

## Separation of Powers? Really?

### News:

Recently, an issue involving the country's legal system made headlines in the media. Malaysia's High Court granted a request from prosecutors to drop all corruption charges against the country's Deputy Prime Minister Ahmad Zahid Hamidi in his charity foundation graft case. The court granted Ahmad Zahid, who was facing 47 charges of criminal breach of trust (CBT), bribery and money laundering, a discharge not amounting to an acquittal (DNAA). This decision has caused various reactions. For die-hard supporters of the ruling party, this was deemed the right decision and all parties are expected to respect it. For the opposition, it is a form of political interference in the country's legal system. As for the common people, they are advised to accept the court's decision and respect the rule of law inherited from the colonialists even though this respect has been clearly violated by alleged 'unseen hands' to save the top leaders of the ruling parties.

### Comment:

Despite being pressed by the opposition in this DNAA issue, the Prime Minister, Anwar Ibrahim, has repeatedly insisted that he did not interfere in the court case. Despite this, the perception that there is interference by the executive body in this DNAA-related issue has already penetrated the public sphere. Consequently there has been voices that recommend that the separation of powers between the executive and judicial bodies should be implemented seriously.

In Malaysia, the government system follows the model of the separation of powers theory. According to this theory, the government system is divided into executive, legislative and judiciary. In this structure, the legislature (Parliament) is the body responsible for making rules and laws. The jurisdiction of the executive body (government) is to implement the laws that have been made by the legislature while the judiciary regulates and monitors the implementation of these laws. However, problems began to emerge when members of the government are appointed from among members of the legislative body. How then, can there be separation of powers if the legislature and the executive are really the same bunch of people and to make it worse, the officers of the judiciary are themselves appointed by the executive!!

In Islam, the legal system is implemented by a judicial body consisting of the Madzlim Court, the Khusumat Court and the Hisbah Court. All three are established on the basis of Aqeedah and sourced from the revelation of Allah (swt). The head of each judicial body will ensure that all court processes run in accordance with Islamic legal principles. The appointment of the head of each judicial body is done by the Khalifah. They will be chosen from among the most deserving people. Although historically there had been weaknesses and flaws in its implementation, this were mainly due to human factors. In a situation where the Islamic legal system is 'manipulated' by any structure within the Khilafah system, then the issue will be dealt with by the Madzlim Court, which is a court whose role is to deal with disputes that arise between the people and the government. The Madzlim Court has the right to sentence the persons convicted, regardless whether he is the Khalifah, his assistants or any state officials. In the Khilafah, only the Khalifah is authorized to implement the entire Islamic law on the people. Since the implementation of Shariah is a command from Allah (swt) there are no opposition parties in discussing the implementation of Allah's (swt) law. Within the structure of the Khilafah, there is the Assembly of the Ummah though its function is not to oppose, but to ensure that the implementation of the Shariah law is done fairly and reliably by the Khilafah institution.

The legal issue that is plaguing the country at the moment is not a new thing. The theory of separation of powers boasted by the supporters of the current government only 'looks good' in the outdated books of western philosophy. However, when it is implemented, there is too much room for manipulation by unscrupulous parties. This is not a legal system revealed by Allah (swt). The only model of Islamic government is the Khilafah, a system inherited from the Prophet (peace be upon him), which applies the Book of Allah and the Sunnah of His Messenger in its totality. Thus, as long as this democratic system is not changed to an Islamic system, this issue will never be settled. The only way to get true justice is to re-establish the Khilafah state that will rule with the Quran and the Sunnah.

Written for the Central Media Office of Hizb ut Tahrir by

Dr. Mohammad – Malaysia