

Don: Dr M's way could have curbed royal intervention
Malaysiakini.com
November 14 ,2011
by Kuek Ser Kuang Keng

The Selangor Pakatan Rakyat assemblypersons could have used a provision in the state constitution dubbed the "Mahathir formula" to curb the alleged intervention by the sultan in commanding them to pass a Bill that is against the principles of integrity, said law professor Abdul Aziz Bari.

"Pakatan should have discussed it with people outside. If they had done that the Bill would not have been passed.

"As of now it is a fait accompli, the assemblypersons have only themselves to blame, but it is a lesson to others," said the Universiti Islam Antarabangsa (UIA) law professor who is an expert in constitutional matters and has written extensively on the role of the monarch.

According to Abdul Aziz (left), "Mahathir formula" is the provision, both in federal and state constitutions, that was inserted into the constitution by former prime minister Dr Mahathir Mohammad's administration in 1994 which sought to bypass the palace in the law making process.

"Technically one may argue that it was invalid - or unconstitutional - as it was done without the consent by the Conference of Rulers as required by Article 38(4) of the federal constitution but that is another matter.

"Under section 11(2A) and (2B) of the Eighth Schedule of the federal constitution, the Bill shall become law in 30 days, with or without the signature of the sultan," he said when contacted last week.

Constitutional crisis

Alternatively, Aziz elaborated, the house may negotiate with the palace and put forward its views on the Bill.

"This issue has the potential of provoking a constitutional crisis in the state especially if the house chose to take the first route, that is, to take the palace head on.

"But that may be good for we would have the opportunity to take it to court and see how the judges see the provision inserted by Mahathir.

"This will allow us to see his real colours. Thus far he has been saying that he did not take away the power of the rulers."

Aziz further pointed out that the state assembly could have varied the Bill to avoid concentrating powers in the hands of the few.

Amendments to the Administration of the Religion of Islam (State of Selangor) Enactment 2003, which was passed by the Selangor state assembly in July - after Selangor Sultan Sharafudin Idris Shah issued a decree to all assemblypersons - expand the powers of both the sultan and Selangor Islamic Religious Council (Mais) over Islamic affairs in the state.

Some of the amendments also give Mais the power to collect and distribute zakat as well as fitrah and

free the council's account from being audited by the Auditor-General.

"It appears that the Bill is dealing with the administration of Islam and not Islam as such. In simple terms the Bill deals with the management rather than doctrine of Islam such as faith etc.

"When it comes to management I think Islam also enjoins prudence, accountability, transparency, checks and balances and so on. But what the Bill sought to do seemed to be the reverse of all these.

"That is the problem and I think the House - or the majority of it - has good reason to take exception to the Bill," he added.

Aziz had earlier pointed out that the sultan may have overstepped his powers by issuing the decree because both the federal and state constitution are silent on whether he can act without or against the legislature on matters pertaining to Islam and Malay customs.

Copyright © 1999-2011 Mkini Dotcom Sdn. Bhd
<http://www.malaysiakini.com/news/181292>