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Need for permanent law reform commission

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THE Revision of Laws (Amendment) Bill 1999 was passed by the Dewan Rakyat on the last day of the recently concluded sitting of the House.

The object of the Bill is to standardise the terminology and spelling of laws in Bahasa Malaysia by referring to the Law Terminology Committee at Dewan Bahasa dan Pustaka for the appropriate term.

This is a very welcome development and makes for exactitude in the interpretation of laws in Bahasa Malaysia.

In the past, different terminologies were used for the same intended term by the Court, the Attorney-General's Chambers and the Translation Bureau of the Prime Minister's Department and made more confusing by different legal draftsmen of the same establishment using different terminologies.

Malaysian laws are the most complex in the world. At the end of World War II, the Laws of the Straits Settlements applied to Penang and Malacca. The laws of the Federated Malay States applied to Selangor, Perak, Negri Sembilan and Pahang.

The States of Johor, Kedah, Perlis, Kelantan, Terengganu, Sabah and Sarawak each had their own laws. Then with the Federation of Malaya Agreement of 1948, some State laws in the peninsula became Federal laws. With the Constitution of 1957, some Federal laws became State laws and some State laws became Federal laws.

The 1957 Constitution provided for three legislative lists, namely, Federal, State and Concurrent lists. This resulted in laws referring to matters partly in the Federal list and partly in the Concurrent or State list or partly in the Concurrent list and partly in the State list.

When Sabah and Sarawak joined the Federation in 1963, confusion was worse confounded by special provisions in the State list of those States to include matters in the Federal list.

To clear up the mess, Parliament enacted the Revision of Laws Act 1968 which came into force on Jan 1, 1969. From then on a new series of laws were instituted called the "Laws of Malaysia" which are numbered serially with the Revision of Laws Act as Act 1.

Act 1 created the appointment of the Commissioner of Law Revision appointed by the Yang di-Pertuan Agong.

It also created a Law Revision Committee comprising of not less than five and not more than seven members from amongst judges and other persons appointed by the Chief Justice of the Federal Court who in his opinion are suitably qualified for the purpose of examining copies of revised laws in draft. I was a member of the committee for many years.

The commissioner has been conferred with powers set out in 24 paragraphs, basically to update pre-1969 laws by deleting matters in the Concurrent or State lists found in Federal laws so that the Laws of Malaysia are strictly Federal Laws.

In the process, he can for example, change names of offices, like from "High Commissioner" to "Minister" and generally to standardise the format of laws.

The Commissioner however, has no power to change the basic substance of the law. That is for Parliament. In a nutshell, law revision is a cosmetic job.

He then transmits draft copies of every revised law to the Committee for its examination and opinion whether the amendments are or are not within

the powers of the Commissioner and certify accordingly.

When published the laws are known as revised laws. Thus far 247 pre-1969 Acts have been revised with another 140 awaiting revision. Now after 30 years, the Commissioner should have worked himself out of his job!

During the debate on the Bill, an MP suggested that the Government establish a Law Reform Commission.

Deputy Minister in the Prime Minister's Department Datuk Ibrahim Ali who tabled the Bill, replied that the Government would consider the suggestion if there was a need for it.

Ibrahim however, added that the present system of law revision is appropriate, implying that there is no need for law reform. There is clearly some confusion here. Law revision is old law in new wrapping. Law reform is research and development of the law.

Several countries including the United Kingdom and Nigeria have established permanent Law Reform Commissions for years.

In Australia, there is a Law Reform Commission for every State and at Federal level. The function of the Commission is to either propose a new law or change old laws to meet the needs of society today and tomorrow.

It holds public inquiries to find out the needs of the community before recommending the proposed law to Parliament for its approval and enactment.

The Attorney-General's Chambers services the Government. It makes laws or changes law according to the needs of the Government in power.

The Parliamentary Draftsman does not and cannot hold public inquiries before drafting a new law. Indeed before a Bill is introduced in Parliament, it is classified as 'secret'.

Malaysia has had so far two ad hoc Law Reform Commissions. The first resulted in the Law Reform (Marriage and Divorce) Act 1976.

There was a series of public inquiries chaired by the late Chief Justice H.T. Ong. I testified before the Commission as a concerned citizen. The other resulted in the Law Reform (Eradication of Illicit Samsu) Act 1976.

Prime Minister Datuk Seri Dr Mahathir Mohamad has stressed time and again the importance of research and development in various fields.

The importance of R&D of the law is no exception. There is therefore a need for a permanent Law Reform Commission as the country enters the new millennium.

Indeed, there is much work for the Law Reform Commission to do, starting with the revised laws!

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