



UNMASKING THE DEVIL

THE ROLE OF THE COURT AND ISLAMIC RELIGIOUS AUTHORITIES IN THE BATTLE AGAINST RELIGIOUS EXTREMISM AND TERRORISM IN MALAYSIA



Khairil Azmin Mokhtar PhD

ka_mokhtar@iium.edu.my

Associate Professor
Ahmad Ibrahim Kuliyah of Laws,
International Islamic University Malaysia



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Malaysia is a country proud of its multireligious, multiethnic and multicultural characters.

Religious freedom is an important aspect of this democratic nation and freedom of religion is one of the fundamental liberties guaranteed and protected by the Federal Constitution.

Respect and understanding are vital in preserving peace and harmony between the people of various races and religions living in the country.

Article 11 of the Federal Constitution proclaims that every person has the right to profess, to practise and to propagate his religion.

This right can be claimed by anybody irrespective of religion, citizenship, gender, ethnic group, or others.

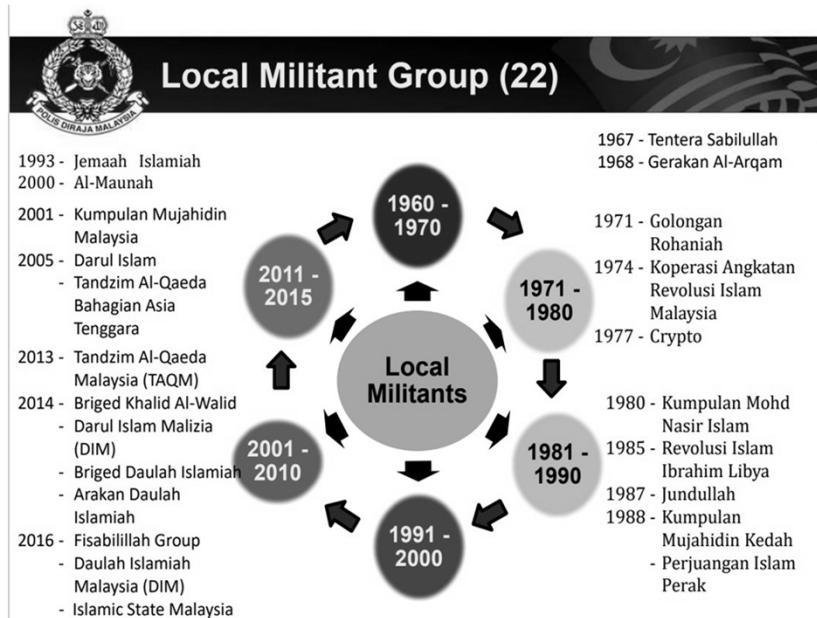
However, the sanctity of religion has been undermined by groups of people who seem to have vile intentions.

Not only have these people diluted the truth, but they also have created chaos and violence under the guise of religion. This has become a major global problem and Malaysia has not been spared.

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If efforts are not taken to wean these groups off extremism, they would degenerate into terrorists and strike blindly without regard for the life of the innocent and disrupt the peace and stability of the country.

These are examples of armed violence that were driven by the deviant teaching and radical ideology of local Islamic groups in the country.



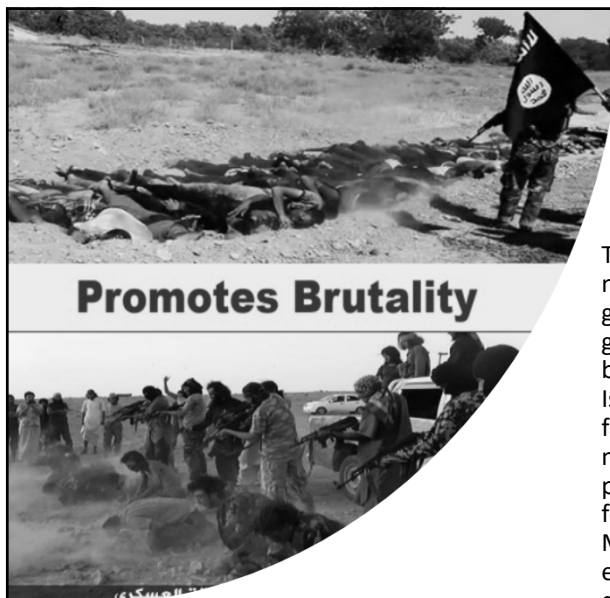
Religious extremism and terrorism are becoming ever increasingly worrying and more difficult to contain because terrorist movements have gone beyond national boundaries, are highly organized, well financed and more sophisticated and advanced in terms of communication, strategy, and weaponry.

