

# EDITORIAL

There are two important bills that are to be tabled soon in parliament; the anti-hopping bill and the abolition of the mandatory death penalty. The anti-hopping bill has been the subject of so many polemics within the government that it has been in and out of Cabinet meetings. Apparently, there has been a consensus reached, and the bill may see the light of the parliamentary day soon. Undoubtedly, it is difficult for legislation to reach a consensus among the government and the opposition representatives. The choice is a law that is so strict that it renders all kinds of hopping to be fatal or a law that is so flexible that its content has so many exceptions that make the law ineffective in curbing party-hopping. Thus, the middle way will be to have an anti-hopping law that caters to certain hopping that is reasonably justified. In moderating such an act, a parliamentary select committee may be considered to be established to deal with the matter. According to the Minister of Law, a possible exception for MP who is involuntarily expelled by the party; who leaves to join a party within a coalition; and the state assemblies may determine whether similar law may be promulgated in the states.<sup>1</sup>

Meanwhile, a term-long study on the abolition of the mandatory death penalty was concluded with the Minister in charge of law and Parliament announcing the possible tabling of bills to amend various provisions of the existing laws. There are nine sections in the Penal Code [Act 574], two sections in the Firearms (Increased Penalty) Act 1971 [Act 37], and also section 39B of the Dangerous Drugs Act 1952 [Act 234], which was already amended in 2018. Further to these offences, there are 22 offences that carry the death penalty at the discretion of the court. These offences are under the Armed Forces Act 1972 [Act 77], the Water Industry Services Act 2006 [Act 708], and the Kidnapping Act 1961 [Act 365]. The main concern is to provide alternative penalties for these offences. An established principle of 'an eye for an eye' requires rethinking a proportionate punishment for intentionally causing death, for instance, under section 302 of the Penal Code. For the victim's family, it is difficult to accept the fact that a person who has caused the

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1 *The Star*, 22 May 2022.

death of their loved one will not end up on the gallows but will live for another twenty years or so in prison. Imagine people who are waging war against the Yang di-Pertuan Agong and have caused His Majesty's death are still alive and kicking even though they are confined in the Sungai Buloh penitentiary. For an alternative punishment, the Minister interestingly raised the possibility of implementing the Islamic law punishment of *diyat* or 'blood money'. The *diyat* is part of the *qisas*, or just retaliation, a punishment that applies the 'an eye for an eye' principle in the case of murder, causing death or bodily injuries.<sup>2</sup> Instead of the accused facing the death penalty, the victim's next of kin may opt for the payment of compensation or *diyat*. The state is to determine the amount of compensation. *Diyat* is a punishment and is not treated as compensation for the victim's death, even though there are opinions to the contrary.<sup>3</sup>

The new issue of the Journal of the Malaysian Parliament has an interesting variety of articles. From reform of Parliament to new laws, the second edition of the journal dwells on issues of public interest vis-à-vis parliamentary democracy and the role of parliament, conducts of Members of Parliament (MPs) in *Dewan Rakyat* and the controversial Police Complaints Commission Bills, the old IPCMC and the new IPCC Bills. There is also an article on the law on medical cannabis that critically evaluates the proposal of legalising cannabis. The following are the brief content of articles published in the second issue:

Reform of the legislature has always focused on the reform of *Dewan Rakyat*. Reform of *Dewan Negara* is also essential as reform has to be comprehensive. Jonathan Fong Ren Ming, in his article "Reforming the *Dewan Negara*: Its Evolution and Options for Reform", looks at the reform of *Dewan Negara* drawing practices in the Upper Houses of Australia and Canada. The paper explores the historical evolution of the *Dewan Negara* and the current issues it faces. The reference to practices in Australian and Canadian Senates is to glean usable lessons, culminating in a discussion of possible reform options for the *Dewan Negara*.

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2 See M.A. Mohamed Adil, 'Shariah response to mandatory death punishment' *New Straits Times*, 22 June 2022 <<https://www.ikim.gov.my/new-wp/index.php/2022/06/22/shariah-response-to-mandatory-death-penalty/>>.

