

# PERSPECTIVE

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## **Will PAS Governments in Kelantan and Terengganu Push for Islamic Laws?**

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### **EXECUTIVE SUMMARY**

- PAS' (Islamic Party of Malaysia) victories in Kelantan and Terengganu in GE 14 overturned predictions that the party would suffer heavy losses. The party is now in control of the two states as it did after the 1999 elections.
- With these victories, will PAS push for harsher *hudud* punishment through each state's syariah criminal code.
- The party must deal with new players now that the Najib Razak government which supported PAS' *hudud* agenda has lost its electoral mandate. Mahathir Mohamed, had in the past blocked PAS attempts to pass *hudud* legislations in Kelantan and Terengganu.
- The National Trust Party (Amanah)—a splinter party of PAS that is now part of the ruling coalition—is expected to block PAS' attempts to push for *hudud* implementation.

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## INTRODUCTION

The performance of the Islamic Party of Malaysia (PAS) in Malaysia's recent general elections surpassed the expectations of many who had predicted that it would lose badly due to three-cornered fights with BN (National Front coalition) and PH (Alliance of Hope coalition). Yet, by forming its own coalition GS (Ideas of Prosperity) with two other small parties,<sup>1</sup> PAS not only retained control of Kelantan, which it has ruled since 1990, it also recaptured Terengganu, the first time since 2004. Numerous polls conducted before the elections indicated that PAS would lose Kelantan to BN. PAS instead performed well in its strong bases, and almost captured Kedah as well.<sup>2</sup> Its outstanding showing in the elections raises questions as to whether it will revive its Islamic state agenda as it previously did when it simultaneously took charge of Kelantan and Terengganu from 1999 to 2004? PAS' record on Islamic governance and laws is telling: it introduced the Syariah Criminal Code Bill II in Kelantan in 1993;<sup>3</sup> the Syariah Criminal Offences (Hudud and Qisas) in Terengganu in 2002; and in 2003 published the Islamic State Document reiterating the party's vision of an Islamic state, which incorporates the implementation of *hudud* laws (punitive Islamic laws). *Hudud* punishments includes amputation, caning, and stoning to death.

While PAS did not explicitly indicate Islamic state and *hudud* laws in the GS' manifesto, it is possible that the party will revisit them given its strengthened position in the east coast of peninsular Malaysia. PAS may also push its agenda with conservatives now in charge of the party, having won most of the seats contested in Kelantan and Terengganu. Moreover, GE 14 has cemented the position of conservative PAS President, Abdul Hadi Awang, at the apex of the party. He has been steadfast on PAS' vision on *hudud* and Islamic state, it is Abdul Hadi.

However, any PAS attempts to revive the Islamic state and *hudud* laws will meet with several obstacles. First, it has to obtain approval from the federal government, which is now headed by Mahathir Mohamed. The last time Mahathir was prime minister (1981-2003), all PAS' attempts to implement *hudud* laws were stopped. Second, PAS is now being challenged by Amanah (National Trust Party), which is made up of former PAS members. Amanah members are regarded as 'progressive' Islamists who are close to former Deputy Prime Minister Anwar Ibrahim. As part of the ruling coalition now, Amanah may provide the Islamic front to counteract PAS' requests. Third, PAS lost its important ally in its recent push for greater Islamisation of Malaysia: UMNO (United Malays National Organisation). Between 2016 and 2018, the Najib Razak government endorsed Abdul Hadi Awang's request to table a private member's bill in parliament to amend Act 355, to increase the limits of maximum punishment of syariah courts (to be discussed later).

## PAS GOVERNMENTS IN KELANTAN AND TERENGGANU

In GE 14, PAS recorded massive victories in Kelantan and Terengganu, both Malay-dominant and rural states. The party took 37 out of 45 state legislative assembly seats in Kelantan. At the parliamentary level, PAS won 9 out of 14 seats. It demonstrated a strong showing in neighbouring Terengganu as well, winning 22 out of 32 state legislative assembly seats and 6 out of 8 parliament seats. It performed well despite facing three-cornered fights for almost every seat contested, internal splits in the party, and BN putting

up strong candidates. PH also did not record a single state legislative seat win in both states. In Kelantan, PH's loses included Husam Musa, a former PAS member who crossed over to Amanah, and Nik Aziz's son, Nik Omar. Nik Aziz was the Chief Minister for Kelantan from 1990 to 2013 and influential PAS spiritual leader.