As admitted by the former Deputy Prime Minister of Malaysia in 2016, who at that time was also the Minister of Home Affairs, since 2013 the Islamic State (IS) militancy or Daesh has become the fastest growing threat to Malaysia.

The group is extremely dangerous because it espouses views and teachings that promotes the *takfiri* ideology.



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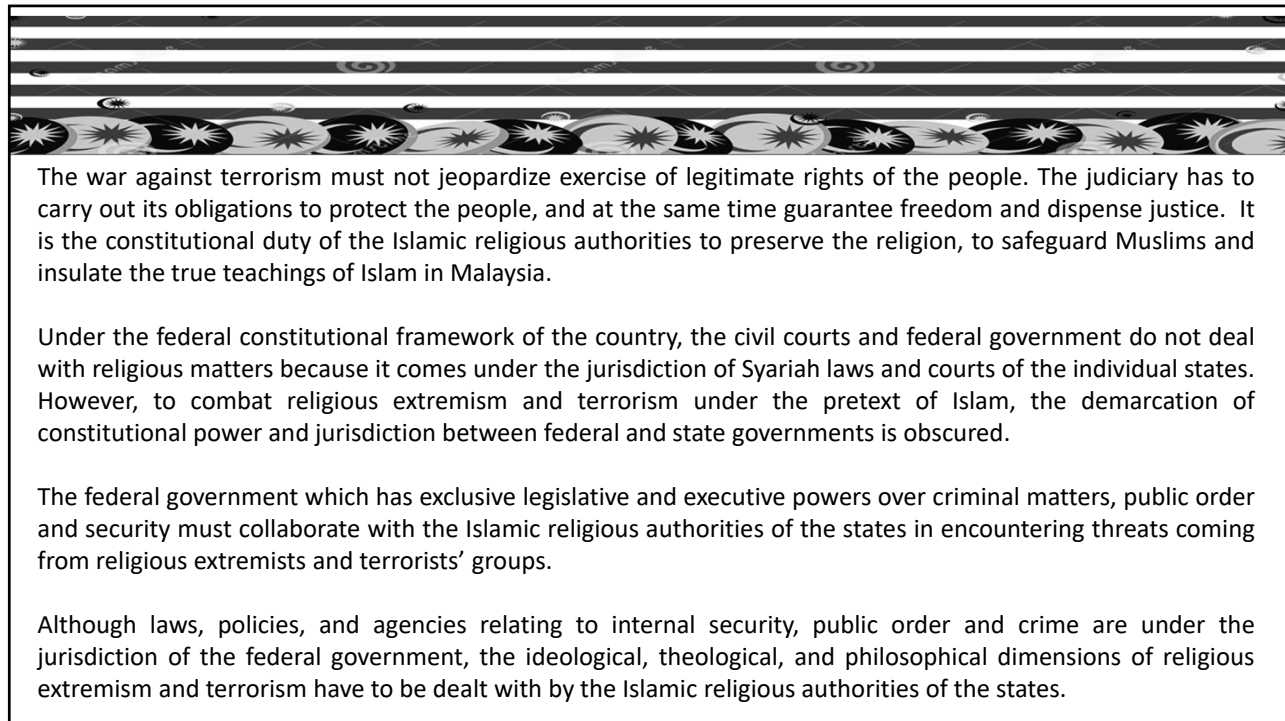


Takfiri ideology is characterized by harsh literalist interpretations of Islam, which pronounce apostasy and disbelief against Muslims who espouse differing interpretations on religious matters, thus justifying the shedding of their blood. The ideology legitimized the murder of Muslims and other religious groups who oppose them.'