3 See M.A. Mohamed Adil, 'Mansuh hukuman mati mandatori selari dengan ajaran Islam' *Berita Harian*, 14 Julai 2022 <<https://origin.bharian.com.my/rencana/lain-lain/2022/06/965724/mansuh-hukuman-mati-mandatori-selari-ajaran-islam>>. See also P. Ismail, 'Asas perbezaan kadar diyat antara lelaki dan wanita menurut undang-undang Islam' (1997) 2(5) *Jurnal Syariah* 229-237.

Liew Chin Tong and Mohammad Fakhurrazi Mohd Rashid write "*Lim Kit Siang dan Reformasi Parlimen Malaysia*" narrating the contribution of the veteran Member of Parliament, Lim Kit Siang, to the reform of *Dewan Rakyat*. It is argued that the domination of the ruling party, Barisan Nasional (BN), in Parliament since the early 1970s has stifled the function of Parliament as a check and balance towards the government. The efforts made came from the realisation that the executive has always been dominant and exacerbated by the rigid procedure in Parliament. As the leader of the opposition, Lim Kit Siang is said to have transformed *Dewan Rakyat* into a more democratic and balanced institution.

Asrawati Awalina Aslan discusses the conduct of Members of Parliament at *Dewan Rakyat* in her article entitled "Conduct in the House of Representatives (*Dewan Rakyat*) Parliament Malaysia". She analyses the Code of Conduct for members of Parliament in regulating their behaviour during parliamentary sessions. The analysis is based on field research that was carried out over two phases. The first phase was to assess the public's knowledge, attitude and perception of the behaviour of MPs. The second phase involved a semi-structured interview with six MPs. The results of the online survey confirmed that the public is more aware of the existence of misconduct among MPs and the discrimination faced by MPs who are members of marginalised groups such as women, youth, and minorities. Findings from the study concluded that although there was a higher awareness rate among the public about the misconduct of MPs, there was contradictory opinion highlighted from the MPs' perspectives, indicating the need to look at the gap between the public and MPs' understanding of these issues.

As part of the move to reform Parliament, it is suggested that the Parliamentary Service Act 1963 should be re-enacted. The article entitled "*Keperluan Mewujudkan Semula Akta Perkhidmatan Parlimen di Malaysia*" by Ikmal Hisham Md Tah et al. seeks to justify that the Act, which was abolished in 1993, is necessary because Parliament as an institution needs a parliamentary service system that is independent and efficient to provide impartial support to members of the House. Since 1993, parliamentary staffs have been governed by the Federal Public Service regulations that are not in line with the spirit of empowerment and independence of parliamentary institutions in uplifting the quality of parliamentary representation in Malaysia. The article sets out to ensure parliament's check and balance function can be discharged accordingly.

Wan Ahmad Fauzi Wan Husain, in an article entitled "Watanic Jurisprudence: Governance Principles Under the Federal Constitution",

provides an alternative approach to the existing principle of sovereignty in Malaysia. The legal methodology of *watani* jurisprudence emphasises the authoritative powers of the Malay Rulers that the author submitted to legitimise the Federation of Malaya Agreement, 1948, the Federation of Malaya Agreement, 1957, and the Federal Constitution of Malaya, 1957. The article stresses the fact that previous research on this subject had ignored the principle of sovereignty as stipulated in Article 181(1) when discussing the issue of legislative powers. The author argues that since the members of the legislative, executive, and judiciary take the oath under the Sixth Schedule before discharging their respective constitutional responsibilities, it is essential to understand the essence of the oath under the Sixth Schedule vis-à-vis the duty to uphold the rule of law and the supremacy of our Constitution.