The PAS government in Kelantan has always been associated with Islamic conservatism. The party has governed the state since 1990.<sup>4</sup> As soon as it took control of the state, it sought to implement a conservative version of syariah laws. In 1993, the Nik Aziz Nik Mat government passed the Kelantan Shari'ah Criminal Code (II) bill which included *hudud* punishments such as *sariqah* (theft), *hirabah* (robbery), *zina* (unlawful sexual intercourse), *qazaf* (unlawful accusation of zina), *shrub* (intoxication of liquor) and *riddah* (apostasy).<sup>5</sup> It also aimed to introduce pre-modern modes of punishments such as amputation or mutilation of hands and feet, whipping, and stoning to death. PAS leaders argued that such modes of punishment were unequivocally stated in the Quran and Muslims could not reject them. PAS leaders also claimed that *hudud* laws are meant for Muslims only.<sup>6</sup> The then Mahathir government rejected PAS' attempt to enforce the law, stating that PAS' move was a political one rather than Islamic. It argued that PAS' version of the laws was against the Islamic principle of justice.<sup>7</sup> The Sultan of Kelantan, Ismail Petra—the patron of Islam for the state—also did not approve PAS' move. The issue was left unresolved and hanging for years to come.

In the 1999 elections, PAS recorded a significant victory in Terengganu and captured the state from BN. Abdul Hadi Awang was appointed Chief Minister of the state. Despite the impasse between the federal government and PAS-state government in Kelantan over the implementation of the Shari'ah Criminal Code (II), in 2003, the PAS government in Terengganu passed the Shariah Criminal Offences Act (Hudud and Qisas). The legislation dealt with the offences of *qazaf*, *zina*, *sariqah*, *hirabah*, and *irtidad*. Interestingly, UMNO lawmakers in the Terengganu legislative assembly supported the PAS bill. The PAS government could not implement the law because of restrictions in terms of maximum syariah punishments stipulated in the federal constitution.<sup>8</sup> PAS lost the state in the 2004 elections.

## **ACT 355 DEBATE**

Should the newly formed PAS governments in Kelantan and Terengganu revive the syariah criminal code debate in their respective states, one can expect tensions between them and the federal government once again. PAS almost had their way under the previous BN government under Prime Minister Najib Razak. This was through amending Act 355, or the Syariah Courts (Criminal Jurisdiction) Act 1965. Under the constitution, the implementation of syariah laws in the states is subjected to the federal Act 355. PAS leaders, particularly Abdul Hadi Awang, sought to increase the maximum punishments for syariah courts. Under existing regulations, the maximum punishments for syariah courts in Malaysia are RM 5000 (S\$1600), 6 strokes of the cane and three years in jail. PAS wanted the punishments to be increased to a fine of RM 100 000 (S\$31 590), 100 strokes of the cane and 30 years imprisonment.

In 2016, the Najib Razak government shocked the population when it allowed Abdul Hadi Awang to table a private member's bill in parliament to amend Act 355. The move was calculated to draw PAS closer to UMNO and to divide the opposition parties. There was also a suggestion that the BN government then would take over the private member's bill and present it as a government bill. During the UMNO general assembly in 2016, Najib Razak clearly indicated his willingness to work with PAS on the issue. The debate did not happen in the end, and after months of UMNO courting PAS leaders to their camp, the issue eventually waned. The issue was also not revisited during the campaign leading up to the 9 May 2018 elections.