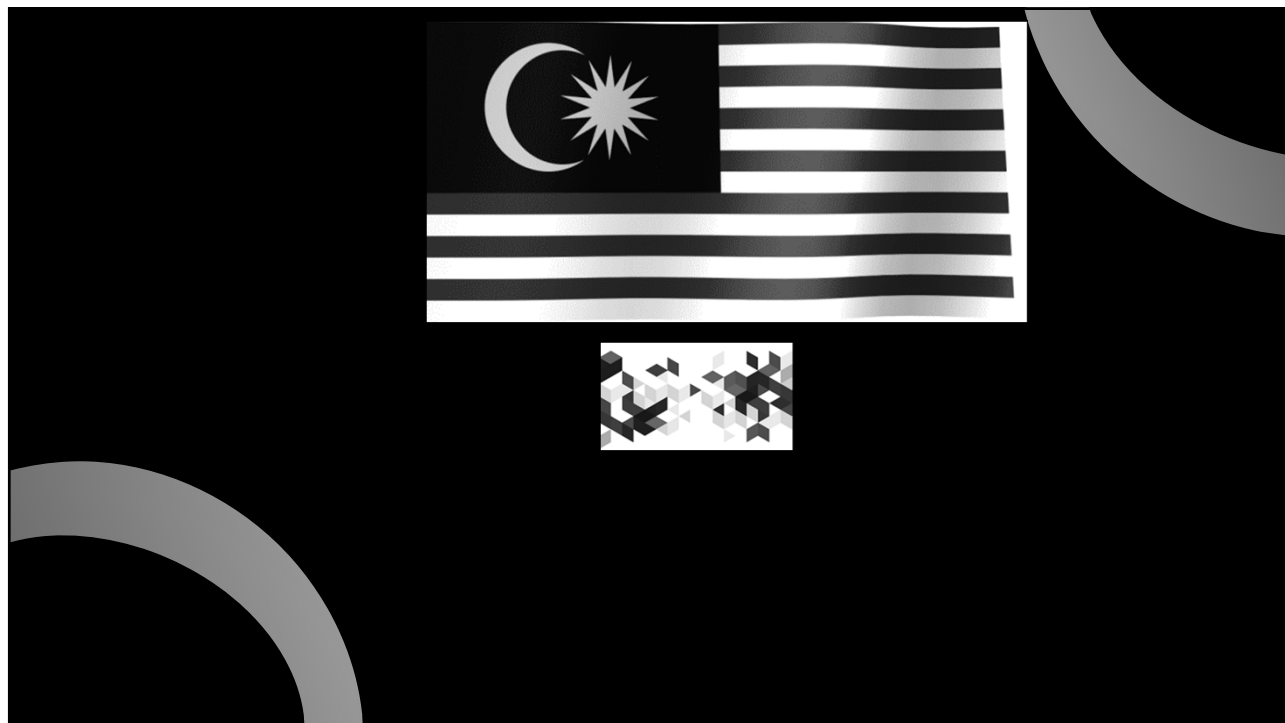
The jihadist Salafism and Wahhabism led to the formation of numerous local religious extremist cells. These extremists' groups shared a common goal namely to topple down the government and demanded the creation of the administrative body that would be fully aligned with their own versions of Islam. The goal is in consonance with various statements and fatwas issued by some leaders of the groups that Muslims must refrain from voting and taking part in democratic political elections. They declare that these activities are forbidden (haram) for Muslims to participate. Thus, although Malaysia is a country that has Syariah laws and courts such extremists' groups still commits acts of violence and cause destruction to the society in the country.

In fact, the reality is, as correctly observed by Anthony H. Cordesman, that globally that most extremist and terrorist violence occurs in Muslim states. The violence overwhelmingly consists of attacks by Muslim extremists on fellow Muslims, and not a clash between civilizations.

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Article 11 of the Federal Constitution guaranteed the right to every person, including permanent residents, migrant workers, tourists, international students, asylum seekers and refugees, to religion.

Religious rights guaranteed under the constitution do not only apply to individual and personal capacities, but it also covers religious groups. The constitution protects the rights of any religious group to manage its own religious affairs. All religious groups have the constitutional rights to establish and maintain institutions for religious or charitable purposes. Rights to property are also guaranteed because it is stated that every religious group has the right to acquire and own property and hold and administer it.



Freedom of religion had been upheld by the courts in several cases such as ***Jamaluddin bin Othman v Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor*** and ***Minister for Home Affairs v Jamaluddin***.

Both the High Court and the Supreme Court in the said cases have maintained the right of the person to practise and propagate Christianity. Notwithstanding that under s 8(1) of the Internal Security Act 1980 (which has now been repealed), the Home Minister was given powers to detain a person to prevent him from 'acting in any manner' prejudicial to the security of Malaysia, the Minister has no power to deprive a person of his right to profess and practise his religion which is guaranteed under art. 11 of the Constitution.

