Malaysia.** If we look back into the past 32 years, maximum imprisonment of 3 years, fine of RM 5,000 and 6 whippings (the

²² Tun Abdul Hamid was the ex-Attorney General wrote a paperwork named *Pelaksanaan Undang-undang Jenayah Islam (Hudud, Qisas, Takzir) di Malaysia – Prospek dan Cabaran*. The Implementation of Syariah Criminal Laws (Hudud, Qisas, Takzir) in Malaysia – Prospects and Challenges

²³ This forum can be watched at <https://www.youtube.com/watch?v=TmwX3D6YTUQ>

current criminal charges under Syariah Courts that we have now) is an improvement from the previous penalties under the Syariah Courts (Criminal Jurisdiction) Act 1965 which only provided a maximum fine of RM 1,000 and imprisonment not exceeding 6 months.

He was also of the opinion that:

“The Act 355 Amendment is analogous to a permit or license to build a five lane highway (five lanes to empower the five Maqasid al-Syariah).”²⁴

In addition to that, the existing penalties for Syariah offences are deemed to be illogical. For example, if we look into the problems relating to aqidah that we found to be widespread in our society today, like the issue of Ayah Pin and his followers or the cases where people claimed themselves to be the Imam Mahdi, these people will not learn their lesson if the penalties imposed upon them are, to them, ‘bearable’ and has no educational value.

This historical move is also in honor of the speech by Seri Paduka Baginda Yang Di-Pertuan Agong, Tuanku al-Haj Abdul Halim Mu’adzam Shah Ibni al-Marhum Sultan Badlishah conveyed in the Opening Ceremony of the First Meeting of the Fourth Quarter in the 13th Parliament on 7th March 2016:

“I hereby fully support all initiatives to uphold Islam as the religion of the Federation; and at the same time, other religions may be practiced in peace and harmony in this country. I hope that all the ways and means TO STRENGTHEN THE ROLE OF RELIGIOUS INSTITUTIONS AND THE EFFICIENCY OF THE IMPLEMENTATION OF ISLAMIC LAW THROUGH THE EMPOWERMENT OF SYARIAH COURT COULD BE EXPEDITED. Religious issues need to be referred to religious authority and should not be interpreted individually or in communnaly for it will cause confusion, dispute and conflict within the society.”

²⁴ His statement in the forum; Wacana RUU 355: Wajarkah Bukan Islam Bimbang? Organized by Pertubuhan IKRAM lately. This forum can be watched at <https://www.youtube.com/watch?v=mG7XyhaWOR8>

6.0 Some Confusions That Demand Clarifications

We mention here a few confusion that might arise from this issue and demand our clear understanding so that we will not be trapped in ambiguity. Among them are:

- **The Jurisdiction of Syariah Courts is in the Absolute Power of the State**

Shedule 9, State List Item 1, specifically mentioned the jurisdiction of Syariah Courts as being the absolute right of the states except in determining the maximum limits of the punishment for criminal offences, where it gives the power to a certain Federal Law, the Act 355.

“...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; the constitution, organization and procedure of Syariah courts, which shall have jurisdiction only over persons professing the religion of Islam and in respect only of any of the matters included in this paragraph, but shall not have jurisdiction in respect of offences except in so far as conferred by federal law;”

The limits of the jurisdiction of the Syariah Courts is as what is written in Item 1 of the Federal Constitution, and does not cover matters included under the Federal List.

One of the think tank panel for the Office of the Mufti of the Federal Territories and a senior lecturer in the International Islamic University Malaysia (IIUM), Assoc. Prof. Dr Shamrahayu Abdul Aziz in a writing to the official website of IKIM²⁵ opined, the Act 355 is meant to distinguish between offences²⁶ and crimes²⁷ under the Federal List and the State List. This effectively put matters pertaining to crimes under the jurisdiction of the Federal Government and offences under the jurisdiction of the State Government.

According to her, with the Act in place, the public perception of the jurisdiction of the state that is assumed to have an absolute provision for matters pertaining to Islam especially when it comes to the question of the implementation of criminal laws may be corrected. The general perception of the general public that the State Legislative Bodies have an absolute power to enact Islamic Laws is not accurate. Enactments and amendments of laws need to begin from the level of the Federal Government.

- **The Act 355 Amendment Bill is a ‘Backdoor’ that Leads to the Implementation of “Hudud”**

²⁵ <http://www.ikim.gov.my/index.php/ms/berita-harian-dr-shamrahayu/9232-akta-355>

²⁶ The Phrase ‘offences carries the meaning of offences relating to the jurisdiction of Islamic Law such as offences relating to the matter of zakat, Friday congregational prayers, marriage and debts.

²⁷The Phrase ‘crimes’ carries the meaning of offences relating to the jurisdiction of the Penal Code such as the crime of stealing, murder and theft.

