

Malaysia: Lawyers split on implications of court ruling against SIS

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PETALING JAYA: Lawyers are divided on a claim that a recent ruling dismissing Sisters in Islam's (SIS) challenge of a fatwa against the Muslim women's rights group will have far-reaching implications as far as the tentacles of Islamic laws are concerned.



Sisters in Islam lawyer Surendra Ananth with executive director Rozana Isa (right) and programme manager Shareena Sheriff at the Kuala Lumpur High Court on Aug 27.

The High Court, in throwing out SIS' challenge against a fatwa labelling it as deviating from Islamic teachings, disagreed with the group's argument that state religious authorities have no power over it as it is registered as a company.

"The company and directors of SIS Forum are Muslims, and their activities relate to Islamic laws. The fatwa is applicable," said High Court judge Nordin Hassan.

In response, activist Marina Mahathir criticised the judgment as "backdoor shariah-sation" of Malaysia laws.

She also said the ruling meant that any company that has Muslims in it, including directors, shareholders and staff, can come under shariah jurisdiction.

But lawyer and rights activist Kuthubul Zaman Bukhari said the court decision only affects SIS.

"In my opinion, it doesn't affect Muslim directors in other companies," said the former Bar Council president who also chaired the council's shariah law committee.

However, he said Muslims who carry out similar activities as SIS may be affected by the decision.

Lawyer Lim Wei Jiet said the court ruling appears to give Islamic authorities a say in the regulation of companies, which are subject to non-shariah laws.

"The idea that a corporate entity - a non-person - can be subjected to Islamic laws and declared a 'deviant' could lead to very negative consequences," he told FMT.

"This is contrary to the secular fabric of the country, in which Islam is only supposed to function within the personal domain."

Lim also asked how a company can be determined as “Muslim enough” to be subject to Islamic law.

He asked what would happen if a non-Muslim holds shares on trust for a Muslim shareholder.

“The permutations are endless, and this Pandora’s box shouldn’t have been opened in the first place.”

Kuthubul Zaman agreed that the High Court ruling contravened the constitutional right to freedom of religion.

“A company is governed by the Companies Act. A fatwa cannot override an act of Parliament or the constitution, the supreme law of the land.”

Shariah lawyer Nizam Bashir said it is premature to draw conclusions on the ruling.

He said the ruling only means that the judicial review of the fatwa against SIS was not successful.

“Of course, as a matter of law, just as much as companies can’t profess the religion of Islam, companies similarly can’t profess to hold liberal beliefs or any other belief for that matter,” Nizam told FMT.

He said there seems to be little or no legal basis to argue that state religious authorities can act against a company, its officers and its employees if a shareholder or director is Muslim.

But Nizam said the ruling would indirectly affect corporate employment policies where Muslim employees or directors are concerned, and corporate decisions when one party is Muslim and the other is not.

“The corporate vehicle may be required to effectively be shariah-compliant,” he noted.

While no one is suggesting that shariah authorities cannot utilise their power to pass fatwas, he said, questions must be asked on whether the fatwas are within constitutional and legal parameters.

“That is exactly the issue that SIS is taking with the present 2014 Selangor fatwa.”

Vinodh Pillai

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