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## From one law to many: Legal pluralism and Islam in Malaysia

This is the story of two laws, both colonial legacies, and both entwined with the political landscape of Malaysia, its democratic aspirations and its autocratic history. The first law relates to the recent sodomy conviction of a prominent politician and the second to preventative detention used against opposition and civil society actors. Although both are civil laws, they have become increasingly entangled with the dominant religion in Malaysia: Islam. In order to elucidate the connections, allow me to delve briefly into some history.

Malaysia has a unique system of legal pluralism that is a result of British colonial rule. The so-called resident system was a form of colonialism that depended on perceived strength of the far-away colonial power and the co-option of local elites to sustain a relatively small British presence. Authority was split with the British taking an active interest in economic and political affairs and the Malay rulers taking charge of the administration of customs and religious affairs.

This has resulted in a curious and increasingly damaging legal pluralism in Malaysia that has divided society into ethno-religious groups of Muslims and non-Muslims. The former are subject to civil as well as Syariah law, while the latter are only subject to civil law. In the Asia-Pacific column of this journal back in 2011, Julian CH Lee made the case that this version of legal pluralism in Malaysia was not working. Increasingly Malaysia's civil courts were deferring to Syariah law and its law courts in an array of matters where both have jurisdiction, leading to unease among non-Muslims.<sup>1</sup>

Controversial cases have included those of men converting to Islam to claim sole custody of children, a Catholic newspaper wanting to use the word 'Allah' to denote God in its Malay-language paper, and whether or not a Muslim may change the religion on their identity card — and, by extension, whether Muslims have the freedom to choose their religion.

Malaysian society has changed dramatically since religious enforcers of Islamic laws have led crackdowns on the consumption of non-halal foods and drinks (the halal certification carried by restaurants, foodstuffs and consumer products is a major industry in its own right), the unlawful mingling of the sexes, so-called deviant religious behaviour and non-hetero normative sexual practices, to name a few. The Syariah enforcement agencies are equipped with few resources and many are volunteers eager and willing to help Islamic authorities maintain strict adherence to their often orthodox laws.

An intense process of Islamisation of society has swept across the region since the late 1970s and has led to the increased policing of lower class Malays and non-Malay Muslims, and minority groups such as the lesbian, gay, bisexual and transgender communities as well as diverse smaller religious groups. These groups represent diversity beyond a state-sanctioned and cleansed imagery of a multicultural Malaysia made up of Malay, Chinese and Indian ethnic groups. Such diversity is often deemed to threaten the finely tuned balance of power in Malaysia that accords positive discrimination to its majority ethnic groups considered indigenous to the country (Malays and so-called *bumiputera* or princes of the soil).

In 1998 the *reformasi* or reform movement swept across Malaysia and Indonesia. In both countries, hope for more democratic governance and a viable opposition took shape and energised the masses. Indonesia transformed many of its institutions and holds regular elections that have ousted its former government and brought about major social and political change. In Malaysia, meanwhile, the same ruling coalition headed by the United Malays National Organisation ('UMNO') still remains in power; in fact it has ruled Malaysia since independence in the late 1950s. UMNO has remained in power despite serious challenges since the *reformasi* period culminating in the 2008 elections in which the opposition coalition — for the first time — took away the government's two third majority.

Anwar Ibrahim has been the prominent and charismatic leader of the opposition coalition. However, the opposition is vulnerable as it comprises a three-party alliance — an Islamist party, a largely Chinese-based party and a progressive party. The opposition coalition has been held together by Anwar and he has been the major threat to the government. He was once the heir apparent to former Prime Minister Mahathir and was poised to become Prime Minister himself. However during the Asian financial crisis in 1997, Mahathir broke with Anwar over how to deal with the crisis. A confrontation between a free market approach and a protectionist one ensued, with Mahathir asserting his power. Anwar was subsequently arrested on charges of corruption and sodomy and later convicted for both.