In the state of Kelantan, other than the Syariah Criminal Code Enactment of Kelantan, 1985 that is currently effective and in place, there also exists the Syariah Criminal Code (ii) 1993 of Kelantan (after this is referred to as SCC II) which was amended and improvised in 2015; SCC II (Amendment) 2015. **The Act 355 Amendment Bill will not affect the SCC II (Amendment) 2015** or is more widely known as the Hudud Law of Kelantan, as the SCC II includes provision for capital punishment for Qisas (retaliation in kind) and bodily amputation for sariqah (stealing). This is due to the fact that the SCC II has transgressed the jurisdiction of Syariah Courts conferred in Act 355, in which stealing and murder offences as well as capital punishment is under the Penal Code under Federal List of the Federal Constitution.

To enhance the jurisdiction of the Syariah Courts in Kelantan, **amendments need to be done on the Syariah Criminal Code Enactment of Kelantan, 1985 that is currently applied to deliver punishments for existing crimes and offences under the Syariah Courts against the precepts of the religion of Islam** including adultery (zina), qazaf, and consuming intoxicants. For example section 11 on adultery and fornication provides: -

*“Any person who commits zina this is not liable to the punishment of had, in accordance with Hukum Syarak, shall be guilty of an offence and shall be liable, on conviction, to **imprisonment for a term not exceeding three years or to a fine not exceeding five thousand ringgit or to both and to six strokes of whipping.***

And Section 25 on intoxicating drinks provides: -

(1) Any person who drinks liquor or any intoxicating drinks which is not liable to the punishment of hadd, according to Hukum Syarak, shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both and to whipping not more than six strokes.

(2) Any person who makes, sells, exhibits for sale, keeps or buys any liquor or intoxicating drinks shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Punishment on the offence of adultery and intoxicating drinks can be amended with a punishment of fines, imprisonment and syariah-compliant whippings of a greater magnitude. The same thing applies to other states, in which the State Legislative Assembly needs to pass the amendments proposed by the state’s Islamic Religious Council through their respective State Governments. It means to say that, **the amendment of Act 355 would not automatically be in effect in the states; for the Act is under the Item 1, List II of the State List, Federal Constitution.** If no amendments is being made in the states, therefore the State Criminal Offence Enactments would remain the same as it was before the amendment of the Act 355.

Therefore the claims made by a certain party that the Private Member's Bill is a backdoor to implement hudud is not true, but what would be a more accurate explanation of the Bill is that it is **aimed to enhance the implementation of the existing Islamic laws in a more comprehensive and far-reaching manner** to achieve the objectives of Syariah.

- **The Bill to Propose Amendments to the Act 355 is Not Constitutional**

In practice, each and every motion especially the Private Motion to propose a Private Member's Bill will be scrutinized by the Secretary and the Yang di-Pertua Dewan Rakyat as soon as it is received to make sure that it adhere to the Standing Order of the Parliament 27(3) and 49. The Government, through the responsible Department (s), and the Attorney General's Chamber will be consulted on the matter to make sure that the motion is not in contradiction with any articles of the Federal Constitution and the existing laws. If found to be **violating the Standing Order of the Parliament and/or in contradiction with the Federal Constitution** or any existing laws, **the motion will be rejected**. The very fact that the Private Motion by the MP of Marang is included in the Order of Business of the House of Representatives denies the allegations that it is not in line with the Federal Constitution.

It is worth mentioning here that there are Private Motions to table a Private Member's Bill that was rejected by the Parliament from the very beginning. For example, The MP of Sungai Siput once tabled a Private Motion to propose a RUU Suruhanjaya Saksama in 2014 but was rejected by the Yang Di-Pertua Dewan Rakyat for it was in contradiction with the Federal Constitution. The same applies to The Private Member's Bill tabled by the MP of Lembah Pantai on the Akta Pemansuhan Darurat, and others that were rejected and were not included in the Order of Business of the Parliament.

- **The high number of lashes in Syariah punishment is cruel and excessive**

The term 'whipping' or in Arabic is called '*al-jald*' is taken from the word *al-jild* which contains the meaning 'skin'. According to Ibn Manzur, the word '*al-jald*' is a derivative of the original word which carries the meaning 'to strike' or 'to trounce'.²⁸ Ibn Qudamah explains that *al-jald* can be understood as whipping with a rod (*al-sawt*).²⁹

We have witnessed the method of whipping according to the Islamic Law ourselves as explained by those with the responsibility to carry out the punishment. It is clearly observable that the difference in method of whipping between what is outlined by the Syariah and its civil counterpart is apparent. Whipping in Islam is not meant to torture but to educate the offender and the general public and to implant a sense of fear of committing punishable crimes in the general public's hearts.

²⁸ Ibn Manzur. *Lisan al-'Arab* (Beirut: Dar al-Sadr, 1955), jil. 12, m. 25.

