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Our right to women judges

Ikim Views

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Fulfilling women's expectations is important because they will expect more justice, especially in the context of realities that women face today.

THE announcement by the Prime Minister during the 12th Syariah Officers Conference in July, on the appointment of two women as judges in the Syariah court, has been applauded by many women-related NGOs.

Datuk Seri Najib Tun Razak hoped that "these appointments (as Federal Territory of Putrajaya and Kuala Lumpur Syariah court judges) would enhance justice in all cases, including those involving families and women's rights".

Surprisingly, the appointment also attracted the international media. *US and World News*, for example, reported that the move was praised by women's rights activists and considered "a boost for a system often accused of favouring men".

Muslim women in Malaysia owe all this to Datuk Seri Jamil Khir, Minister in the Prime Minister's Department.

With technical assistance from Tan Sri Ibrahim Lembut, the Director-General/Chief Justice of the Syariah Judiciary, the whole process took only half a year, though the struggle for it (especially through women's NGOs and Women, Family and Community Development Minister Datuk Seri Shahrizat Jalil), started more than a decade ago.

A prevailing *fatwa* (legal edict) issued in 2006 facilitated the whole process. Though the *fatwa* was issued four years ago – on April 6, 2006 – it needed a new Minister to make it happen.

This shows how political will supported by the enabling environment for change can make great things happen.

The appointments are significant because they pave the way for more women to be appointed at a higher level. It has had a “snowballing effect” in that other states have started to show interest in appointing women as Syariah court judges.

At the international level, Malaysia would not have any problem with reporting to the CEDAW Committee of the United Nations, except to move up to another level, i.e. – fulfilling the 30% quota of women at decision-making level.

Reporting to the United Nations is a secondary matter but acknowledgment of the fact of the presence of women on the bench is important, because it makes the legal system less alien and more relevant to the female half of the population.

These appointments will also instill public confidence, especially among women, in impartiality of the justice system.

On top of that, these appointments also best serves available human resources, because the current ratio of women law graduates to men law graduates is 60:40, and their academic performances are better than their male counterparts’.

The Syariah Chief Justice has also seen how the existing “glass-ceiling” obstructs the career path for women who choose to be in the Islamic judiciary. Under the current system, they are stuck in the same post because they cannot go anywhere up.

Since the appointments of the two women, questions have been raised – by reporters from the international media, specifically *The New York Times* – on whether they will be prevented from hearing certain cases.

The reporters have seen certain Muslim countries such as Sudan allowing their women judges to hear all cases; but Egypt, on the other hand, bars their women judges from hearing criminal cases. What is the position in Malaysia?

The Department of Syariah Judiciary discussed this issue at the Meeting of Chief Justices of all states in Malaysia in 2009. It was only in July 2010, after intense debate and careful consideration, that these women judges were appointed and given the same jurisdiction as their male counterparts.

In the existing jurisdiction, under the Syariah, *hudud* (crimes with fixed punishments) or *qisas* (retribution) punishment – which could be death as the maximum penalty – are not meted out for criminal offences.

Only the Civil courts are given such jurisdiction in Malaysia but not the Syariah. All punishments are made under the *ta’zir* category only.

Section 47 (2) (a) of the Syariah Criminal Offences Act (Federal Territories) 1997 specifically provides for criminal cases with specific penalty in the form of *ta’zir* (crimes with discretionary punishments).

The Syariah Courts in Malaysia hear exclusively personal law and offences, and not *hudud* and *qisas*. This solves the complication often faced by other Muslim countries in appointing women judges.

Since the *fatwa* allowing women to be appointed as Syariah court judge in Malaysia was based on the Hanafi school of thought, their jurisdiction would follow the same school, i.e., they are allowed to hear all cases except *hudud* and *qisas*.

Since there are no *hudud* or *qisas* cases given the current legislation, no women and men judges are given jurisdiction to do so.

To conclude, fulfilling women's expectations is important because they will expect more justice, especially in the context of realities that women face today.

They hope that the presence of women on the bench can make a difference because women possess different experiences, concerns and interests that can bring new perspectives and reduce stereotypes.

However, in dispensing justice, which is an obligation on these judges, these women judges (and men as well) are guided by Qur'an 5:42 ("...If you judge, judge between them with justice...") and also Quran 4:105 ("We have revealed to you the scripture with the truth that you may judge between people by what God has taught you").

Appointment of female judges is a landmark, breaking the last barrier that has been within the legal system for the advancement of women.

Egypt's Grand Mufti Sheikh Ali Gomaa mentioned that the appointment of women to judicial positions does not contradict Islamic precepts.

"The job of a judge is merely to know the law well and to implement it fairly. The inclusion of women is a right owed to society as a whole," he said.

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