

**Allah decision against Constitution, gives Home Minister more power, says DAP
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BY LEE SHI-IAN**

The decision by the Court of Appeal on the usage of the word Allah by non-Muslims has given the Home Minister wide-ranging discretionary powers to make pre-emptive executive decisions, said DAP national publicity secretary Tony Pua (pic).

"The court argued that 'such usage if allowed would inevitably cause confusion within the community... so the Home Minister had sufficient material before him to ban the Herald from using the word'. With this, the court has empowered the Minister to make pre-emptive executive decisions to ban words or publications which he deems will cause confusion," Pua said.

"With such powers, the Home Minister will be able to rule that the Sikh Holy Book should be banned, as such any Bahasa Malaysia church material in East or West Malaysia should be declared illegal if they use the term Allah. The Court will deem itself to have 'no plausible reason for the High Court to interfere with the minister's decision'," he added.

In a statement, Pua highlighted several key points which he had deduced from the judgment read out yesterday by appellate court judge Datuk Seri Mohamed Apandi Ali.

He said the Federal Constitution clearly stated that other religions could be practised in peace and harmony in any part of the Federation and every religious group has the right to manage its own affairs.

"But the court had decided on behalf of the Roman Catholic Church on what was deemed an integral part of the faith and practice of Christianity," he said, arguing that the court's only role was to decide on the legality of the use of the word Allah by the church and nothing more.

"The court has no role in deciding what is integral or otherwise in any religion practised in Malaysia. The court has clearly overstepped its authority into the realm of theological discourse and also breached the Federal Constitution," he said.

Another key point, Pua said, was that the appellate court had defined the rule of law as the "wishes of the majority" and ruled that the welfare of an individual or group must yield to that of the community. He said the court had neglected its role to protect and defend the rights of the minority.

"Article 8 of the Federal Constitution clearly states that 'all persons are equal before the law and entitled to the equal protection of the law'. But the court has made a decision which is based purely on the wishes of the majority," Pua pointed out.

He quoted the third United States president, Thomas Jefferson, who proclaimed in his presidential address that "All, too, will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will, to be rightful, must be reasonable, that the minority possess their equal rights, which equal laws must protect, and to violate which would be oppression".

Pua added, "In ruling that the welfare of an individual or group must yield to that of the community, the Court of Appeal should define the community or the majority and their needs and wants. It is not the place of the appellate court to decide who the majority are and what they want.

"It should be emphasised that the role of the appellate court is to determine legality and not make such highly subjective moral judgment on ill-defined subjects," Pua argued.

Pua said the far-reaching consequences of yesterday's ruling meant that the appellate court has given itself the authority to make discretionary judgment which are not based on the Federal Constitution and the laws passed by the Parliament, but based on the judges' own personal viewpoints and bias.

"Secondly, the appellate court has trampled on the rights of the minority by endorsing the oppression by the majority. The court has also given discretionary and absolute pre-emptive powers to the Home Minister to take action against anyone who is deemed to be wrong," he added.

Pua said the argument by the Court of Appeal in delivering its judgment on the usage of the word Allah was clearly unreasonable and must be challenged in the Federal Court.

It was not because of the usage of the word Allah, he said, but because of the implied powers of judges and the executive branch of the government to mete out punishment without legal or factual basis. - October 15, 2013.

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