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Advocates & Solicitors
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Tel: +603 2783 9694, Fax: +603 2783 9666

8 Ogos 2018

YB DATO' DR. MUJAHID BIN YUSOF
MENTERI DI JABATAN PERDANA MENTERI (AGAMA)
Aras 10, Blok A,
Kompleks Islam Putrajaya,
No. 23, Jalan Tunku Abdul Rahman,
Presint 3,
62100 PUTRAJAYA.

Serahan Tangan & e-Mel

اَلسَّلَامُ عَلَيْكُمْ وَرَحْمَةُ اللهِ وَبَرَكَاتُهُ

YB Dato',

DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
(BAHAGIAN SIVIL)
SAMAN PEMULA NO: WA-24-18-03/2017
MOHAMED TAWFIK BIN TUN DR ISMAIL (PLAINTIF)
PANDIKAR AMIN BIN HAJI MULIA & YANG LAIN (DEFENDAN-DEFENDAN)

Adalah dengan hormatnya kami merujuk kepada perkara di atas.

2. Kami merupakan peguam cara bersama-sama dengan Encik Rosli Dahlan sebagai kaunsel kepada Pemohon iaitu Encik Mohamed Tawfik bin Tun Dr Ismail dalam perkara ini, sementara Jabatan Peguam Negara ("**AGC**") bertindak bagi pihak Yang di-Pertua Dewan Rakyat yang lalu. Perkara ini ditetapkan untuk bicara pada 02/10/2018. Bersama ini kami lampirkan surat kami kepada Peguam Negara yang kandungannya adalah jelas (sila lihat **Lampiran 1**).

3. Secara ringkasnya, tindakan ini adalah untuk mencabar Usul Hadi berkenaan RUU 355 yang telah dibenarkan pembentangannya oleh Yang di-Pertua Dewan Rakyat terdahulu yang melanggar, antara lainnya, Perkara 38 Perlembagaan Persekutuan. AGC telah gagal untuk membatalkan tindakan

ini. Penghakiman bertulis Mahkamah Tinggi dilaporkan dalam makalah undang-undang [2018] 4 AMR 156 (sila lihat **Lampiran 2**).

4. Penghujahan kami telah diringkaskan oleh Hakim Mahkamah Tinggi di perenggan 44 hingga 49, dan 56 hingga 64 Penghakiman tersebut. Isu utama telah diringkaskan oleh YA Hakim di perenggan 65 seperti berikut:

"The question to be considered by this Court in the trial is whether the defendants have acted in breach of Article 38 of the Federal Constitution by inserting Hadi's motion into the Order Paper and allowing Hadi's motion to be tabled in the Dewan Rakyat without prior consultation or consent of the Conference of Rulers."

5. Anak guam kami telah berbincang dengan Yang di-Pertua Dewan Rakyat yang baru dan beliau telah menyatakan sokongan kepada tindakan kami. YB Dato' sendiri telah memberikan komentar kepada media berkenaan perkara ini yang selari dengan pendirian kami (sila lihat **Lampiran 3**).

6. Kami akan berbesar hati jika YB Dato' dapat menyampaikan pandangan kepada YBhg Peguam Negara dan menyokong usaha kami untuk mendapatkan penyelesaian secara Perintah Persetujuan tanpa keperluan untuk perkara ini dibicarakan di Mahkamah.

7. Nasihat dan panduan dari YB Dato' amatlah dihargai supaya Malaysia di era baru bertunjang kepada keluhuran undang-undang dan dihormati sebagai sebuah negara hukum.

Yang benar,

B/p Tetuan Mansoor Saat & Co.

Salinan: Anak guam

Lampiran 1

Mansoor Saat & Co.
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Peguambela & Peguamcara

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8th August 2018

THE HONOURABLE TUAN TOMMY THOMAS
The Attorney General of Malaysia
Attorney General Chambers of Malaysia
No. 45, Persiaran Perdana Presint 4
62100 Putrajaya W.P., Malaysia

By E-Mail / Hand

Dear Sir,

DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
(BAHAGIAN SIVIL)
SAMAN PEMULA NO: WA-24-18-03/2017
MOHAMED TAWFIK BIN TUN DR ISMAIL (PLAINTIF)
PANDIKAR AMIN BIN HAJI MULIA & YANG LAIN (DEFENDAN-DEFENDAN)

We refer to the above matter.

2. We are the solicitors with Encik Rosli Dahlan as the counsel in this matter for Encik Mohamed Tawfik bin Tun Dr Ismail who is the Plaintiff, and the Attorney-General's Chambers ("**AGC**") is acting on behalf of the Speaker of the former Dewan Rakyat and the Secretary of the Dewan Rakyat. The matter is fixed for hearing on 02/10/2018.

3. The Originating Summons ("**OS**") was filed to challenge the constitutionality of the tabling of Hadi's motion on RUU 355 which was allowed by the former Speaker and Secretary in violation of, amongst others, Article 38 of the Federal Constitution. The AGC had sought to strike out the OS but failed. The written judgment by the High Court is reported in [2018] 4 AMR 156 (see **Attachment 1**)**.**

4. We draw your attention to paragraphs 44 through 49, and 56 through 64 of the judgment. The main issue had been summed up by the learned High Court Judge at paragraph 65 as follows:

"The question to be considered by this Court in the trial is whether the defendants have acted in breach of Article 38 of the Federal Constitution by inserting Hadi's motion into the Order Paper and allowing Hadi's motion to be tabled in the Dewan Rakyat without prior consultation or consent of the Conference of Rulers."

5. After GE14, the current government had tasked the Institutional Reforms Committee ("**IRC**") to ensure full compliance with all constitutional requirements and the Rule of Law. On RUU 355, the Minister in the Prime Minister's Department (Religion), Dato' Dr Mujahid Bin Yusof Rawa is reported to have also questioned its constitutionality (see **Attachment 2**).

6. We are instructed by our client to write this letter to you to draw your attention to this pending matter and to seek a meeting with you for the following reasons: -

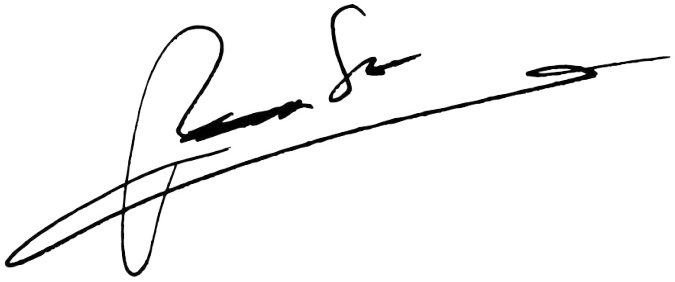
   (i) The current Speaker of the Dewan Rakyat has informed our client that he is in agreement with our client's contention on the unconstitutionality of the proposed amendment to the Syariah Law RUU 355, that it is unconstitutional for the reasons we have stated in the application.

   (ii) If this view of the current Speaker is shared by the AGC, it would change the purpose of the application and perhaps open the door for an amicable Consent Order to the satisfaction of the AGC and the current Speaker on the unconstitutionality of the proposed legislation. This would render the hearing which is fixed for 02/10/2018 unnecessary.

7. Our client hopes to have this discussion with our presence for the reasons of the application and why the constitutionality of the proposed legislation was challenged. Our client thinks that this meeting would be for the mutual benefit of the parties concerned. Thank you.

Yours faithfully,

For Mansoor Saat & Co.