Sharifah Syahirah S. Shikh writes that patriarchy has impacted the selection of women in general elections. Her article "*Patriarki, Politik Malaysia dan Pilihan Raya Umum*" analysed qualitatively data obtained from secondary data, official documents, and observations during the GE14 period, including during the nomination of candidates as well as the month after GE14. The article hypothesised that the patriarchal system has clearly undermined and negated women's potential as leaders in Malaysian politics and that it is strengthened through the cultural practices of political parties such as UMNO, PAS, PKR, DAP and BERSATU. In GE14, the practice of enhancing the hegemony of masculinity continued with a minimal number of female candidates, and female party members were still considered more suitable as party voters. However, there are efforts that have been carried out by various parties, especially the women's wings of political parties, civil society, the media, and government agencies, that have challenged this system and have voiced the importance of women as leaders of the country.

Amy Tam Lay Choon, in her article "Parliamentary Oversight to Uphold Accountability in the Review Process of Sustainable Development Goals", analyses the role of Parliament in supporting the SDG process through the enactment of legislation and the adoption of a budget. She argues that the role of parliament includes ensuring accountability for the effective implementation of the 2030 Agenda. It is followed by a regular follow-up and review with an accountability structure that will support a comprehensive assessment and oversight of SDG implementation. This paper sheds light on the steps taken by parliaments around the world to incorporate accountability into their work on SDG implementation. It would draw on lessons learned from the experiences

of these parliaments as a way forward for parliaments to be involved in the SDG implementation.

The death penalty and the right to life is the subject matter discussed by Mohamed Azam Mohamed Adil. In his article entitled "*Hak untuk Hidup dan Hukuman Mati: Respons Syariah terhadap Perundangan Antarabangsa*", the writer submits that while the Shariah recognises the right to life of each and every human, it also posits that humankind is the prize of God's creation. As humans were created by God, a human's right to life ultimately belongs to God. For God gives life, and He is the one who takes it back. Therefore, human lives are sacred, according to the Syariah, and it is a crime to take another human's life without a just cause. In this regard, Syariah has prescribed retaliation (*qisas*) that prescribes the death penalty for intentional murder. The article examines the human right to life from both the perspectives of Islam and the Federal Constitution and also examines the demands of international law on the abolition of the death penalty and what the Shariah response is in this regard.

The establishment of an independent Police Commission has been the subject of much debate since it was first mooted. It all started with the promulgation of the Independent Police Complaints and Misconduct Commission (IPCMC) Bill 2019. Due to many objections to the Bill, the Independent Police Conduct Commission (IPCC) Bill 2020 was enacted. Augustine Leonard Jen seeks to review the Bill in the article entitled "*Polemik Rang Undang-undang Suruhanjaya Bebas Aduan Salah Laku Polis 2019 (RUU IPCMC 2019) dan Rang Undang-undang Suruhanjaya Bebas Tatakelakuan Polis 2020 (RUU IPCC 2020)*". The new Bill contains 47 Clauses compared to 60 Clauses in the previous Bill. The IPCC 2020 Bill was enacted to enhance the integrity of the Royal Malaysia Police (PDRM), reduce misconduct among PDRM members and encourage public confidence in the police force. The author discusses the issues that the IPCC 2020 Bill still invites controversy and negative connotations and compares the new Bill with the old one.

The article entitled "Preventing Oversight on Medical Cannabis Legislation in Malaysia: Analysis of Risks, Benefits and Regulation Requirements" by Mohamad Haniki Nik Mohamed et al. seeks to discuss the risks, benefits and regulations of medical cannabis in the light of many countries that have legalised the use of cannabis for medical purposes. The authors argue that although there are claims and studies reported that medical cannabis is needed to treat certain diseases, the decision to legalise cannabis in Malaysia needs to carefully weigh the risks and benefits. After all, there are other FDA-approved medicines

and their clinically proven to be safe and effective alternatives that are currently available to treat such diseases. The control of cannabis licensing and selling needs to be taken into serious consideration before deciding on the regulatory status of cannabis. The lack of high-quality clinical trials regarding the benefits and harms of cannabis for medical purposes should also be a major consideration before the decision to legalise cannabis is made.

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