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Religion is a nourishment to the soul. It brings peace to the mind and fulfils one's spiritual needs. It is meant to create peaceful way of life for human beings. Religion creates peace between a person and his creator, and it also creates harmony between a person with the nature and his surroundings. It also has the objective of establishing a peaceful environment for the society.



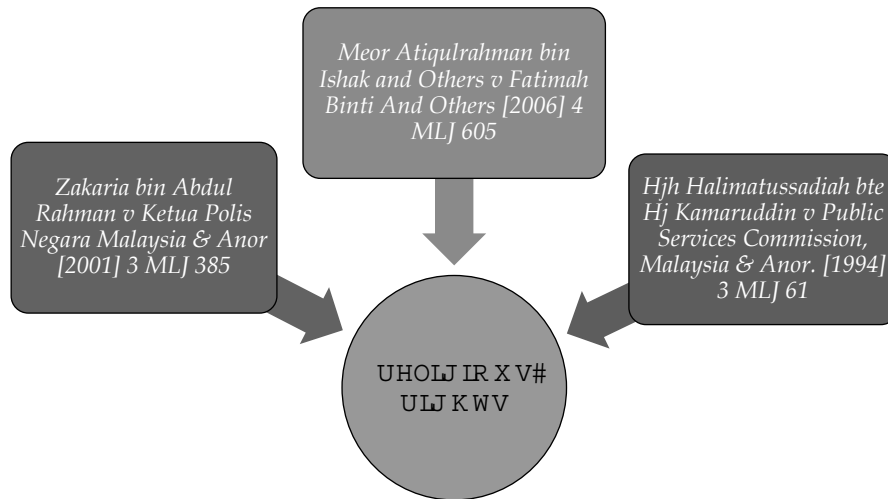
Accordingly, the Federal Constitution of Malaysia does not authorize any act contrary to any general law relating to public order, public health, or morality. The express limitation of religious rights can be found in Article 11(5). In other words, religious rights guaranteed by the Constitution cannot be abused to disrupt public order. Any action even those associated with any religion may be limited if it endangers public health and undermine morality of the public.

'The freedom to profess and practise one's religion should not be turned into a licence to commit unlawful acts or acts tending to prejudice or threaten the security of the country'.

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The civil court on a few occasions had faced the challenging tasks of upholding rights of those accused of religious terrorism while at the same time preserving public order, peace, and security of the country.

The right to practice religion has been restricted by the courts on various occasions on the basis whether or not the action or practice is required or obligatory under that religion. It appears that only an action or practice which been classified as obligatory is certain to be protected by Article 11.