²⁹ Ibn Qudamah. *Al-Mughni wa Yalihi Sharh al-Kabir* (Beirut: Dar al-Kitab al-'Arabi, t.t.), jil. 10, m 28

1. Characteristics of The Whipping Rod

Al-Syaukani explained the characteristics of the whipping rod as being a middle sized branch, not too new or too old. The length of the cane is approximately 0.598 meters (one *hasta*) and has a diameter equivalent to that of a thumb.³⁰

Under the Section 125 of the Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560), it is stated that the whipping rod, excluding its holder, shall be of the same type and made either from rattan or small branch of a tree without segment or joint and its length not more than 1.22 metres and its thickness not more than 1.25 centimetres.

2. Method of Whipping

Syeikh al-Islam Ibn Taimiyyah explains the method of whipping to be a moderate lash (not too strong and not too soft) by using a whipping rod of a moderate weight (not too heavy and not too light).³¹

The following provisions shall be followed when executing the sentence of whipping, that is-

- (a) before execution of the sentence, the offender shall be examined by a Government Medical Officer to certify that the offender is in a fit state of health to undergo the sentence;
- (b) if the offender is pregnant, the execution shall be postponed until the end of two months after delivery or miscarriage, as the case may be;
- (c) the sentence shall be executed before a Government Medical Officer in such place as the Court may direct or in a place fixed by the Government for the purpose;
- (d) the person appointed to execute the sentence shall be an 'adil and mature person;
- (e) the person shall use the whipping rod with average force without lifting his hand over his head so that the offender's skin is not cut;
- (f) after inflicting a stroke, he shall lift the rod upward and not pull it;
- (g) whipping may be inflicted on all parts of the body except the face, head, stomach, chest or private parts;
- (h) the offender shall wear clothes according to Hukum Syarak

³⁰ Al-Syaukani. *Nail al-Autar Sharh Muntaqa al-Akhyar* (Beirut: Dar al-Fikr, 1983), jil. 7, m. 285.

³¹ Ibn Taimiyyah. *Al-Siyasah al-Shar'iyyah fi Islahi al-Ra'i wa al-Ra'iyyah* (Beirut: Dar al-Kutub al-'Arabiyyah, 1966), pg. 101.

(i) if the offender is a male the whipping shall be inflicted in a standing position, and if a female, in a sitting position;

(j) if during the execution of the whipping the Government Medical Officer certifies that the offender can no longer receive the strokes, the whipping shall be postponed until the Medical Officer certifies that the offender is fit to undergo the balance of the sentence.

Other than that, the lashes should never hit the face, head, stomach, chest or the private parts of the offender and should not inflict physical wound on the offender. Looking at the above explanations, we can understand that whipping in Islam means moderate lashing using specified tools and is meant not to tear off the flesh and bones of the offender.



It is totally different than the civil method of whipping punishment, in which it employs strong lashes and is focused on only one part of the body that would definitely tear off the skin and flesh of the offender. It is clear that the 100 whippings dictated by the Syariah is not in any way excessive and cruel as how some parties have exaggerated it.

- **Some Misunderstandings on the Statement made by Ibn Qayyim**

A lot of people put forth their arguments against the Act 355 Amendment Proposal by referring to the statement made by Ibn Qayyim on the real meaning of Syariah, which results in a conclusion other than the *maslahat* of the people, claiming that the situation is not yet conducive to implement Syariah Laws and others. We hereby quote the full statement by Ibn Qayyim that had always been misinterpreted by those parties:

فَإِنَّ الشَّرِيعَةَ مَبْنَاهَا وَأَسَاسُهَا عَلَى الْحِكْمِ وَمَصَالِحِ الْعِبَادِ فِي الْمَعَاشِ وَالْمَعَادِ، وَهِيَ عَدْلٌ كُلُّهَا، وَرَحْمَةٌ كُلُّهَا، وَمَصَالِحُ كُلُّهَا، وَحِكْمَةٌ كُلُّهَا؛ فَكُلُّ مَسْأَلَةٍ خَرَجَتْ عَنِ الْعَدْلِ إِلَى الْجَوْرِ، وَعَنِ الرَّحْمَةِ إِلَى ضِدِّهَا، وَعَنِ الْمَصْلَحَةِ إِلَى الْمَفْسَدَةِ، وَعَنِ الْحِكْمَةِ إِلَى الْعَبَثِ؛ فَلَيْسَتْ مِنَ الشَّرِيعَةِ وَإِنْ أُدْخِلَتْ فِيهَا
بِالتَّأْوِيلِ

Meaning: “Indeed the foundations of the Islamic Syariah is all wisdom and goodness for mankind in this world and the hereafter. The Islamic Syariah is all