Copy: Client

Lampiran 2

Mohamed Tawfik bin Tun Dr Ismail
v
Pandikar Amin bin Haji Mulia (disaman sebagai Yang di Pertua Dewan Rakyat, Parlimen Malaysia) & Anor

High Court, Kuala Lumpur – Originating Summons No. WA-24-18-03/2017
Kamaludin Said J

February 22, 2018

Civil procedure *– Striking out – Application for – Declarations sought by plaintiff via originating summons ("OS") directly related to proceedings of Dewan Rakyat – Whether High Court has jurisdiction to hear OS – Whether decision made by Dewan Rakyat non-justiciable by virtue of Article 63(1) of the Federal Constitution relating to privileges of Parliament – Federal Constitution, Articles 38, 38(2), (4), 63(1)*

A member of the Malaysian Parliament for the Marang constituency had proposed a motion before the Parliament to amend the Syariah Courts (Criminal Jurisdiction) (Amendment) Bill 2016 ("the motion"). The second defendant, as the Setiausaha Dewan Rakyat, inserted the motion into the Dewan Rakyat's Order Paper for the fifth session of the 13th Parliament sitting. The plaintiff, who is a former Member of Parliament, via letter, notified the first defendant that the insertion of the motion into the Dewan Rakyat's Order Paper did not conform with the Standing Orders of the Dewan Rakyat without it first being referred to or consulted with the Conference of Rulers; and that the tabling of the motion would be in breach of Article 38 of the Federal Constitution ("the FC") read with Order 49 of the Standing Orders of the Dewan Rakyat.

The plaintiff then went on to file and serve an originating summons ("OS") against the defendants for inter alia declaration that the tabling of the private member bill to amend the motion is null and void and that the first defendant has acted ultra vires when he allowed the motion to be tabled in Parliament for the fifth session of the 13th Parliament sitting. Hence the instant application by the defendants to strike out the plaintiff's OS on the grounds that the decision made by the second defendant is non-justiciable by virtue of Article 63(1) of the FC relating to the privileges of Parliament; and that the plaintiff's action is premature and hypothetical as the bill has yet to be debated and finally decided before it can become a valid law.

Issue

Whether the instant High Court has the jurisdiction to hear the plaintiff's OS.

Held, dismissing the defendants' striking out application with no order as to costs

1. Although the defendants submitted that the motion has yet to be tabled, granted leave or debated in the Dewan Rakyat and the motion still has to go through several legal processes before it can become a valid law, the pertinent issue raised here is whether the motion can be accepted without conforming with Order 49 of the Standing Orders and Article 38 of the Federal Constitution. It is too early to assume that the plaintiff has no rights whatsoever under the law to challenge the motion. It is also not correct to say that it is too early for the plaintiff to assume that the bill will be passed and that the rights under the FC will be affected. [*see p 172 para 53*]

2. The usurpation of the Rulers' rights, privileges and powers becomes more serious because the legislative process of bills becoming law under Article 66 of the FC can in fact bypass the Rulers. For that reason, strict adherence to Article 38 of the FC cannot be disregarded. Therefore, any consultation with the Rulers on any law that affects the position of Islam must be prior to its tabling in Parliament. The defendants' conduct can be regarded as contemptuous of the Conference of Rulers and the respective Rulers of the States in the Federation of Malaysia. [*see p 173 para 57*]

3. According to the plaintiff, Article 38(2) and 38(4) of the FC which requires prior consultation must be before the tabling of a bill in order to fit into the scheme of the legislative procedure. It is the only safeguard to protecting the position of the Conference of Rulers as the heads and protectors of Islam in their respective states. The illustration shown by the plaintiff that the arrangement of the Articles in the FC is also significant which he says that Article 38 is set out before the Chapter on Federal Legislature i.e. the provisions on Parliament. The chronological sequence is clear indication that the process to consult the Conference of Rulers must come before a bill is presented to Parliament. [*see p 173 para 58*]

Cases referred to by the court

Bandar Builder Sdn Bhd & 2 Ors v United Malayan Banking Corporation Bhd [1993] 2 AMR 1969; [1993] 4 CLJ 7, SC *(ref)*

Dewan Undangan Negeri Selangor & 2 Ors v Mohd Hafarizam b Harun [2016] 4 AMR 826; [2016] 7 CLJ 143, FC *(ref)*

Fan Yew Teng v Setia Usaha Dewan Rakyat [1975] 2 MLJ 40, HC *(ref)*

Inspector General of Police & Anor v Lee Kim Hoong [1979] 2 MLJ 291, FC *(ref)*

Jamaluddin b Mohd Radzi & 2 Ors v Sivakumar a/l Varatharaju Naidu (dituntut selaku Yang Dipertua Dewan Negeri Perak Darul Ridzuan) (Suruhanjaya Pilihan Raya – Intervener) [2009] 5 AMR 761; [2009] 4 CLJ 347, FC *(ref)*

Lim Woon Chong & Anor v PP [1979] 2 MLJ 264, FC *(ref)*

Michael Ben ak Ponggi v PP [1979] 2 MLJ 65, HC *(ref)*
Sim Kie Chon v Superintendent of Pudu Prison & Ors [1985] CLJ (Rep) 293, SC *(ref)*
Teng Chang Khim (merayu selaku Tuan Speaker Dewan Undangan Negeri Selangor) v Badrul Hisham b Abdullah & Anor [2017] 6 AMR 746; [2017] 5 MLJ 567, FC *(ref)*
Teng Chang Khim & 5 Ors v Dato' Raja Ideris b Raja Ahmad & 2 Ors [2014] 3 AMR 114; [2014] 4 MLJ 12, FC *(ref)*
YAB Dato' Dr Zambry b Abd Kadir & 6 Ors v YB Sivakumar a/l Varatharaju Naidu (dituntut sebagai Yang Dipertua, Dewan Negeri Perak) (Attorney-General Malaysia – Intervener) [2009] 5 AMR 604; [2009] 4 MLJ 24, FC *(ref)*
Yang Dipertua, Dewan Rakyat & 3 Ors v Gobind Singh Deo [2015] 1 AMR 724; [2014] 6 MLJ 812; [2014] 9 CLJ 577, FC *(ref)*

Legislation referred to by the court

Malaysia
Federal Constitution, Articles 3(2), 38, 38(2), (2)(b), (c), (4), (6)(d), 62, 62(1), 63, 63(1), (4), 64, 66, 72(1), 74(3), 76(2), 121(1), Ninth Schedule, List II, item 1
Houses of Parliament (Privileges and Powers) Act 1952
Perak State Constitution, Article XLIV
Rules of Court 2012, Order 18 r 19, Order 33 r 3
Rules of the High Court 1980, Order 18 r 19
Syariah Court (Criminal Jurisdiction) Act 1965
Syariah Courts (Criminal Jurisdiction) (Amendment) Bill 2016

Other references

Erskine May's Treatise, *Law, Privileges, Proceedings and Usage of Parliament*, 23rd edn, 2004, pp 110-112

Rosli Dahlan, Mansor Saat, Nurul Aisyah and Ahmad Fadhil Umar (Lee Hishamuddin Allen & Gledhill) for plaintiff
Shamsul Bolhassan, SFC (AG's Chambers) for defendants

Judgment received: May 16, 2018

Kamaludin Said J

Introduction

[1] This is the defendants' application in encl 9 to strike out the plaintiffs' originating summons ("OS") dated March 31, 2017 for various declarations inter alia that the tabling of the of the private member bill to amend the Syariah Courts (Criminal Jurisdiction) (Amendment) Bill 2016 ("RUU 355") (hereinafter referred to as "the motion") is null and void and that the first respondent has acted ultra vires when he allowed the motion to be tabled in Parliament for the fifth session of the 13th Parliament sitting.

