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Fatwa-binding laws invalid, Federal Court told

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Fauwaz Abdul Aziz
Jan 19, 06 8:50pm

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The Terengganu state assembly acts beyond its constitutional powers to the extent that it enacts laws that turn certain fatwas (edicts) issued by the state fatwa committee laws in themselves, the Federal Court heard today.

Lawyer Malik Imtiaz argued that a case in point was that of his client Sulaiman Takrib, who has been charged for allegedly violating a fatwa and being in possession of VCDs said to insult Islam.

"The enumerated powers in Lists II and III of the 9th Schedule of the Federal Constitution do not provide for such power nor was the creation of an independent legislative power [...] contemplated under the Federal Constitution," said Malik in his submissions this morning.



Sulaiman (*pix, left*) a follower of self-styled spiritual leader Ayah Pin, has been charged under Sections 10 and 14(b), respectively, of the Terengganu Criminal Offences (Takzir) Enactment for the above alleged offenses.

He is seeking a declaration under Article 4(4) of the constitution that the sections are null and void as the state legislative assembly of Terengganu does not have the power to make such laws.

Also challenged is the validity of Section 51 of the state's Administration of Islamic Religious Affairs Enactment 2001, which binds every Muslim in Terengganu to

abide by and uphold gazetted edicts of the Terengganu fatwa committee.

Section 51 also renders fatwas issued by the state fatwa committee authoritative for the purpose of legal proceedings in syariah courts.

Malik argued that in delegating the fatwa committee to issue binding fatwas and creating the offence of acting contrary to fatwa, the Terengganu state assembly had not just created 'an independent legislative power' but had also led to 'excessive delegation of power'.

"Power to make subsidiary or ancillary legislation can be entrusted provided there is an enunciation of policy, principles or standards for

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the guidance. Entrustment without guidance amounts to excessive delegation [of power]," Malik said.

Power limited

Haris Ibrahim, who is also representing Sulaiman, argued that the constitution's provisions for state governments to act on 'offences against the precepts of Islam' referred only to the five pillars of the religion which are the testimonies of faith, the five daily prayers, the fast of Ramadhan, the payment of zakat (alms), and the Haj pilgrimage.

The constitution did not intend for the 'offences' to mean alleged insults or acts in defiance of the state religious authorities' fatwas, said Haris.

Neither, he added, did the constitution include as 'offences against the precepts of Islam' the act of printing, publishing, producing, disseminating or being in possession of any materials that were said to be contrary to Islamic laws.

"For these reasons, it is submitted that as the power to create offences was limited to the creation of offences against the precepts of Islam, the state assembly of Terengganu was incompetent to enact sections 10 and 14 of the Terengganu Criminal Offences (Takzir) Enactment."

Citing another case, Haris said another important precept in Islam was that there is no compulsion in matter of the religion.

The Terengganu state government is represented by Ahmad Kamal Mohd Shahid who is assisted by two lawyers from the Attorney-General's Chambers.

Federal Court Justice Ahmad Fairuz Sheikh Abdul Halim fixed Feb 22 for continued hearing.

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