*about justice, goodness and wisdom. For that, each and every thing that transgress the domain of justice and falls into injustice, from mercy to that in contradiction to it, from goodness to evil, from wisdom to meaningless-ness, therefore it is not a part of Syariah, though interpreted otherwise.*³²

On the contrary to what they have claimed, this statement portrays the feature of Islamic Syariah that is built upon a foundation of wisdom and *maslahah*. It is also fair and full of mercy. A lot of people tend to quote one part of the statement and leave the rest. Ibn Qayyim goes on by saying:

فَالشَّرِيعَةُ عَدْلُ اللَّهِ بَيْنَ عِبَادِهِ، وَرَحْمَتُهُ بَيْنَ خَلْقِهِ، وَظِلُّهُ فِي أَرْضِهِ، وَحِكْمَتُهُ الدَّالَّةُ عَلَيْهِ وَعَلَى صِدْقِ رَسُولِهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - أَتَمَّ دَلَالَةً وَأَصْدَقُهَا، وَهِيَ نُورُهُ الَّذِي بِهِ أَبْصَرَ الْمُبْصِرُونَ، وَهُدَاهُ الَّذِي بِهِ اهْتَدَى الْمُهْتَدُونَ، وَشِفَاؤُهُ التَّامُّ الَّذِي بِهِ دَوَاءُ كُلِّ عَليْلِ، وَطَرِيقُهُ الْمُسْتَقِيمُ الَّذِي مَنْ اسْتَقَامَ عَلَيْهِ فَقَدْ اسْتَقَامَ

Meaning: “The Syariah is the justice of Allah among mankind and His mercy towards His creations. The wisdom behind the Syariah points out to Him and his Prohet who validated the proofs and the truths of Him. It is the light of which with it people of knowledge use it to see, and a guidance for those who embraced it. It is the perfect cure for the deceased, a straight path in which those who remain steadfast upon it would definitely reach their destinations.”³³

Therefore the real meaning intended by Ibn Qayyim was not as what being misunderstood by these people that the wisdom and benefits behind the Syariah need to be prioritised over the implementation of Syariah itself. On the contrary, Ibn Qayyim was trying to **make a call towards the implementation of Syariah and was not discussing the priority of achieving the wisdom behind Syariah law over the implementation of it.** That would be the real meaning of Syariah. In order for us to uphold justice, we surely need the existence of a functional and independent court to carry out the orders given by our God. In fact, the implementation of Syariah is not restricted to the laws revealed in the Quran and Sunnah only but also includes the punishment of *ta'zir*, which gives the jurisdiction to the judges to charge punishments upon the offenders based on the elements of justice, *ihsan* and *syura*.

Syeikh Rasyid Ghannouchi once mentioned the opinion of Syeikh Ibn Asyur by saying:

“In principle, every means towards the realization of the maqasid of Islam such as to uphold justice, syura and others, are considered to be part of the Islamic Syariah though they are not revealed through the religious texts;

³² Ibn Qayyim, *I'lam al-Muwaqqi'in 'an Rabb al-'Alamin* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1991), jil. 3, pg. 11.

³³ Ibid.

*al-Quran and hadeeth. And such is the opinion of many Islamic scholars.*³⁴

Syeikh Prof. Dr. Wahbah al-Zuhaili in his work *Usul al-Fiqh al-Islami* (hal. 1/650) said:

*“There are times when the wisdom [behind the Syariah] is hidden and could not be perceived by our empirical senses. Therefore, the feature of this is not mundhabit, which is why the majority of the ulama of usul rejects any ‘illah solely based upon hikmah.”*³⁵

This is the very reason why the Act 355 Amendment Proposal must be supported as it is not only focused upon the implementation of small sections/parts of the Syariah but the whole Islamic Judicial System in Malaysia will benefit from the amendment through better management of zakat funds, the improvisation of the welfare of children and women, eradicating prostitution, gambling and other offences under the syariah criminal enactments or acts in Malaysian states

³⁴ Ibn ‘Ashur, *Maqasid as-Shari’ah al-Islamiyyah*, ad-Dar al-Tunisiyyah Li al-Nashr. Ghannouchi, Racid. 2016. *Politik & Demokrasi*. Politics and Democracy. Translated by Marwan Bukhari. (Shah Alam : Institut Darul Ehsan, 2016) pg. 19.

³⁵ In this issue there exist 3 schools of thoughts:

- Permissible *‘illah* with hikmah (wisdom). This is what being tarjih by Imam al-Razi, al-Baidhawi and Ibn al-Hajib.
- Phohibited. This is the opinion of the majority of the ulama.
- Applied but with some details on the explanation (*mufassal*). This is the opinion of al-Amidi. He said, “If the wisdom is apparent (*zahir*) and consistent (*mundhabit*), thus it is appropriate to be a legal reason (*‘illah*). Otherwise, then it is not possible.” See al-lbhaj 3/91 and al-lhkam 3/12.