[2] The striking out of the plaintiff's OS is on ground that the declarations sought by the plaintiff are directly related to the proceedings of the Dewan Rakyat which is non-justiciable by virtue of Article 63(1) of the Federal Constitution. Article 63(1) provides that the validity of any proceedings in either House of Parliament or any committee thereof shall not be questioned in any court therefore, this honourable court has no jurisdiction to question the validity of the said decision by virtue of Article 63 of the Federal Constitution.

[3] The plaintiff opposed to the defendants' encl 9 and contended that defendants' assertions as to its absolute power and immunity against the courts' jurisdiction is misconceived.

[4] This court heard the defendants' application and after hearing the oral submissions and also referred to the written submissions from the senior federal counsel for the defendants and counsel for the plaintiff, this court adjourned the decision to February 22, 2018.

[5] Having considered encl 9 and submissions of the respective parties, in my considered opinion this court has jurisdiction to hear the plaintiff's OS. This is not a plain and obvious case for this court to strike out the plaintiff's OS. The defendants' application in encl 9 is dismissed with no order as to costs.

[6] The encl 1 of the applicant is to proceed for hearing on merits.

Cause papers

[7] The following cause papers before this court are as follows:

a) Originating summons dated March 31, 2017 filed by the plaintiff ("originating summons");

b) The plaintiff's affidavit in support of the originating summons affirmed by Mohamed Tawfik bin Tun Dr Ismail on March 27, 2017 ("the plaintiff's affidavit (1)");

c) The plaintiff's supplementary affidavit affirmed by Mohamed Tawfik bin Tun Dr Ismail on April 7, 2017 ("the plaintiff's supplementary affidavit");

d) The defendants' affidavit in reply affirmed by Pandikar Amin bin Haji Mulia on August 24, 2017 ("the defendants' affidavit in reply");

e) The plaintiff's affidavit in reply affirmd by Mohamed Tawfik bin Tun Dr Ismail on October 26, 2017 ("the plaintiff's affidavit in reply");

f) The defendants' notice of application dated August 24, 2017 ("encl 9");

g) The defendants' affidavit in support affirmed by Pandikar Amin bin Haji Mulia on August 24, 2017 ("the defendants' affidavit in support of encl 9");

h) The plaintiff's affidavit in reply to notice of application affirmed by Mohamed Tawfik bin Tun Dr Ismail on October 26, 2017 ("the plaintiff's affidavit in reply to striking out application"); and

i) The plaintiff's additional affidavit in reply affirmed by Mohamed Tawfik bin Tun Dr Ismail on December 8, 2017 ("the plaintiff's additional affidavit in reply").

Brief facts of the case

[8] The plaintiff is a Malaysia citizen, voter and former Member of Parliament whilst the first and second defendants are Tuan Yang di-Pertua and Secretary to the Dewan Rakyat respectively.

[9] It is not disputed that Dato' Seri Abdul Hadi bin Awang, who is a member of the Malaysian Parliament for Marang constituency had proposed a motion before the Parliament, which is as follows:

> Bahawa Dewan ini memberikan kebenaran menurut Peraturan Mesyuarat 49(1) kepada Yang B erhormat Ahli bagi kawasan Marang untuk mencadangkan suatu Rang Undang-undang Ahli Persendirian bernama Rang Undang-undang Mahkamah Syariah (Bidang Kuasa Jenayah)(Pindaan) 2016 seperti berikut:
>
> *Pindaan Seksyen 2*
>
> Akta Mahkamah Syariah (Bidang Kuasa Jenayah) 1965 [Akta 355] dipinda dalam proviso kepada seksyen 2 dengan menggantikan perkataan *"penjara selama tempoh melebihi tiga tahun atau denda melebihi lima ribu ringgit atau sebatan melebihi enam kali"* dengan perkataan *"penjara selama tempoh melebihi tiga puluh tahun atau denda melebihi satu ratus ribu ringgit atau sebatan satu ratus kali sebagai mana ditadbir selaras dengan tatacara jenayah Syariah"*.
>
> ("Hadi's motion")

[10] Hadi's motion is for an amendment known as the Rang Undang-undang Mahkamah Syariah (Bidang Kuasa Jenayah) (Pindaan) 2016 (RUU 355).

[11] The second defendant, who is the Setiausaha Dewan Rakyat had inserted Hadi's motion into the Dewan Rakyat's Order Paper for the first meeting of the fifth session of the 13th Parliament held between March 6, 2017 and April 6, 2017.

[12] By letter dated March 22, 2017, the plaintiff's solicitors notified the first defendant that the insertion of Hadi's motion into the Dewan Rakyat's Order Paper does not conform with the Standing Orders of the Dewan Rakyat ("the Standing Orders") and that the tabling of Hadi's motion would be in breach of

Article 38 of the Federal Constitution read with Order 49 of the Standing Orders without it first being referred to or consulted with the Conference of Rulers. The plaintiff's solicitors also requested the first defendant to remove Hadi's motion from the Dewan Rakyat's Order Paper until there is compliance with the provisions of the Federal Constitution and Standing Orders of the Dewan Rakyat.

[13] By letter dated March 23, 2017, the first defendant replied that he has taken note of the issues raised.

[14] Despite the reply by the first defendant, the plaintiff filed and served the originating summons on March 31, 2017 and April 5, 2017.

[15] The motion was however tabled on April 6, 2017 but was not debated. Thereafter, the motion was neither tabled nor debated at the second and third meetings of the 13th Parliament held between July 24, 2017 to August 10, 2017 and January 23, 2017 to November 30, 2017.

Grounds for striking out

[16] In the defendants' application and submissions, it is clear that the striking out of the plaintiff's originating summons is based on two (2) grounds which are as follows:

i) The decision made by the second defendant is non-justiciable by virtue of Article 63(1) of the Federal Constitution relating to the privileges of Parliament.

ii) The plaintiff's action is clearly premature and hypothetical as the bill has yet to be debated and finally decided before it can become a valid law.

[17] It was submitted that by virtue of Article 62(1) of the Federal Constitution, each House of Parliament shall regulate its own procedure. In this case the procedure for questions is regulated by the Standing Orders. Based on Article 63 of the Federal Constitution, any motion or matter presented to the House and authorised by the Yang di-Pertua of Dewan Rakyat under Order 49 of the Standing Orders is an integral part of the proceedings in any House of Parliament. The proceedings in any House of Parliament also include matters for every meeting listed in the order of business.

[18] Therefore, any decision made by the defendants in respect of matters for every meeting listed in the order of business is an integral part of the proceedings in the Dewan Rakyat.

[19] Based on the trite legal position of the parliamentary privileges and immunity, it was submitted that the plaintiff's prayers for the declarations sought are unjusticiable. The prayers sought against the defendants are intended to effectively stop the tabling of the motion before the House. Section 7 clearly

shows that civil proceedings should not be imposed on the members of the House in any matter produced before the House or any committee and in this case, the matter is the motion to be tabled by the first defendant before the House. In other words, the declarations sought by the plaintiff are directly related to the proceedings of the Dewan Rakyat which is non-justiciable by virtue of Article 63(1) of the Federal Constitution .