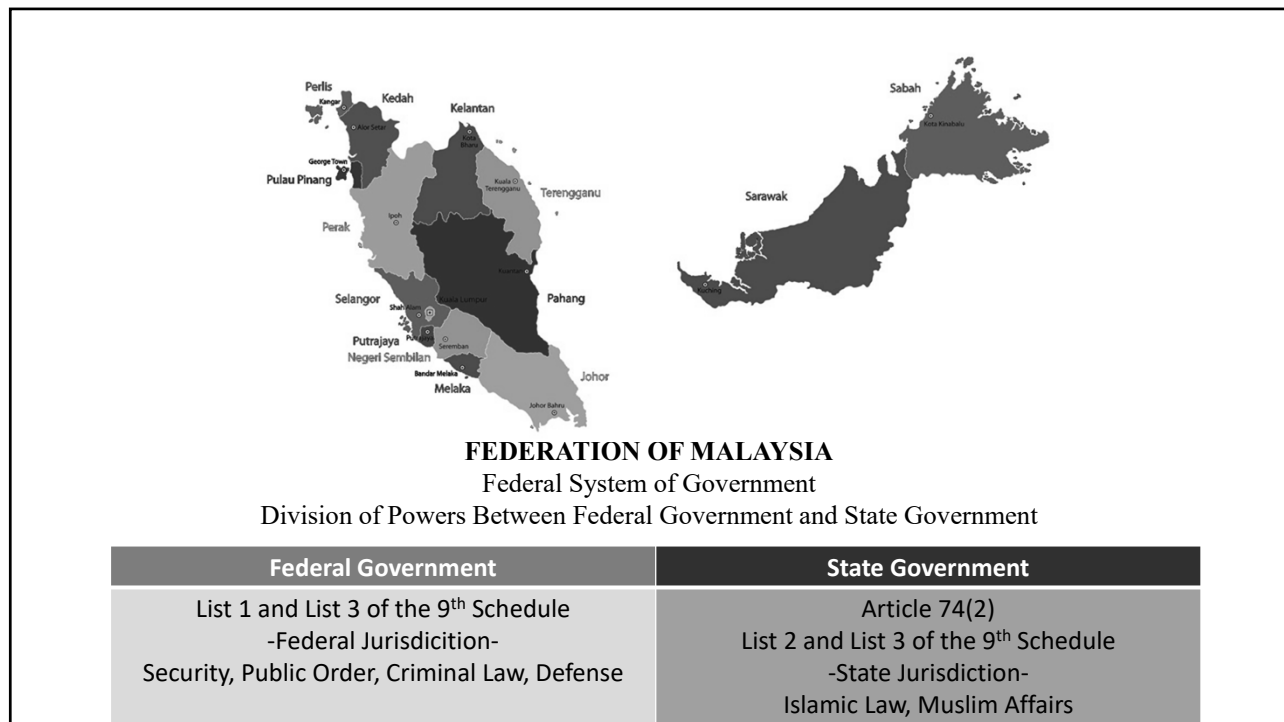


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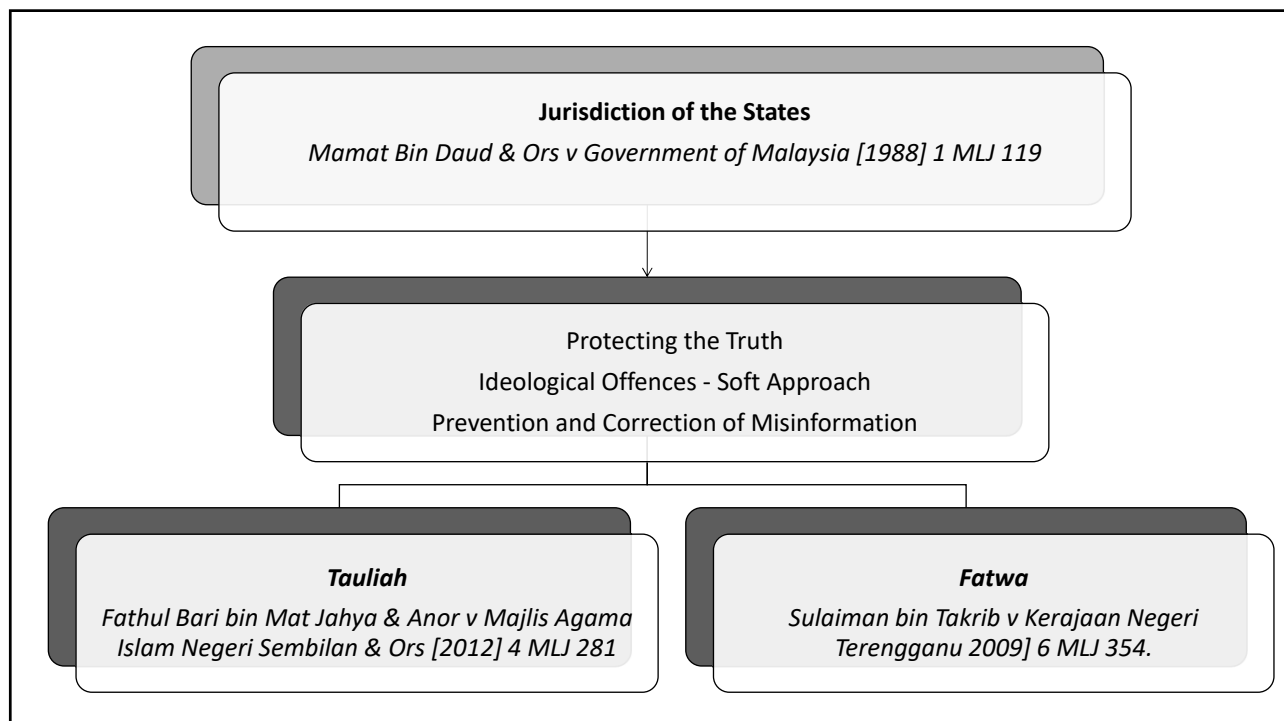