7.0 Some Questions to Those Parties Repudiating the Act 355 Amendment Bill

There are parties who seem to be not comfortable with the amendment proposal and argued that it is in contradiction with the Federal Constitution, imposes a risk to threaten societal harmony and is viewed as an attempt to dismantle the existing laws that had functioned well since the Independence.

We return a question back to them:

1. Can these claims be considered as fair, whereas **the issue at hand is not yet resolved at the level of the Parliament, and is still debated, as we speak?** Generally speaking, the issue of empowering the jurisdiction of Syariah Court is not a new one, and it is not being proposed in a hasty manner. History proves that this issue has been debated thoroughly, and some of the most heated debates occurred in the year 1990s that eventually produced the Syariah Criminal Code Enactment of Kelantan in 1993 and Syariah Criminal Code Enactment of Terengganu in 1999. Even way before that, the Federal Constitution itself has a provision for the establishment of a court free from the influence of the civil court which handles matters pertaining to the affairs of a Muslim as written in the Ninth Schedule of the Constitution. Act 355 is not an Act that was passed arbitrarily, but one that went through a truly democratic process, one reading after another, level by level, discussed, debated and in the end passed in the Parliament. This is an Act that was enacted collectively by the people of Malaysia and now the improvisation to it is proposed using the very same method it was brought into being in the first place.
2. Then, why are there parties who are sternly opposing the bill and preventing the discussion on this bill from taking place? **This attitude is a violation of the democratic principles of this country's constitutional democracy.**
3. Are these kinds of objections deemed appropriate when the very existence of this Act is a ... This is based upon the ... in Ninth Schedule, State List, Item 1, which mentioned all matters pertaining to Islam and state affairs including, "...the constitution, organization and procedure of Syariah courts, ... but shall not have jurisdiction in respect of offences except in so far as conferred by federal law;". This Item if understood properly carries the meaning that The Federal Constitution itself is contingent upon the Act 355 for governance and Islamic judicial system in this country.

8.0 Opinions of Authoritative Figures on the Issue of Syariah Courts and *Taqnin*

A lot of Muslim intellectual figures have discussed the importance of the empowerment of Islamic Law with a strong and functional judicial system. Among them are:

i. Syeikh Prof. Dr. Yusuf al-Qaradhawi

In brief, Prof. Dr. Yusuf stressed that we must recognize all factors contributing to the process if we really want to implement codes sourced from the Syariah Islamiyyah. We must look into the Syariah, Fiqh and conventional needs that are ever evolving and the plethora of problems we are currently facing. This process require us to produce a generation of Muslim scholars (Ulama') who are capable of merging the two *thaqafah syar'iyyah* which are sourced from the primary sources of knowledge in Islam as well as the modern *thaqafah qanuniyyah*. They must do all this *tajdid* not in expense of the authenticity of Syariah.³⁶

ii. Syeikh Abdullah bin Mahfudh Ben Bayyah

He is in favour of the effort towards *taqnin fiqh* but at a domain more suitable to the current demands and conditions. This attitude of him is based upon his experience as the Minister of Laws of Mauritania, in handling the process of enacting family laws there.³⁷

iii. Authoritative Scholars in Agreement with the effort towards *taqnin*³⁸:

Numerous authoritative Muslims scholars are in support of the effort to codify the Syariah into laws and in support of the existence of the Syariah courts in order to empower the Syariah. Among them would be:

- Syeikh Allamah Mustafa al-Zarqa' (A great scholar of Syam)
- Syeikh Muhammad Abu Zahrah (al-Azhar's great ulama)
- Syeikh Ali 'Muhammad al-Khafif (al-Azhar's ex-Chief Ulama)
- Syeikh Rashid Khunain (Saudi Ulama)
- Syeikh Abdullah Khayyat (Ex-Imam of Masjid al-Haram)
- Syeikh Abdullah bin Mani' (Saudi Ulama)
- Syeikh Abdul Majid bin Hassan (Saudi Ulama)
- Syeikh Soleh bin Ghusun (A Famous Ex-Qadhi in Saudi)

³⁶ Al-Qaradhawi, Yusuf. *Madkhal li Dirasat al-Shari'ah al-Islamiyyah* (Beirut: Mu'assasah al-Risalah, 1993), pg. 263

³⁷ See <http://binbayyah.net/arabic/archives/1423>

³⁸ Al-Lahwi, 'Amir bin Isa. *Harakah Taqnin al-Fiqh al-Islami*, pg. 6.

This is in line with the legal maxim:

مَا لَا يَتِمُّ الْوَاجِبُ إِلَّا بِهِ فَهُوَ وَاجِبٌ

Meaning: “when an obligation cannot be fulfilled without a means, then the means become obligatory.”³⁹

This legal maxim is relevant to the current issue in hand where the establishment of a functional Syariah Court and *taqin* is a must in order to uphold justice.