[20] The latest Federal Court decisions in *Teng Chang Khim & 5 Ors v Dato' Raja Ideris bin Raja Ahmad & 2 Ors* [2014] 3 AMR 114; [2014] 4 MLJ 12 and *Teng Chang Khim (merayu selaku Tuan Speaker Dewan Undangan Negeri Selangor) v Badrul Hisham bin Abdullah & Anor* [2017] 6 AMR 746; [2017] 5 MLJ 567 reaffirmed the legal principles of parliamentary privilege and non-justiciability of the validity of its proceedings pursuant to Article 63 of the Federal Constitution.

[21] It was submitted that although the motion was listed in the Order Paper for the second and third meetings of the fifth session of 13th Parliament held between July 24, 2017 to August 10, 2017 and October 23, 2017 to November 30, 2017, the motion has yet to be tabled, granted leave or debated in the Dewan Rakyat. The motion still has to go through several legal processes before it can become a valid law.

[22] Therefore, it was submitted that at this stage the plaintiff has no rights whatsoever under the law to challenge the motion. It is too early for the plaintiff to assume that the bill will be passed and that the rights under the Constitution will be affected. The plaintiff's action is clearly premature and hypothetical as the bill has yet to be debated and finally decided before it can become a valid law.

[23] It is obvious from the plaintiff's originating summons that the declarations sought are not only hypothetical in nature i.e. the presumption that the bill will be passed, but also because this issue is not subject to this court's jurisdiction. It is too early for the plaintiff to make any presumption as to what would happen to the motion.

[24] It was further submitted that the constitutionality of the bill once it becomes law can still be challenged like any other laws. Since the plaintiff brought this action with no prospect of success, the plaintiff's originating summons ought to be struck out.

[25] Based on those grounds above, the defendants submitted that the plaintiff's action is plainly and obviously unsustainable and the action is clearly an abuse of the process and ought to be struck out.

Plaintiff's reply

[26] In the submission of the plaintiff, it was stated that the originating summons was filed due to the defendants' failure to abide by Article 38 of the Federal Constitution and Order 49 of the Standing Orders.

[27] The plaintiff submitted that the defendants' objection to the jurisdiction of this court is by itself not a basis for seeking to strike out the plaintiff's originating summons. The established principles stated above show that the defendants should have resorted to Order 33 r 3 of the Rules of Court 2012 as this is not a plain and obvious case or disclosing no reasonable cause of action. To the contrary, the plaintiff's complaint of constitutional violations by the defendants is a serious question to be decided by this court.

[28] It was also submitted that the question to be considered by this honourable court is whether the defendants have acted in breach of Article 38 of the Federal Constitution by inserting Hadi's motion into the Order Paper and allowing Hadi's motion to be tabled in the Dewan Rakyat without prior consultation or consent of the Conference of Rulers.

[29] Article 121(1) of the Federal Constitution clearly provides that the High Court has the power and jurisdiction to ascertain whether the defendants had gone beyond the powers conferred on them in the act of inserting Hadi's motion for tabling which may cause a significant impact to the country and ultimately affect the power of the constitutional monarch.

[30] Finally, it was submitted that the defendants are not immune from scrutiny by the High Court by virtue of Articles 62 and 63 of the Federal Constitution when their very acts are in breach of the Federal Constitution? It is the court's power to ensure that the defendants' exercise of powers is within the intended limit.

The law for striking out

[31] It has been consistently stated by our courts that any pleading may be struck out under Order 18 r 19 of the Rules of Court 2012 if it is obviously unsustainable and should only be exercised in plain and obvious cases.

[32] Reference can be made to the Supreme Court case of *Bandar Builder Sdn Bhd & 2 Ors v United Malayan Banking Corporation Bhd* [1993] 2 AMR 1969; [1993] 4 CLJ 7 whereby his Lordship Mohamed Dzaiddin bin Hj Abdullah SCJ (delivering the judgment) held as follows:

> *At p 1975 (AMR); p 11 (e-h) (CLJ):* The principle upon which the court acts in exercising its power under any of the four limbs of Order *18 r 19(1) of the RHC* are well settled. *It is only in plain and obvious cases* that recourse should be head to be summary process under this rule (per *Lindley MR in Hubbuch* & *Sons Ltd v Wilkinson, Heywood* & *Clark Ltd*), and this summary procedure can only be adopted when *it can be clearly seen that* a *claim or answer is on the face of it "obviously unsustainable"* (see *AG of Duchy of Lancaster v L* & *Nw Rly Co*). It cannot be exercised by a minute examination of the documents and facts of the case, in order to see whether the party has a cause of action or a defence (see *Wenlock v Moloney* & *Ors*) ... The court must be satisfied that there is no reasonable cause of action or that the claims are frivolous or vexatious or that the defences raised are not arguable.

[33] Meanwhile in Supreme Court case of *Sim Kie Chon v Superintendent of Pudu Prison & Ors* [1985] CLJ (Rep) 293 his Lordship Abdul Hamid Omar CJ held as follows:

> *At p 294 (g):* The principles governing the striking out of pleadings is clear in that it is only in plain and obvious cases that recourse should be had to the summary process under Order 18 r 19 of the Rules of the High Court 1980: "the summary procedure under this Rule can only be adopted when it can clearly be seen that a claim or answer is on the face of it "obviously unsustainable" (*Attorney General of Duchy of Lancaster v L & NW Railway Co* (1892) 3 Ch 274) (Supreme Court Practice 1985).

Opinion of this court

[34] It is trite that the principle governing the striking out of pleadings is clear in that it is only in plain and obvious cases that recourse should be had to the summary process under Order 18 r 19 of the Rules of the High Court 1980 (now the Rules of Court 2012): the summary procedure under this rule can only be adopted when it can be seen that a claim or answer is on the face of it "*obviously unsustainable*".

[35] The defendants submitted the plaintiff's claim is plainly and obviously unsustainable as there is no reasonable course of action against the defendants and the action is clearly an abuse of the process of the court because the decision made by the second defendant is *non-justiciable* by virtue of Article 63(1) of the Federal Constitution which provides that *"the validity of any proceedings in either House of Parliament or any committee thereof shall not be questioned in any court"*.

[36] It is trite that in all cases it is the court's power to ensure that any exercise of powers must be within the intended limit. In other words, the courts will ensure that the body acts in accordance with the law. However, in this case, Article 63(1) of the Federal Constitution provided an ouster clause that any proceedings in either House of Parliament or any committee thereof shall not be questioned in any court. In other words, if the matter falls under the realm of Parliament, the court has no jurisdiction to interfere.

[37] The law governing exercise of powers in respect of proceedings in either House of Parliament or any committee has been settled in a number of Federal Court's decision. There are decisions of the Federal Court which decided that Article 63(1) of the Federal Constitution is justiciable and also decisions which held that the said Article is non-justiciable. The decisions of the Federal Court clearly based on the circumstances of the facts in those cases. The decisions are clear that Article 63(1) is held justiciable if there is reason for the court to ascertain whether the power that has been claimed has been provided for.

[38] The Federal Court in *YAB Dato' Dr Zambry bin Abd Kadir & 6 Ors v YB Sivakumar a/l Varatharaju Naidu (dituntut sebagai Yang Dipertua, Dewan Negeri*

Perak) (Attorney-General Malaysia – Intervener) [2009] 5 AMR 604; [2009] 4 MLJ 24 has finally dealt with this issue. In *Dato' Dr Zambry* case, the Federal Court concluded that Article 63 of the Federal Constitution does not oust the court's jurisdiction and that the court has the jurisdiction to ascertain whether particular power that has been claimed has in fact been provided for. It was held that:

> [46] It follows that Article 72(1) must be read as being subject to the existence of a power of jurisdiction, be it inherent or expressly provided for, to do whatever that has been done. The court is empowered to ascertain whether a particular power that has been claimed has in fact been provided for. The issues raised by the applicants are therefore justiciable.

