

MCA: Kedah fatwa challenge ban interferes with judiciary
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By Clara Chooi

KUALA LUMPUR, April 26 — MCA today accused Kedah of encroaching on judicial independence by passing an enactment barring all fatwas (religious edicts) from being challenged by the courts.

Party president Datuk Seri Dr Chua Soi Lek (picture) told a press conference here that MCA “condemns” the new legal provision passed by the Kedah legislative assembly on April 18.

“This is totally undemocratic... it is like interfering with the judiciary,” he said.

The veteran leader also slammed DAP’s silence in the matter, pointing out that according to reports from his party leaders in Kedah, DAP’s assemblyman had neither supported nor rejected the proposed amendment during debates in the House.

He pointed out that the party was usually the first to spring to action on matters dealing with transparency, independence of judiciary and accountability.

“Why are they so quiet now?” he asked.

According to an April 18 report in English daily The Star, the Kedah legislative assembly had passed an amendment to the Mufti and Fatwa (Kedah Darul Aman) Enactment 2008 during its sitting, which stipulates that “any fatwa decided by the state mufti or Fatwa Committee, whether gazetted or not, cannot be challenged, appealed, reviewed, denied or questioned in any civil or syariah court”.

In an immediate response, Perlis Mufti Dr Juanda Jaya had labelled the amendment un-Islamic and asked if the Kedah PAS-led administration wanted to become a theocratic government instead of forming Pakatan Rakyat’s (PR) often-promoted progressive, welfare state.

Bar Council Constitutional Law Committee chairman Syahredzan Johan had also told The Malaysian Insider that the enactment was unconstitutional as it went against the basic principles of a functioning democracy, which underlines the separate of powers between the legislative, executive and judiciary arms of government.

“You have one making the law, one that executes it, one that interprets it. As a general principle, anything that ousts the jurisdiction of the civil and syariah courts goes against this and the principle of rule of law,” he said when contacted yesterday.

Syahredzan added that the state assembly does not possess such powers to usurp the jurisdiction of the courts as enshrined under Article 121 of the Federal Constitution.

“The Constitution now says that the civil court has jurisdiction over matters as provided for

by federal law.

“Meaning, only federal law (and not state) can oust the jurisdiction of the civil courts... meaning, only Parliament can do so,” he said.

Article 121 of the Constitution, which governs the judicial powers of the Federation, states that “the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law”.

The controversial Article was amended in 1988 during the Mahathir administration to state the above, which critics have long complained had limited the powers of the judiciary and made it subservient to the executive.

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