From a legal standpoint, Abdul Hadi's bill is not in line with the Malaysian constitution. According to constitutional law expert, Professor Shad Saleem Faruqi, "In criminal law, there should be uniform application of the state's coercive power against delinquents. In the Hadi Bill, there is no emphasis on uniformity from state to state. Each state can choose which penalties to impose."<sup>9</sup>

## **MAHATHIR AND ISLAM**

One hurdle PAS may face if it pursues its *hudud* agenda is the 7th Prime Minister himself. PAS' attempts in the 1990s and 2000s to implement the Islamic laws were stopped by Mahathir, who wrote personally to the Kelantan Chief Minister Nik Aziz to state why he was against the moves. Similarly, during the recent debates surrounding Act 355, Mahathir went public about his reservations regarding the proposal. On *hudud* and syariah, Mahathir's thinking is consistent: that they have no place in multi-religious Malaysia. In fact, Mahathir and PAS could not see eye to eye on many issues. During the campaigning for the last GE, old issues such as the 1986 Memali issue and Amanat Hadi Awang cropped up.

How can one characterise Mahathir's Islamic orientation? Generally, he is a moderate and forward-thinking Islamic leader. He is respected in the Islamic world for modernising Malaysia while retaining its Islamic identity. Mahathir believed that Muslims should understand the principles of syariah and not just follow their faith blindly. In his response to the Kelantan syariah criminal code saga in 1993, Mahathir wrote to Nik Aziz saying that, "Once again, it is proven that PAS law is not based on *maqasid Shari'a* at all (objectives of syariah). In fact, it will only case discernible injustice, and injustice cannot be regarded as Islam. The different punishment imposed on Muslims and non-Muslims is not Islamic."<sup>10</sup> Mahathir reiterated similar views when confronted with the Act 355 debate in recent years.

Mahathir's earlier writings, *The Malay Dilemma* (1970) and *The Challenge* (1986), had pointed out the importance for the Malays to create wealth, and to not focus too much on the hereafter. Consistent with his Islamic worldview, Mahathir believed in the creation of a Malay/Muslim professional class and businessmen.<sup>11</sup> Unlike his successors Abdullah Badawi and Najib Razak who introduced Islamic slogans Islam *Hadhari* (Civilisation Islam) and Islam *Wasatiyyah* (Centrist Islam) as part of their government's vision, Mahathir did not really have such campaigns when it came to his Islamic vision. Yet, his ideas on Islam and development came across in his memoirs *A Doctor in the House*. He said, "The teachers of the religion stress the need for prayers, for appeals to Allah during any difficulty

or threat, But what is not stressed is the injunction in the Quran that Allah will not change your situation until you make the effort to change it yourself.”<sup>12</sup>

Nevertheless, while Mahathir is seen as a progressive and moderate Muslim, he was also responsible for facilitating Islamisation and growing conservatism of the country. He also succumbed to pressure from the Islamic resurgence movement of the 1980s and 1990s. The federal institution, Department of Islamic Development Malaysia (JAKIM), was expanded under his watch in 1997, even though Islam is a matter of the state under the purview of the Malay rulers. In his eagerness for UMNO, the party he led when he first became prime minister in 1981, to out-Islamise PAS, he introduced many Islamic policies including the building of the International Islamic University of Malaysia (IIUM) and setting up of ISTAC (International Institute of Islamic Thought Malaysia). He also co-opted many Islamic leaders into UMNO and the government, to boost their Islamic image. It was in this context that Anwar Ibrahim was first brought into UMNO. Mahathir also adopted Islam in shaping his foreign policy, and at times was critical of Western world and Israel.

## CONCLUSION

It is not certain that PAS will make any headway in its pursuit of its Islamic state agenda, since its main proponent, UMNO, is undergoing some soul searching at this point of time. Gagasan Sejahtera (GS) has not made any bold promises in the GE 14 manifesto except that of tackling the cost of living and welfare. Moreover, PAS also has to confront new players before it can put forth its Islamic agenda, even if it is intended to be applied only in Kelantan and Terengganu. One such actor is Amanah. It remains unclear where Amanah members stand on the Act 355 issue, although at the outset they are on the same page as Mahathir. Questions also remain as to where Amanah stands on other Islamic issues; after all, they were formerly PAS members. There has been talk that they are influenced by Tunisian thinker Raschid Ghannouchi, who is a democrat but an Islamist at the same time. Amanah, it seems, would not push their Islamic agenda to the forefront, even though the party retains its Islamic identity.