[39] The judicial pronouncement in the *YAB Dato' Dr Zambry* (supra) was cited with approval in the more recent Federal Court case of *Yang Dipertua, Dewan Rakyat & 3 Ors v Gobind Singh Deo* [2015] 1 AMR 724; [2014] 6 MLJ 812 which held that:

> [26] The judicial pronouncements of the Federal Court in *YAB Dato' Dr Zambry bin Abd Kadir & 6 Ors v YB Sivakumar a/l Varatharaju Naidu (dituntut sebagai Yang Dipertua, Dewan Negeri Perak) (Attorney-General Malaysia – Intervener)* [2009] 5 AMR 604; [2009] 4 MLJ 24 apply with equal force to the argument on the issue of non-justiciability premised on Article 63(1) of the Constitution, even though that case was in relation to proceedings in a Legislative Assembly under Article 72(1) of the Constitution. In that case, the Federal Court held that Article 72(1) of the Constitution must be read as being subject to the existence of the Constitution must be read as being subject to the existence of a power of jurisdiction (be it inherent or express) to do whatever that has been done and that the court had the jurisdiction to ascertain whether the power that has been claimed has been provided for, rendering the issue raised by the applicant in that casejusticiable.
>
> [38] It must be understood that Standing Orders are written rules formulated and formally adopted by the House to regulate its own proceedings, e.g. how business is arranged or conducted, how the behavior of the Members of Parliament are supposed to behave, and rules to be applied on Committees and the like. Under s 2 of the Houses of Parliament (Privileges and Powers) Act 1952 "standing orders" means the Standing Rules and Orders of the House for the time being in force. It is trite that new Standing Orders may be adopted, suspended, modified and even deleted by way of consensus or by a simple majority vote, on a motion moved by any Member of Parliament (see for analogy *House of Commons Procedure and Practice Edition* by Robert Marleau and Camille, Montpetit). They remain "standing" or effective until the House states otherwise. Some procedures that have developed through precedents including through rulings made by the Speaker and resolutions of the House may not even be written in the Standing Orders and may only last until the end of a session.
>
> [39] By comparison, a piece of legislation, which at its early stage is called a Bill, will have to go through the hassle of three readings, before being passed by Parliament. In the process enroute to being passed as law, and in order to

overcome all the minefields, the Minister, his Deputy or the Parliamentary Secretary will need all the "skill, dexterity and astuteness which do not come overnight" (*Reflecting on Cabinet Governing* by Rais Yatim p 469). In short, in comparison to an Act, which has to go through much trial and tribulation before being passed as law, a Standing Order's route is so mild and temporary. Suffice on that reasoning a Standing Order can never be in the same league with a piece of legislation let alone override the Constitution. Rober Marleau and Camille, Montpetit in *House of Commons Procedure and Practice* in clear terms said:

> "In the hierarchy of Parliamentary procedure, just as statutory provisions cannot set aside constitutional provisions, Standing Orders cannot set aside statutory law. Only Parliament can enact or amend statutory provisions; the House of Commons can adopt its own rules as long as they respect the written constitution and statutory law."

[40] It is therefore in conceivable that Parliament, after passing a motion, is permitted to allude to the Standing Orders when faced with the want of statutory authority, to suspend the remuneration of the respondent, a course of action that unwittingly renders a constitutional provision meaningless. In the circumstances of the case it is therefore manifestly patent that the motion to disentitle the respondent of his allowance and benefits was devoid of legal foundation. A constitutional protection granted to Members of Parliament by the imperative provision of Article 64 of the Federal Constitution, which takes in the form of the Houses of Parliament (Privileges and Powers) Act 1952, could not simply be displaced in the absence of clear law.

[40] On the other hand, the Federal Court in the case of *Teng Chang Khim & 5 Ors v Dato' Raja Ideris b Raja Ahmad & 2 Ors* [2014] 3 AMR 114; [2014] 4 MLJ 12 is referred to and it was held as follows:

> At the outset of its discussion on the justiciability of the orders sought by the applicants which was governed by *Article 72(1)* of the *Federal Constitution,* this court made it clear that *the alleged contempt committed by the appellants resulting in the impugned orders of suspension against them did not arise within the walls of the assembl y but outside it, and that therefore the critical issue for the deliberation of the court was whether provision has been made for such contempt:*
>
> As we answered only the first two questions this part of the judgment shall be confined only to an analysis of the law relating to them. *In answering the questions, it must be remembered that the alleged contempt 's committed by the applicants resulting in their suspension did not arise within the walls of the legislative assembl y but outside it.* This is obvious as the charge against them is for, inter alia, wrongly holding themselves out as Menteri Besar and Executive Council Members respectively. Thus the critical issue for deliberation is whether provision has been made for such contempt as envisaged by the two questions.
>
> Indeed, the importance of the fact that the alleged acts of contempt were committed beyond the walls of the Legislative Assembly was emphasised further in the judgment of this court where, immediately after referring to *Kielley v Carson*

4 Moore's PC Cases, (in which it was held that in the absence of express grant, legislative assemblies in the British Colonies have no power to adjudicate or punish contempt committed beyond their walls), it concluded that there must be specific legal authority to take cognisance of and punish for contempt, and that that was particularly significant where the alleged contempt was committed beyond the wall of the legislative assembly. ... Thus it has been held in *Kielley v Carson 4 Moore's* PC Cases that the legislative assemblies in the British Colonies have, in the absence of express grant no power to adjudicate upon or punish, contempts committed beyond their walls.

It is thus manifestly patent that there must be specific legal authority to take cognisance of and punish for contempt. This is particularl y significant where the alleged contempt was committed beyond the walls of the legislative assembly. The need for such authority is recognised in Article XLIV of the Perak Constitution which reads as follows:

> (1) Subject to the provisions of the Federal Constitution and this Constitution, the legislative assembly shall regulate its own procedure and may, from time to time, make, amend and revoke standing rules and orders for the regulation and orderly conduct of its own proceedings and the conduct of business.

The decision in *Kielly v Carson* that in the absence of express grant, the legislative assemblies in the British Colonies have no power to adjudicate upon or punish, contempt committed beyond their walls, was the basis for this court's decision that there must be specific legal authority to take cognisance of and punish for contempt. That was particularly significant where the alleged contempt was committed beyond the walls of the legislative assembly. In our view, the judgment of this court that *Article 72(1)* of the *Federal Constitution* must be read as being subject to the existence of a power or jurisdiction (be it inherent or expressly provided for) to do whatever that has been done and that the court was empowered to ascertain whether the power that has been claimed has been provided for, should be read in light of the factual context of the case as aforesaid, and the critical issue whether there existed a power for the Legislative Assembly to suspend certain assemblymen for specific alleged acts of contempt. It follows that the ratio decidendi to be distilled from the judgment should be limited accordingly. We do not believe that the judgment in *Dato' Dr Zambry*'s case can be taken to have laid down the proposition that all acts of the legislative assemblies and that of their committees, or the Houses of Parliament and that of their committees are amenable to scrutiny and correction by the courts, because that will render meaningless the constitutional immunity guaranteed under *Articles 72(1)* and *63(1)* of the *Federal Constitution* of the Federal Constitution and para 2 in the Schedule to the Selangor Constitutions (as well as Constitutions of other states having similar provisions).