The President of Muslim Lawyers Association of Malaysia, Dato’ Haji Zainul Rijal Bin Abu Bakar in his writing for the Sinar newspaper on the 26th of August 2016 remarked:

“It is the time for all legal practitioners in Malaysia to acknowledge the fact that Islam is a part of the lives of the citizens of Malaysia. Even the non-Muslim citizens recognize this fact. Let us all take a paradigm shift towards implementing Islamic Law that is more suitable and fair to all citizens of Malaysia regardless of racial and religious affiliation.”

³⁹ al-Ghazzali, Abu Hamid. *Al-Mustasfa fi Ilmi al-Usul*, jil. 2, pg. 92.

9.0 Official Statement from the Mufti of the Federal Territories

We start off with the ethics of discussion. There are times when we employ all our communication skills we have up our sleeves to win people's heart, but in the end they are the ones distancing themselves from us. This is often the case when people lack the right art to discuss and debate. An interesting quote that is worth contemplating would be: "*The sign of intelligence is not to win disputes but to avoid it.*"

Syeikh Muhammad Ali al-Sais in his work *The History of Islamic Jurisdiction* mentioned that the Islamic jurisdiction stands upon three foundations which are not troublesome (*'adam al-haraj*), little/few obligations (*qillatu al-takalif*) and peaceable (*al-tadarruj*). Meanwhile Dr. Muhammad Yusuf Musa in his work *Introduction to Islamic Fiqh Studies* stated three foundations of Islamic jurisdiction as not troublesome, avoiding difficulties, as well as securing the interests of mankind as a whole.

We can all agree with the issue of *asolah* and *thawabit* (immutable and principles) in Islam but the main challenge we face is the choice of approach we take [to handle issues] and our method of conveying [our message]. A new paradigm and a more proactive approach in our way of dealing with Muslims and non-Muslims in spreading the message of Islam is very much needed. This method includes the question of the right message, *uslub*, and medium of communication, approach and priorities relevant to the issue in hand.

Once again, it is of our best interest to stress the importance of the issue of *taqnin* in Syariah Courts. Once a well-known scholar of Islam, Prof. Dr. Wahbah al-Zuhaili spent his time visiting us here in Malaysia, in a closed discussion with various influential Islamic scholars, raised the importance and put an emphasis on the need for Islamic injunctions related to everyday life of a Muslim to be codified (*taqnin*). This is due to the fact that the existence of a judicial system and courts based upon noble virtues like safeguarding justice and securing the supremacy of laws is very much needed.

We have put forward the introduction, importance and answers to the confusion or misunderstandings that may happen with respect to the issue of Act 355 Amendment Proposal. Adhering ourselves to the spirit of empowering Syariah Courts in Malaysia, we hereby declare that it is imperative for all of us to support and back the Act 355 Amendment Proposal.

- **It is Obligatory (*Wajib*) upon Muslim Members of Parliament to Support the Amendment Proposal**

Saidina Ali R.A. once reported saying: "*The principle of justice is a significant principle in securing the balance in society by giving [our] attention [to it].*"⁴⁰

⁴⁰ Lihat *Tabsirah al-Hukkam Fi Usul al-Aqdiyah wa Manahij al-Ahkam* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1995), jil. 1, pg. 115

Ibn Farhun in his effort to explain a fair and just governance (*siyasaḥ ‘adilah*) listed the followings; returning the rights of the oppressed, exterminating all forms of injustice, and eliminating harms to achieve to purpose of Syariah (*Maqasid al-Syariah*) as the features of a fair governance. This is due to the fact that the Syariah would always secures the rights of a human and closes the doors leading to mischief and injustices⁴¹.

Any individual in possession of a fair attitude reflects his/her possession of a sound and healthy intellect capable of attaining true happiness. One of the way to uphold justice in Islam is to acknowledge the holistic feature of the Syariah by finding ways to practice Islam as a complete way of life. In Surah al-Maidah, Allah SWT made a remark on the fair attitudes that should be in possession of the people of faith by saying:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ عَلَىٰ أَلَّا تَعْدِلُوا اعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ

Meanings: “O you who have believed, be persistently standing firm for Allah , witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness. And fear Allah; indeed, Allah is Acquainted with what you do.”