THE ISLAMIC RELIGIOUS AUTHORITIES

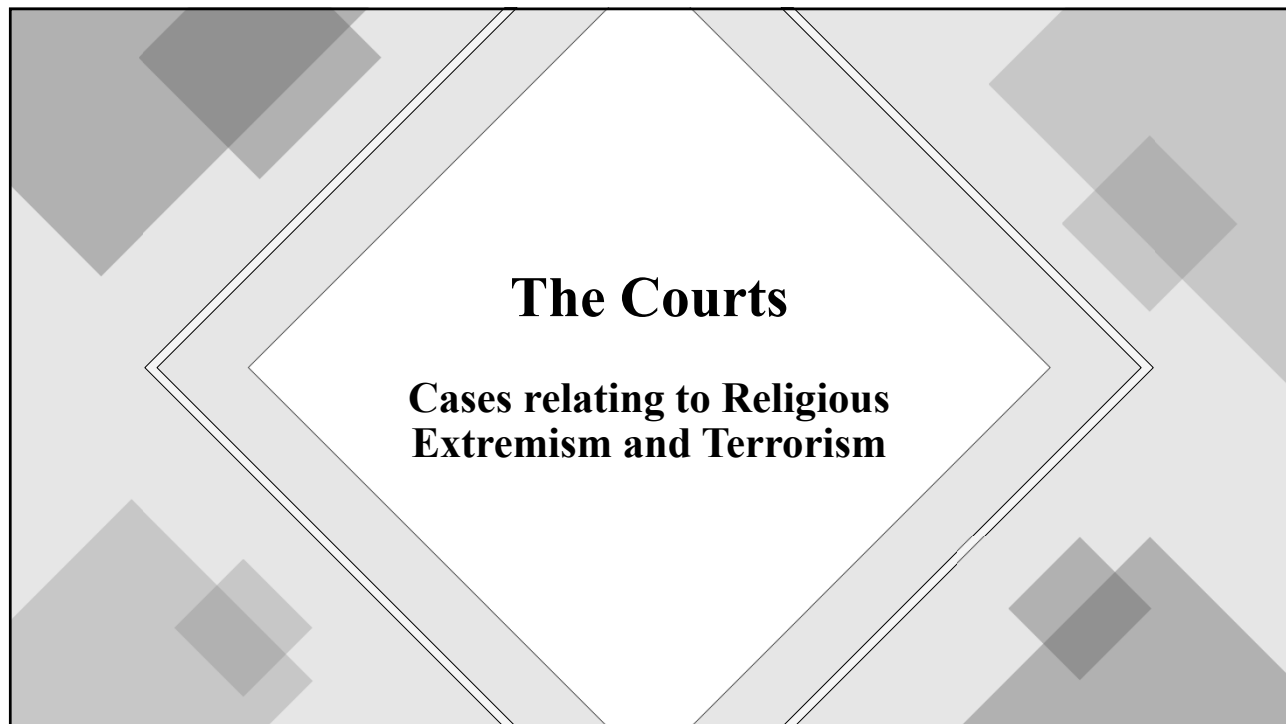
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Minister for Home Affairs v Jamaluddin

The freedom to profess and practise one's religion should not be turned into a license to commit unlawful acts or acts tending to prejudice or threaten the security of the country. The protection conferred by Article 11 of the Constitution cannot be a complete umbrella for all actions.

Mamat bin Daud & Ors v Government

The article which provides for freedom of religion does not authorise any act contrary to any general law relating to public order, public health or morality'.