Unlike *Dato' Dr Zambry*'s case, the present appeal is concerned with the resolution of the legislation assembly made within its walls establishing a select committee and the conduct and proceedings which took place within that committee. *Dato' Dr Zambry*'s case is therefore distinguishable. What we have said thus far is

sufficient to dispose of the present appeal. Be that as it may, additionally, in our view, even if the decision in *Dato' Dr Zambry*'s case is to be applied to the present appeal, our conclusion on the justiciability of the matters raised in the originating summons would still be the same. Applying *Dato' Dr Zambry*'s case the question is – was there in existence a power or jurisdiction (be it inherent or expressly provided for) to support the motion and resolution of the SLA in establishing SELCAT. If there existed such a power or jurisdiction then the proceedings of the SLA in establishing SELCAT and the ensuing proceedings of SELCAT must be immune from legal challenge in a court of law by virtue of *Article 72(1)* of the *Federal Constitution* and paragraph 2 in the Schedule to the Selangor Constitution. On the other hand, if such a power or jurisdiction did not exist, then the court was empowered to enquire into the proceedings and nullify the aforesaid resolution made by the SLA. Elsewhere in this judgment, "we have set out the crucial provisions relating to parliamentary privileges applicable to State Legislative Assemblies provided under *Article 72* of the *Federal Constitution* and paragraphs 2 and 3 in the Schedule to the Selangor Constitution. Under Article 75 of the Selangor State Constitution, the SLA is the master of its own proceedings and conduct of its business. It is empowered to regulate its own procedure, to make, amend and revoke Standing Rules and Orders for the regulation and orderly conduct of its own proceedings and conduct of business ...

(Emphasis added.)

[41] Therefore, it can be summarised that in *Gobind Singh Deo*'s case and *Dato' Dr Zambry*'s case, the Federal Court decided that Article 63(1) of the Federal Constitution cannot oust the jurisdiction of court. In *Gobind Singh Deo,* it was held that the motion to disentitle the respondent of his allowance and benefits was devoid of legal foundation. It says that a constitutional protection granted to Members of Parliament by the imperative provision of Article 64 of the Federal Constitution, which takes in the form of the Houses of Parliament (Privileges and Powers) Act 1952, could not simply be displaced in the absence of clear law. In other words, the power for disentitlement of allowance and benefit of Gobind Singh Deo, have not been provided for. Similarly, in *Dato' Dr Zambry*'s case, the court had the jurisdiction to ascertain whether the power that has been claimed has been provided for, rendering the issue raised by the applicant in that case justiciable. The court found that Article XLIV of the Perak State Constitution read together with the Standing Orders of the Legislative Assembly and the Legislative Assembly (Privileges) Enactment 1959 do not provide for the offence of contempt and the resultant punishment of suspension from attending sessions of the State Legislative Assembly. The suspension of the applicants on account of the alleged contempt committed by them is null and void. In other words, there is no clear provision on the offence of contempt and matters related to it therefore any action done on contempt on *Dato' Dr Zambry* without legal power shall be considered as illegal and void.

[42] It is not disputed that by Article 62(1) of the Federal Constitution, each House of Parliament shall regulate its own procedure. In this case the tabling of

the of the private member bill to amend the Syariah Courts (Criminal Jurisdiction) (Amendment) Bill 2016 (RUU 355) is proceedings under Order 49 of the Standing Orders therefore, it is an integral part of the proceedings in any House of Parliament. Proceedings in any of House Parliament also include matters for every meeting listed in the order of business.

[43] What is "proceedings in Parliament? The Federal Court in *Jamaluddin bin Mohd Radzi & 2 Ors v Sivakumar a/l Varatharaju Naidu (dituntut selaku Yang Dipertua Dewan Negeri Perak Darul Ridzuan) (Suruhanjaya Pilihan Raya – Intervener)* [2009] 5 AMR 761; [2009] 4 CLJ 347 interpreted the words "proceedings in the legislative assembly" in Article 72(1) of the Federal Constitution (in pari material with Article 63(1) of the Federal Constitution) by adopting the meaning ascribed to "proceedings in Parliament" by Erskine May's *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 23rd edn, 2004, at pp 110-112:

> *The term "proceedings in Parliament" has received judicial attention (not all of it in the United Kingdom) but comprehensive lines of decision have not emerged and indeed it has been concluded that an exhaustive definition could not be achieved. Nevertheless,* a *broad description is not difficult to arrive at. The primary meaning of proceedings* as a *technical parliamentary term, which it had at least* as *early* as *the seventeenth century, is some formal action, usually a decision, taken by the House in its collective capacity. This is naturally extended to the forms of business in which the House taken action, and the whole process, the principal part of which is debate, by which it reaches a decision. An individual member takes part in a proceeding usually by speech, but also by various recognized forms of formal action, such* as *voting, giving notice of* a *motion, or presenting* a *petition or report from* a *committee, most of such actions being time saving substituted for speaking.*

[44] The plaintiff in his submission did not dispute that the motion or matter presented to the House was made under Order 49 of the Standing Orders which is an integral part of the proceedings in any House of Parliament. What was submitted by the plaintiff is that the power of Parliament to make law is exercisable subject to any conditions or restrictions imposed with respect to any particular matters by this constitution. Counsel referred to Article 74(3) where the Legislature of a State is conferred with the power to may make laws with respect to any of the matters enumerated in the State List (that is to say, the Second List set out in the Ninth Schedule) or the Concurrent List. In view of that and when in the matter of making law on Islam the relevant restrictions are to be followed:

1. Under Article 38(2)(b) and 38(6)(d), the conference of rulers has discretionary functions in relation to the "agreeing or disagreeing to the extension of any religious acts, observances or ceremonies to the Federation as a whole". Enforcement of a uniform law over all the states amounts to "extension of any religious acts, observances to the Federation as a whole" If the defendants' rebuttal is that the existing Syariah Court (Criminal Jurisdiction) Act 1965 was not passed with the

prior consent of the COR, then the answer should be that the constitutionality of the 1965 Act is open to question.

2. Article 76(2) is clear that "no law shall be made in pursuance of paragraph (a) of clause (1) with respect to any matters of Islamic law or the custom of the Malays ... and no bill for a law under that paragraph shall be introduced into either House of Parliament until the government of any state concerned has been consulted". No argument of parliamentary privilege can disregard this prior constitutional requirement.

3. Under Article 38(4) "no law directly affecting the privileges, position, honors or dignities of the Rulers shall be passed without the consent of the Conference of Rulers". It is submitted that the term "law" must refer to a bill, for if something is already "law" then there will be no need to seek anyone's consent. It is submitted that before a bill affecting the privileges, position etc. of the rulers is introduced and passed, the clearance of the conference of rulers must be obtained.

4. There are political precedents about this prior consent in matters relating to Islam. A few years ago, Minister Nazri announced that a bill was on the anvil to resolve the issues arising out of the unilateral conversions of children to Islam. A few days before the bill was introduced, the conference of rulers instructed that it must be approached first. The bill was withdrawn.

5. Under Article 38(2)(c), the Conference of Rulers has an absolute discretion to consent or withhold consent to any law that requires the consent of the COR or is to be made after consultation with the conference. The term "law" must be interpreted to mean a "bill" for if something is already "law" then there is no need to seek any further consent of anyone.

[45] It was submitted that disregard of and challenge to the exclusive rights of Rulers and the Conference of Rulers over matters of Islam may as well constitute sedition. The law of parliamentary privileges is subordinate to the law of sedition (Article 63(4) of the Federal Constitution).