(Surah al-Ma'idah :8)

The knowledgeable Ibn ‘Asyur once mentioned: “It is followed by all sorts of injunctions on matters of dealings between a man and a woman, therein, the most important of all things mentioned are fairness and [being fair in] giving evidences, it is therefore, being prioritised [in a lexical order] over the other. Therefore, *al-Qist* is fairness in *qadha’*. That is why the word *al-Qist* begins with the alphabet *ba’*.”⁴²

To all Muslim MPs, we put forward some additional points to be pondered upon and to be understood:

- i. One of the way to uphold the Islamic conception of justice is by establishing an Islamic judicial system and its judiciary according to the related Acts.
- ii. It is obligatory upon a people of faith to uphold the Islamic judicial system as best as one can, included in this effort to uphold the judicial system by supporting the empowerment of Syariah Courts dan the needed *taqnin* process (codification/enactments of laws).
- iii. With the Act 355 Amendment in place, the interests of the Muslim ummah will be respected and secured

⁴¹ See *Tabsirah al-Hukkam Fi Usul al-Aqdiyah wa Manahij al-Ahkam* (Beirut: Dar al-Kutub al-‘Ilmiyyah, 1995), jil. 1, pg. 115

⁴² Muhammad al-Tahir Ibn ‘Ashur. *al-Tahrir wa al-Tanwir* (Tunis: Dar al-Tunisiah, 1984) jil. 6, pg. 135.

- **Non Muslim MPs are Advised to Support the Amendment Proposal**

There are a few empirical and logical arguments that need to be contemplated by all non-Muslim MPs as a symbol of adherence to the principle of justice we all hold on to dearly.

- i. Act 355 Amendment would NOT be effective to non-Muslims for the act itself is meant for those who profess to the religion of Islam
- ii. The aforementioned act is already in existence and will only be amended to give some room for improvements
- iii. It is not a backdoor to implement hudud but is a form of empowerment of the Islamic judicial system needed by the Muslim ummah in Malaysia. This effort to empower the Syariah Court follows the tenets of a constitutional democracy being practiced in this country, which would be held on to dearly by each and every one of us.
- iv. We are of the opinion that each and every individual is bestowed upon him/her by God a good '*fitrah*' that is inclined towards what is good and is inclined to love everything that brings about goodness. Any decision made by any individual to reject something which is good is not a reflection of his/her true *fitrah* but that decision is under the influence of one's blameworthy desires and lusts. It is therefore a must for everyone to support this effort to bring about goodness to the society as a whole.
- v. Supporting the effort to amend the act, in itself, is a form of interpretation of two of the principles embedded in the *Rukun Negara*, 'The Supremacy of The Constitution' (*Keluhuran Perlembagaan*)⁴³ and 'The Rule of Law' (*Kedaulatan Undang-Undang*).⁴⁴
- vi. We put forward an analogy to describe the current issue at hand. Let us assume that we are the neighbours to a Muslim family. Our neighbour is very strict to their children when it comes to respecting the ethics and moral codes of Islam, and at the same time being respectful to their neighbours. Such an attitude displayed by our neighbour would eventually instill a sense of security in ourselves from the misbehaviors of our neighbour's children (at least they are being disciplined by their parents).

⁴³ This principle stresses the need for all citizens of Malaysia to accept, oblige and protect the supremacy of The Federal Constitution. The Federal Constitution is the primary source of jurisdiction in this country. Its function is to grant protection for each and every citizen of this country and to grant the rights and specialty for them as the citizen of Malaysia. Every single individual in this country is required to respect, acknowledge, and understand the meanings and contents as well as the background of the history of the formation of the Federal Constitution. The Federal Constitution was enacted based on the consent of all races and parties in this country. With that, the constitution is a form of a people's social contract that could not be challenged and disturbed by any individuals or parties. The Federal Constitution determines the political axis and the socio-economical position of the people of this country. It is the ultimate reference for all matters pertaining to the governance, jurisdiction, position and socio-economical rights of the people.

⁴⁴ Justice is based upon the supremacy of laws in which each citizen is deemed equal before the law of the country. Fundamental liberty is secured for every citizens of Malaysia. Our country's laws are based upon the Federal Constitution. That is why its supremacy has to be accepted and defended. Without the laws, social life would be unstable and chaotic. For that, the laws of the country are then secured by a free and authoritative judiciary. Every country needs laws to regulate and create a peaceful, stable and prosperous society. The existence of laws will ensure the lives of the members of a society to be organized and efficient without any chaos, in which every members of the society would feel safe. The rights of the people can be exercised freely as long as it does not violate the laws and matters secured by the Federal Constitution.

- vii. We hereby make a call to all Members of Parliament to support the Act 355 Amendment Bill, for it is being presented by a representative that speaks the hearts and minds of Muslim voters whom would readily accept the empowerment of Syariah Courts in Malaysia.
- viii. We are also keen to plead all the Members of Parliament to support this amendment to carry out your responsibility as Members of Parliament who represent the needs and welfare of Muslim citizens especially when it comes to the domain of familial issues, Islamic religious endowments and charities, Religious places of worship, the institution of *zakat* in you respective constituents.