In a scenario where Amanah decides to push PAS' Act 355 proposal, there are also more dominant secular partners in the PH coalition such as the DAP (Democratic Action Party) and PKR (People's Justice Party). Hence, despite winning big in Kelantan and Terengganu, the new political equation at the federal level is likely to deter PAS' Islamic agenda. Moreover, at the federal level, since PH can continue to form the government without PAS, it does not need to give in to PAS' demands. The equation at the state level is more favourable to PAS, which can weaken the Kedah and Perak governments and make their demands heard. Then the Mahathir government may have to renegotiate with PAS.

It is also unlikely that the new Prime Minister himself will budge when it comes to Islamic laws. Already, he has made the pledge to review JAKIM's role in the country, which some claimed had overstepped its objectives during the Najib government. He has also ignored calls by conservative Muslim groups which demand that the position of the Attorney General be reserved for Muslims only. Instead, he insisted on his appointment of Tommy Thomas, a non-Muslim constitutional law expert for that position. However, the society Mahathir is facing in his second stint as prime minister is more conservative compared to

the first time he was leader of the country. His predecessor, Najib Razak, despite his campaign to promote *Islam wasatiyyah*, supported PAS' efforts to amend Act 355. This may have consolidated the conservatives. Mahathir will have to deal with the conservatives carefully in order not to be seen as "anti-Islam" or "pro-DAP". This camp may unite to form a block opposing PH in the next elections, after Mahathir has left the political scene.

- <sup>1</sup> Gagasan Sejahtera includes the following parties: PAS, Ikatan (parti Ikatan Bangsa Malaysia) and Berjasa (Barisan Jemaah Islamiah Se-Malaysia)
- <sup>2</sup> It also captured 15 out of 36 seats in the Kedah state legislative assembly.
- <sup>3</sup> Norshahril Saat, “The Ulama, Thought-styles, and the Islamic State Debate in Contemporary Malaysia,” *Studia Islamika* 21(1), 2014.
- <sup>4</sup> This is the second PAS government. The first PAS government was formed from 1959 to 1974.
- <sup>5</sup> Farish A Noor, *Islam Embedded: The Historical Development of the Pan-Malaysian Islamic Party PAS (1951-2003)* (Kuala Lumpur: Malaysian Sociological Research Institute, 2004), p.501.
- <sup>6</sup> Rose Ismail (ed), *Hudud in Malaysia: Issues at Stake* (Kuala Lumpur: Sisters in Islam, 1995), p.51-52.
- <sup>7</sup> Farish A Noor, pp.503-504
- <sup>8</sup> Norshahril Saat, *The State, Ulama and Islam in Malaysia and Indonesia*, (Amsterdam: Amsterdam University Press, 2018), p.125.
- <sup>9</sup> Shad Saleem Faruqi, “Testing time for the constitution, Star online 24 November 2016. Link: <https://www.thestar.com.my/opinion/columnists/reflecting-on-the-law/2016/11/24/testing-time-for-the-constitution-two-bills-and-several-recent-developments-are-giving-legal-experts/>
- <sup>10</sup> Mahathir Mohamad, “Islam guarantees justice for all citizens,” in Rose Ismail (ed), *Hudud in Malaysia: The Issues at stake*, (Kuala Lumpur: Sisters in Islam, 1995).
- <sup>11</sup> Shahrudin Maaruf, *Malay Ideas on Development: From Feudal lord to capitalist*. (Singapore: Times International book, 1988)
- <sup>12</sup> Mahathir Mohamad, *A Doctor in the House: The memoirs of Tun Dr Mahathir Mohamad* (Kuala Lumpur: MPH Publishing, 2011), p.486

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