[46] Therefore, it was submitted that if a matter relates to the internal proceedings of Parliament and is regulated *solely* by the Standing Orders and/or resolution of the House, then the House has exclusive jurisdiction and the courts will not interfere. But where statutory law or the Constitution is involved, it is the duty of the courts to keep Parliament within its constitutional limits – both substantive and procedural. Parliamentary privileges cannot displace the law of the Constitution. For example, in *Inspector General of Police & Anor v Lee Kim Hoong* [1979] 2 MLJ 291 and *Lim Woon Chong & Anor v PP* [1979] 2 MLJ 264, courts examined the contention whether papers relating to the proclamation of

emergency were or were not laid in Parliament as is required by Article 150(3). Decisions on disqualification have been subjected to judicial review: *Fan Yew Teng v Setia Usaha Dewan Rakyat* [1975] 2 MLJ 40 and *Michael Ben anak Ponggi v PP* [1979] 2 MLJ 65. An MP's salary cannot be withheld despite his suspension.

[47] Accordingly, it was submitted that RUU 355 is unconstitutional because Ninth Schedule, List II, item 1 requires that Syariah Court shall not have jurisdiction in respect of offences except in so far as conferred by federal law. Jurisdiction is about: (i) Who may be tried? (ii) What offences may be tried? (iii) The punishments that may be imposed.

[48] In this case, it was viewed that RUU 355 fails to perform task number (ii).

[49] Following the plaintiff's argument , it will mean that the second defendant had blatantly disregarded the Standing Orders by inserting Hadi's motion into the Dewan Rakyat's Order Paper whereas it did not fulfill the requirements of Order 49 of the Standing Orders which provides:

> 49. (1) Any private member desiring to introduce a Bill may, subject to the provisions of Article 67 of the Federal Constitution, apply to the House for leave to do so, and shall, at the same time, *submit a copy of the Bill with an explanatory statement of the objects and reasons* but shall not contain any argument.
>
> (2) Every such application shall be made in the form of a motion, and the member making such application shall at the same time deliver to the Setiausaha a copy of his motion containing the title of his proposed Bill. *The Setiausaha shall refuse to accept any application which does not conform with the requirement of these Standing Orders or any Federal law.*

[50] Secondly, it was alleged that the members of the Dewan Rakyat were not provided with a copy of Hadi's motion with RUU 355 or an explanatory statement of the objects and reasons. Thus, pursuant to Order 49(2) of the Standing Orders, the second defendant should have refused to accept Hadi's motion which clearly did not conform with Order 49 of the Standing Orders and Article 38 of the Federal Constitution.

[51] It was also alleged that despite having been notified by the plaintiff, the first defendant neglected to carry out his duties as the Yang di-Pertua Dewan Rakyat in accordance with the Federal Constitution. The first defendant allowed the tabling of Hadi's motion in blatant disregard to the fact that no consent was obtained from the Conference of Rulers, contrary to the provisions of the Federal Constitution. Thus, he had acted in violation of Article 38 of the Federal Constitution and in contempt of the position of the Conference of Rulers as constitutional protectors of Malaysian citizens of the Islamic faith.

[52] Based on the above submissions, it is clear that while Order 49 of the Standing Orders is within exclusive jurisdiction of the Parliament and the courts

will not interfere, the issue is whether without the consent of Rulers under Article 38(2) of the Federal Constitution, can Hadi's Motion with RUU 355 be accepted under Order 49 of the Standing Orders? It is not disputed that the motion was listed in the Order Paper for the second and third meetings of the Fifth Session of 13th Parliament held between July 24, 2017 to August 10, 2017 and October 23, 2017 to November 30, 2017.

[53] Although the defendants submitted that the motion has yet to be tabled, granted leave or debated in the Dewan Rakyat and the motion still has to go through several legal processes before it can become a valid law, the pertinent issue raised here is whether can the motion be accepted without conforming with Order 49 of the Standing Orders and Article 38 of the Federal Constitution. Similarly, it my opinion it is too early to assume that the plaintiff has no rights whatsoever under the law to challenge the motion. It is also not correct to say that it is too early for the plaintiff to assume that the bill will be passed and that the rights under the Constitution will be affected.

[54] Article 38(2) of the Federal Constitution provides:

> (2) The Conference of Rulers shall exercise its functions of –
>
> ...
>
> (b) agreeing or disagreeing to the extension of any religious acts, observances or ceremonies to the Federation as a whole;
>
> ...
>
> and may deliberate on questions of national policy (for example changes in immigration policy) and any other matter that it thinks fit.

[55] Article 38(4) of the Federal Constitution also provides:

> (4) No law directly affecting the privileges, position, honours or dignities of the Rulers shall be passed without the consent of the Conference of Rulers.

[56] It is not disputed that RUU 355 involves and relates to religious acts and affects the position of Rulers as the Head of Islam for each state. It was submitted that without prior consent obtained, the tabling of RUU 355 is an act which usurps the position of the Rulers and the Conference of Rulers respectively. Article 3(2) of the Federal Constitution provides:

> (2) In *every State* other than States not having a Ruler *the position of the Ruler as the Head of the religion of Islam* in his State in the manner and to the extent acknowledged and declared by the Constitution of that State, and, subject to that Constitution, *all rights, privileges, prerogatives and powers enjoyed by him as Head of that religion, are unaffected and unimpaired;* but in any acts, observances of ceremonies with respect to which the Conference of Rulers has agreed that they should extend to the Federation as a whole each of the

other Rulers shall in his capacity of Head of the religion of Islam authorize the Yang di-Pertuan Agong to represent him.

[57] The usurpation of the Rulers' rights, privileges and powers becomes more serious because the legislative process of bills becoming law under Article 66 of the Federal Constitution can in fact bypass the Rulers. For that reason, strict adherence to Article 38 of the Federal Constitution cannot be disregarded. Therefore, any consultation with the Rulers on any law that affects the position of Islam must be prior to its tabling in Parliament. The defendants' conduct can be regarded as contemptuous of the Conference of Rulers and the respective Rulers of the States in the Federation of Malaysia.

[58] Thus, according to the plaintiff, Article 38(2) and 38(4) of the Federal Constitution which requires prior consultation must be before the tabling of a bill in order to fit into the scheme of the legislative procedure. It is the only safeguard to protecting the position of the Conference of Rulers as the heads and protectors of Islam in their respective states. The illustration shown by the plaintiff that the arrangement of the Articles in the Federal Constitution is also significant which he says that Article 38 is set out before the Chapter on Federal Legislature i.e. the provisions on Parliament. The chronological sequence is clear indication that the process to consult the Conference of Rulers must come before a bill is presented to Parliament.

[59] It becomes incumbent on the first and second defendants to act in accordance with the oaths of office that they have undertaken to preserve, protect and defend the Federal Constitution.

[60] There seems to be a forceful argument by the plaintiff whether before accepting Hadi's motion to table the RUU 355 under Order 49 of the Standing Orders, the defendants must make sure the RUU 355 must get the consent of Rulers under Article 38 of the Federal Constitution, otherwise it will be the defendants' blatant act of inserting Hadi's motion to table RUU 355 without prior consent from nor consultation with the Conference of Rulers and such an act is inconsistent with the Federal Constitution.

[61] By that reason, it is my considered opinion that the court is empowered to ascertain if the exercise of power has been properly carried out, during the full trial.