A Call to All Members of Parliament

Again, to all YBs, respected Members of Parliament, let us contemplate with our utmost effort on the following points: -

- The legislative power to confer criminal sentences suitable to the interest and needs of *Maqasid al-Syariah* is in the hands of the State Legislative Assembly (Dewan Undangan Negeri (DUN)). Discussions can be conducted with higher level of prudence at the level of the State Legislative Assembly.
- In making a decision, sometimes we have to renounce the decision made by other people [of which we disagree to it] with the sole purpose of achieving a far greater 'benefits' for our country and our people.
- A lot of advanced countries would always revise their laws from time to time so that the laws are in line with the demand of the time.⁴⁵
- One shall always remember that our actions today would be a part of history and would surely be judged by our future generations. That is the reality.
- There is no way that the Islamic Syariah can never be implemented or at least empowered in the context of the current existing legislation given the exalted position of the religion of Islam in our country.⁴⁶

I apologize for the language we employ, which may not be truly precise and suitable for us to put forward our views in the issue. That is why, we choose to name this article as Bayan Linnas, Act 355 Amendment Proposal: An Opinion.

⁴⁵ Prof. Ulung Tan Sri Prof. Dr. Mohd Kamal Hassan, International Islamic University Malaysia (IIUM) agreed that the Act 355 Amendment 1987 needs to be improvised, for it has been outdated and is not suitable to be implemented today. This statement of his is taken from a telephone conversation between us on the 27th Ogos 2016.

⁴⁶ According to Professor Ahmad Ibrahim: "*Perkataan Islam dan bukan Uqama Islam yang digunakan dalam perkara 3 bolehlah diujahkan bahawa apa yang dimaksudkan ialah Islam sebagai cara hidup iaitu Islam sebagai Addin. Jika disebut agama-agama lain boleh diamalkan dengan aman dan damai dimana-mana bahagian persekutuan, orang bukan Islam mendakwa bukan sahaja mereka diberi kebebasan mengamalkan kepercayaan dan upacara-upacara agama mereka akan tetapi cara hidup mereka. Jika ini makna yang dikehendaki diberi kepada perkataan agama oleh orang-orang yang bukan Islam lebih-lebih lagi orang Islam berhak memberi makna yang luas kepada Islam sebagai agama persekutuan.*" (see the Article; "*Kedudukan Islam dalam Perlombongan Malaysia*" by Tan Sri Prof. Ahmad Ibrahim, <http://www.Islam.gov.my/buu/artikel2.html>.)

Ultimately, the Truth lies with God, as His words suggests:

الْحَقُّ مِنْ رَبِّكَ فَلَا تَكُونَنَّ مِنَ الْمُمْتَرِينَ

Meaning: “*The truth is from your Lord, so never be among the doubters.*”

Surah al-Baqarah, (2:147)

But whenever and wherever found, we should adhere to and follow the Truth;

الْحَقُّ أَحَقُّ أَنْ يُتَّبَعَ

Meaning: *Right is most worthy to be followed, and truth is most fitting to be listened to.*

Again, I apologize if I am in any way transgressing my limits. With my sincere intention to have us enjoy a prosperous and developed Malaysia, given the seat and responsibility as the *Mufti* of the Federal States appointed to me, I am trying my best to not wander off beyond my ultimate role related to giving out fatwas. The benefits we expect to have by resolving this issue is my ultimate purpose.

The Islamic Syariah does not demand a servant to do things beyond his/her own capabilities. The Islamic Syariah does not put a burden upon the shoulders of a servant that is beyond his/her capacity to perform it. In the Islamic Syariah there would be no difficulties and injustices for the Syariah was revealed as to bring about tranquility, peacefulness and happiness to a servant, both in this world and the hereafter. All this are the salient feature of the Islamic Syariah to instill peace of heart, purification of the soul as well as liberation from the feelings of sorrow and sufferings. Among the ways in which a *syumul* and *tasamuh islami* Syariah can be enacted is by having a judicial system that is both strong and reliable.

We hope that our beloved country, Malaysia, who has just celebrated her 59th Independence Day would experience greater unity, higher level of toleration, and having higher mutual respect among her citizen, as well as achieving peace and harmony resulting in a *Baldatun Tayyibatun Wa Rabbun Ghafur* in the years to come. Amin

We end our edition of Bayan Linnas with the assertion that, by looking at the benefits (*maslahat*) of building a developed and competitive nation, **it is a duty for all of us to support the amendment of Act 355**. We end this edition with a supplication:

اللَّهُمَّ أَرِنَا الْحَقَّ حَقًّا وَأَرِزُقْنَا اتِّبَاعَهُ وَأَرِنَا الْبَاطِلَ بَاطِلًا وَأَرِزُقْنَا اجْتِنَابَهُ

Meaning: “*O Allah! show us the truth as true, and inspire us to follow it. Show us falsehood as falsehood, and inspire us to abstain from it.*”

Your brethren in faith,

Datuk Dr. Zulkifli Mohamad al-Bakri

Mufti of the Federal Territories

1st September 2016 / 29 Zulkaedah 1437