The sodomy laws under which Anwar was convicted are not related to Islam and Syariah law, but rather are a remnant of Christianity enshrined in British law. Section 377 of the Penal Code deals with an array of what the Act calls 'unnatural offences' and has its roots in section 377 of the Indian Penal Code instituted under the British Raj and itself based on archaic English law from 1533 that brought sodomy from the ecclesiastical courts to the civil ones. Thus an 'unnatural sexual act against the will of God and man' was turned into civil law (starting with the English *Buggery Act* of 1533) that allowed the government to confiscate a convicted sodomite's possessions. This Act, while long repealed in Britain, continues to cause suffering in many former British colonies that retain this law.<sup>2</sup> Internationally there was some hope for political change recently; for example, when the Delhi High Court overturned s 377 as unconstitutional in 2009. However, the tide for change was short lived when the Indian Supreme Court overturned the Delhi decision, reinstating s 377. Similarly, reforms in Singapore decriminalised oral and anal sex for consenting heterosexuals and lesbians only and, in 2014, the Supreme Court upheld those parts of s 377 that criminalise sexual acts between men.

Anwar has faced two separate trials for sodomy: the first in 1998 was overturned in 2004, and the second in 2010 when he was acquitted. However, in 2014, the acquittal was overturned and, in February 2015, the conviction was upheld and he was arrested once more. Many questions have been raised as to why the sodomy trials have been pursued in civil rather than Syariah courts where there exists a similar charge of *liwat* or sexual relations between male persons.<sup>3</sup> Indeed, Anwar has lodged a *qazaf* or false accusation suit in the Syariah courts against his former aide, who had accused him in the civil courts of sodomy. That case has not progressed.

While the political opponents continue their legal stand-off, the slippage between civil law cases and peoples' moral laws has been most damaging. Even when legal convictions were being overturned, peoples' judgments based on their moral codes endured.

The corruption conviction prevented Anwar from entering politics until the 2008 election and the current conviction for sodomy removes him from the political arena once again. The many trials and tribulations have energised his family to become politically active. His wife Wan Azizah Wan Ismail has held multiple political offices, including opposition leader, while one of his daughters, Nurul Izzah Anwar, is a popular member of parliament. They will again keep the Anwar brand alive in parliament and state assemblies, but Anwar is now in his late sixties and unlikely to return to claim the throne he was supposed to inherit all those years ago.

Other important laws that have had a lasting effect in curtailing civil society and opposition activity are the Internal Security Act ('ISA') and the Sedition Act. The ISA finds its genesis in the Malayan Emergency in the late 1940s, when British forces confronted a communist insurgency. The British enacted the Emergency Regulations Ordinance 1948 that allowed detention without trial. After independence, Malaysia brought back a version of this ordinance as the Internal Security Act to continue work to thwart communists. However, over the years, the Act was largely used to suppress political dissent. By 2011, as street protests and international pressure mounted, Prime Minister Najib Razak decided to abolish the ISA and, in 2012, it was repealed.

Hope of reform was soon quashed with the revival of the colonial era Sedition Act as a tool to quell dissent, with investigations and charges doubling in 2013, and again in 2014, compared to previous years.<sup>4</sup> This year it was amended to include religion as a seditious matter, which brings us full circle to the importance of ethno-religious identities in Malaysia and the problematic nature of raising any contentious matters pertaining to race and religion there.

Malaysia needs to redouble its efforts to locate a political solution to the destructive identity politics borne out of legally codified ethno-religious divisions. This entails a commitment to diversity in Malaysia beyond the touristic imagery of a tri-cultural tropical paradise. Sodomy laws inherited from British colonial rule should be up for discussion, as should the issue of freedom of — and for — religions (Islam, the nation's official religion, as well as all others). As long as religion (Islam) is used for political leverage, to appease identity insecurity among some and to divide the populace, the nation will remain mired in and subject to the ill-effects of its identity politics. Whether the opposition or government will make the first real steps towards this brave new world remains to be seen.

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