

## **'Hudud couldn't fly in 1993, and won't fly now'**

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Kelantan's hudud law could not be implemented in 1993 when it was first passed, and the same considerations still apply today as the fundamental reason is it goes against the federal constitution.

Commenting on PAS Kelantan's insistence pushing forward with its Private Member's Bill in Parliament, founding associate of Institute for Democracy and Economic Affairs (Ideas) Amin Ahmad said it was not just a simple matter of having certain laws amended.

"We don't know whether the Private Member's Bill will really be tabled in time to come by PAS chief Abdul Hadi Awang.

"When he said we should hear out what he has to put forth, the question arises: isn't it nice if he says what it is first, before it is tabled?" quipped Amin (left) in a commentary today.

He said the only thing one could be sure of was that Kelantan has passed its Syariah Enactment II (1993) 2015.

"Here, the general public needs to be aware, since 20 years ago the enactment could not be executed because it went against the federal constitution."

He said this was because of the core principal of the constitution where any law passed after independence that is not consistent with the federal constitution is not valid.

"It is not a question of the jurisdiction of the federal and state governments, which can be amended with a two-thirds majority, and it is not about giving the state powers to enact civil and criminal laws presently under federal jurisdiction.

"But it is also about the provisions of the federal constitution concerning all the institutions involved in implementing it - the syariah court and the police, for example.

"Apart from that, it must also fulfil the principles of equality before the law," said Amin, who is also the chairperson for the Centre for Reform, Democracy and Social Initiatives.

### **Human rights before all**

Amin also reminded that it is important to apply the rule of law, as opposed to "rule by law" regardless of the protections of the individual accorded in the federal constitution.

No party, he said, should place themselves above the constitution.

"The constitution recognises that every human being has dignity and personal freedom that must be upheld.

"These rights exist upon birth, before the existence of laws.

"Laws should be established to ensure the freedoms of one party does not affect the dignity and privacy of another party," he said.

He also warned that the implementation of laws for the sake of justice, could be used for the opposite purpose.

"This aspect of great concern among some quarters about the syariah criminal code," he said, pointing to alleged successes in the implementation of hudud that he said were actually failures, such as the experience of Sudan, Pakistan and Nigeria.

"When we examine cases of hudud offenses in these countries, we can find there are many deficiencies justified 'in the name of syariah', that really just aggravate a negative image of Islam itself," he warned.

He cited Nigeria's chief justice Ibrahim Bukar who had said the country's hudud laws had failed because it was "introduced in haste and more for political achievement rather than its importance and necessity, without negotiation..."

Amin said this was a timely reminder that in the introduction of any law, "political factors can not be ruled out".