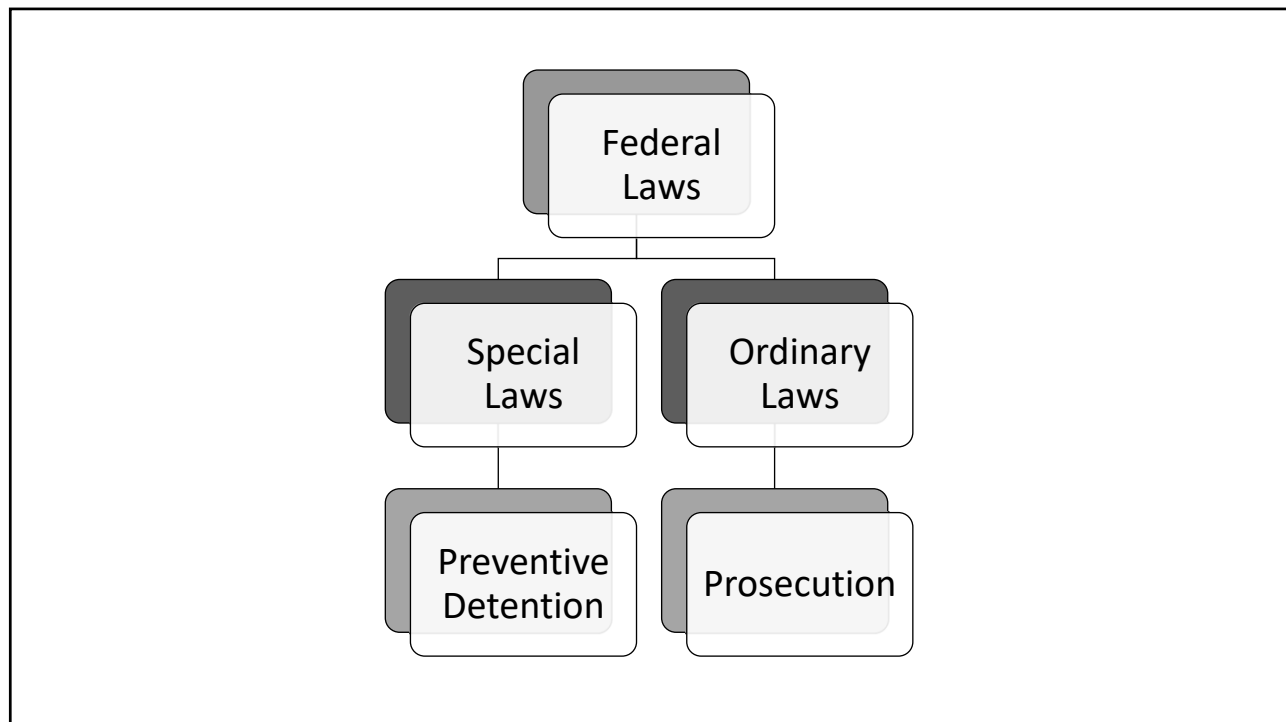
Federal Government

Federal Jurisdiction – Security, Public Order, Criminal Law, Defense

Federal Laws

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The Internal Security Act 1960	Penal Code
<p>Ahmad Yani bin Ismail & Anor v Inspector General of Police & Ors MLJ [2005] 4 MLJ 636</p> <p>Abdul Razak bin Baharudin & Ors v Ketua Polis Negara & Ors [2004] 7 MLJ 267</p>	<p>Mohd. Nasuha bin Abdul Razak v Pendakwa Raya [2020] 3 MLJ 530</p> <p>Mustaza bin Abdul Rahman v Public Prosecutor [2021] 1 MLJ 230</p> <p>Pendakwa Raya lwn Anuar bin AB Rawi [2016] MLJU 533</p> <p>Pendakwa Raya lwn Tengku Shukri bin Che Engku Hashim [2018] 8 MLJ 645</p> <p>Public Prosecutor v Aszroy bin Achoi [2018] 9 MLJ 702</p> <p>Public Prosecutor v Razis bin Awang [2020] MLJU 132</p> <p>Public Prosecutor v Wan Mohamad Nur Firdaus bin Abd Wahab and other appeal [2019] 4 MLJ 692</p> <p>Pendakwa Raya lwn Siti Noor Aishah bt Atam [2017] 7 MLJ 461</p>

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CONCLUSION

The use of military capabilities, enforcement of the laws, and prosecution in the courts can cause physical damage to terrorist organizations and stifle their activities. However the ideology underpinning the terror would remain intact. Deradicalization measures and countering/preventing violent extremism which aims at tackling the ideological roots of terrorism are considered highly effective in dealing with the ideological problem. The holistic approach provides commensurate measures and proportionate reaction to terrorism related activities.

The ever-increasing threat by religious extremists and terrorist groups requires the enforcement agencies to step up their efforts to protect the society and nation. At the same time the authorities need to be vigilant and more tolerant in dealing with cases of ideological offences so as not to impede lawful exercise of rights to free speech and expression, and legitimate religious rights.

The enforcement agencies, together with the courts and Islamic religious authorities must work in tandem to defeat not only terrorist organizations but its ideology as well. To counter the terrorists' threats and to combat the spreading of the dangerous extremists' ideologies the court and the Islamic religious authorities need to cooperate. Only then the fight against religious extremism and terrorism in Malaysia is sustainable and effective.