

Kelantan Shariah enactment challenge: Apex court to deliver verdict tomorrow

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KUALA LUMPUR, Feb 8 — The Federal Court is set to render its verdict tomorrow on a constitutional challenge initiated by a Muslim mother and her daughter seeking to nullify 18 state provisions under the Kelantan Shariah criminal enactment.

The decision is scheduled to be delivered in open court at 9am by Chief Justice Tun Tengku Maimun Tuan Mat, who is leading a nine-member panel of judges.

Nik Elin Zurina Nik Abdul Rashid, a native of Kelantan, along with her daughter Tengku Yasmin Nastasha Abdul Rahman, filed a petition directly with the Federal Court under Article 4(4) of the Federal Constitution, naming the Kelantan government as the sole respondent in this case.

The duo are challenging the constitutionality and validity of 18 provisions under the Kelantan Syariah Criminal Code (I) Enactment 2019, claiming that the Kelantan State Legislature does not have the power to enact laws on these offences because there are federal laws covering the same.

On September 30, 2022, the Federal Court granted the two women leave to commence their constitutional challenge.

They contended that the state provisions addressing Shariah offences, encompassing acts such as incest, gambling, sodomy, and sexual harassment, were deemed invalid since these matters are already addressed by federal law.

The rest of the panel are Court of Appeal President Tan Sri Abang Iskandar Abang Hashim, Chief Judge of Malaya Tan Sri Mohamad Zabidin Mohd Diah, Chief Judge of Sabah and Sarawak Tan Sri Abdul Rahman Sebli, and Federal Court judges Tan Sri Nallini Pathmanathan, Datuk Mary Lim Thiam Suan, Datuk Harmindar Singh Dhaliwal, Datuk Nordin Hassan, and Datuk Abu Bakar Jais.

During previous proceedings, Justice Tengku Maimun said the issue was not about undermining the position of Islam or Shariah Courts in the country, but simply about the competency of the Kelantan State Legislative Assembly to enact the impugned provisions.

She further emphasised that the statement “Mahkamah Syariah akan berkubur di Malaysia” (The Shariah Court will be buried in Malaysia) is untrue.

This was in response to a statement by Mohd Yusfarizal Yussoff, the lawyer for the Terengganu Islamic Religion and Malay Customs Council, emphasising the importance of comprehending the challenge against the powers of the Shariah Court before it becomes buried like a “batu nisan” (tombstone).

The top judge also reminded lawyers involved in the hearing of the constitutional challenge to refrain from commenting on the case.

She said the lawyers are bound by the etiquette of their profession and therefore, it is not appropriate for them to discuss ongoing cases in a public forum.

She said the court took the unusual step of mentioning the matter because so much has been said by so many people about the petition before the court, adding that much of it was the distorted version of the real issue. — Bernama

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