[62] The defendants have claimed immunity from the court process by relying on the House of Parliament (Privileges and Powers) Act 1952. It is trite law that parliamentary privileges must not transgress any provisions of the Federal Constitution. In the case of *Dewan Undangan Negeri Selangor & 2 Ors v Mohd Hafarizam bin Harun* [2016] 4 AMR 826; [2016] 7 CLJ 143, the Federal Court clearly highlighted the importance of the State Legislative Assembly to act in accordance and within the scope provided by the State Constitution. The court further states that Article 72(1) of the Selangor Constitution, which is similar to Article 63 of the

Federal Constitution, which lays down the privileges of Parliament, must not go against the Constitution.

> As per Zulkefli Ahmad Makinudin CJ (Malaya): As regards to this appeal, ***it is our judgment that the assembly must act within its constitutional and legal powers before the protection provided for by Article 72(1) can arise***, before passing a resolution of an act of contempt having been committed beyond the walls of the Assembly.

[63] The same position was stated by an earlier Federal Court in *Yang Dipertua, Dewan Rakyat & Ors v Gobind Singh Deo* [2015] 1 AMR 724; [2014] 9 CLJ 577 wherein the Federal Court emphasised the distinction that in a country applying constitutional supremacy as compared to parliamentary supremacy, the parliamentary privileges provided by virtue of Article 63 of the Federal Constitution "shall" *not* go against the Constitution.

Conclusion

[64] Based on the foregoing, it is my considered opinion that this is not a plain and obvious case for this court to strike out the plaintiff's OS.

[65] The court has the jurisdiction to enquire into the matter complained of in the OS. The question to be considered by this court in the trial is whether the defendants have acted in breach of Article 38 of the Federal Constitution by inserting Hadi's motion into the Order Paper and allowing Hadi's motion to be tabled in the Dewan Rakyat without prior consultation or consent of the Conference of Rulers.

[66] Wherefore, the defendants' application in encl 9 is dismissed with no order as to costs.

Lampiran 3

DATUK Dr Mujahid Yusof Rawa.- Foto NSTP

Agensi Islam Persekutuan perlu ada bawah Majlis Raja-Raja

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KUALA LUMPUR: Semua hal ehwal Islam pada peringkat Persekutuan perlu diletakkan di bawah kuasa Majlis Raja-Raja untuk mengembalikan maruah serta memperkasa institusi itu.

Naib Presiden Parti Amanah Negara (AMANAH), Datuk Dr Mujahid Yusof Rawa, berkata Majlis Raja-Raja perlu menjadi penentu perjalanan dasar Islam di negara ini, manakala agensi hal ehwal Islam bawah Kerajaan Persekutuan hanya bertindak sebagai pelaksana.

Katanya, ia bagi mengelakkan agensi seperti Jabatan Kemajuan Islam Malaysia (JAKIM) disalah gunakan bagi kepentingan politik serta membelakangkan Majlis Raja-Raja.

"Kita lihat sebelum ini wujud campur tangan politik dalam agensi seperti JAKIM ketika pentadbiran kerajaan sebelum ini, contohnya ketika isu Rang Undang-Undang (RUU) 355.

"Sepatutnya nak bawa cadangan di Parlimen pun perlukan persetujuan raja-raja, tetapi hingga saat ini, setahu kami Majlis Raja-Raja tidak pernah perkenankan pun.

"Institusi lain juga digunakan bagi menyokong kumpulan politik tertentu, hingga tanpa disedari, tindakan itu bercanggah dengan kuasa Majlis Raja-Raja," katanya ketika dihubungi NSTP, hari ini.

Ketika ini, sebanyak 12 agensi hal ehwal Islam berada di bawah Jabatan Perdana Menteri, iaitu JAKIM, Jabatan Kehakiman Syariah Malaysia (JKSM), Pejabat Mufti Wilayah Persekutuan, Lembaga Tabung Haji (TH), Institut Kefahaman Islam Malaysia (IKIM).

Selain itu, Jabatan Wakaf, Zakat & Haji (JAWHAR), Jabatan Agama Islam Wilayah Persekutuan (JAWI), Majlis Agama Islam Wilayah Persekutuan (MAIWP), Yayasan Dakwah Islamiah Malaysia (YADIM), Yayasan Pembangunan Ekonomi Islam Malaysia (YaPIEM) dan Yayasan Waqaf Malaysia, selain Al-Hijrah Media Corporation.

Mujahid berkata, cadangan meletakkan agensi Islam di bawah Majlis Raja-Raja tidak bererti institusi itu akan terbabit secara langsung dalam urusan harian agensi berkaitan.

"Pentadbiran harian seperti pengurusan agensi dan kewangan dijalankan kerajaan, selagi mana kuasa Majlis Raja-Raja tidak diambil atau diceroboh tanpa disedari.

"Contohnya, dulu didedahkan bagaimana menteri bertanggungjawab ketika menyalahgunakan dana YaPIEM, sedangkan agensi itu sepatutnya tumpu pada pembangunan ekonomi Islam. Ini tidak boleh dibenarkan berlaku lagi," katanya.

Sementara itu, Pensyarah Kulliyah Undang-Undang Universiti Islam Antarabangsa Malaysia (UIAM), Prof Madya Dr Shamrahayu A Aziz, bersetuju dengan pelaksanaan cadangan itu yang bakal mengembalikan kuasa Raja, selaras Perlembagaan Persekutuan.

"Islam kekal di bawah kuasa Raja dan Majlis Raja-Raja boleh memainkan peranan, namun Kerajaan Persekutuan masih perlu wujudkan portfolio untuk mengekalkan seorang menteri untuk bertanggungjawab dalam hal ehwal Islam.

"Ini kerana Kerajaan Persekutuan masih ada tanggungjawab dalam undang-undang Islam," katanya.

Shamrahayu berkata, adalah tidak adil bagi pihak tertentu menuntut JAKIM dimansuhkan kerana kewujudannya tidak bercanggah dengan Perlembagaan Persekutuan.

"Sebelum ini, satu institusi sebagai sekretariat kepada Majlis Hal Ehwal Agama Islam diwujudkan pada 1968 dengan perkenan Majlis Raja-Raja.

"JAKIM asalnya adalah sekretariat itu sebelum diletakkan di bawah Jabatan Perdana Menteri. Jadi, tidak adil untuk mencadangkan ia dibubarkan," katanya.

Pengerusi PKR Perak, Dr Muhammad Nur Manuty, turut bersetuju dengan usaha itu, namun ia perlu diperhalusi menerusi perbincangan antara kerajaan dan Majlis Raja-Raja.

"Mengikut Perlembagaan, Sultan dan Raja adalah ketua agama Islam, dan dalam manifesto Pakatan Harapan (PH) juga kami merancang mengembalikan kuasa Sultan bagi mengukuhkan Islam.

"Perkara ini perlu diperhalusi dengan perbincangan antara kerajaan dan Majlis Raja-Raja bagi memastikan tiada salah faham antara institusi itu dan kementerian berkaitan hal ehwal agama," katanya.

Berita Berkaitan

(/rencana/muka10/2018/06/433387/penstrukturan-diharap-kukuh-institusi-islam)

Penstrukturan diharap kukuh institusi Islam (/rencana/muka10/2018/06/433387/penstrukturan-diharap-kukuh-institusi-islam)

(/kolumnis/2018/08/456444/langkah-bijak-memperkukuh-institusi-islam)

Langkah bijak memperkukuh institusi Islam (/kolumnis/2018/08/456444/langkah-bijak-memperkukuh-institusi-islam)