

Malaysia: Jakim doesn't have oversight of Suhakam - lawyers

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The Islamic Development Department (Jakim) does not have oversight on what the Human Rights Commission (Suhakam) studies, said constitutional and syariah lawyers.

This came following tensions over Suhakam's plans to research possible legislation to recognise the third gender.

"As it stands, Jakim is a department under the Prime Minister's Department where it has, among others, the mandate of merely functioning as a federal coordinating agency for the various Islamic State Religious Departments in Malaysia.

"Consequently, Jakim does not directly have any 'oversight' over Suhakam," syariah lawyer Nizam Bashir told *Malaysiakini* yesterday.

"Nevertheless, because of its mandate of coordinating state religious departments, it may still be sensible to take note of what may have been expressed by Jakim," he added.

Constitutional lawyer New Sin Yew said Suhakam's establishment under the Human Rights Commission of Malaysia Act enshrined its status as an independent body.

Therefore, he said, "they are not beholden to the executive, including Jakim."

On June 14, Suhakam advertised a vacancy for a research position to study the feasibility of drafting legislation to recognise the third gender in Malaysia on its social media channels.

This brought a swift response from Jakim the next day, demanding [clarification](#) from the human rights commission over the study.

In a Facebook [statement](#) on June 16, de facto Religious Affairs Deputy Minister Ahmad Marzuk Shaary claimed that Jakim had the right to receive an explanation from Suhakam due to "its duty and role to address an issue that sparks concern for the Muslim community".

However, New said the proposed study to recognise a third gender was incidental to Suhakam's functions under Section 4 of the Suhakam Act.

Section 4 of the Act states, among others, that its duties are to promote awareness of human rights and to advise and assist the government in formulating legislation.

New added that Section 4(2)(a) of the same Act also gave the commission a legal right to conduct research for the purpose of discharging its duties.

Suhakam commissioner Hishamudin Yunus has also asserted that the commission should be given the space to conduct research into the third gender.

Hishamudin has also said that being transgender is a “medical condition” that cannot be treated and will plague a person for life.

In the project’s terms of reference document, Suhakam said that legal gender recognition was essential for transgenders to thrive and live with dignity, and to protect them from violations and degrading treatment.

Deputy minister, Jakim take issue with Suhakam’s ‘third gender’ study

De facto religious affairs deputy minister Ahmad Marzuk Shaary and the Islamic Development Department (Jakim) have taken issue with the Human Rights Commission’s (Suhakam) plans to research possible legislation to recognise a third gender.

Jakim yesterday said it was demanding a clarification from Suhakam over the study while Marzuk opined that the commission could research other matters rather than this.

“Jakim has the right to receive an explanation from Suhakam as it is the duty and role of Jakim to address an issue that causes concern among Muslims in this country.

“After all, we do not want the data collected to be misused to misrepresent social reality given that the goal of the study is clearly biased, that is, towards giving recognition to the third gender.

“In my view, it is better for Suhakam to use the allocation provided by the government to study issues that are more relevant to the urgent Covid-19 pandemic situation, especially those related to issues of the human rights of the vulnerable, women and children,” Marzuk said in a Facebook post last night.

Such research, he said, could include how to resolve domestic violence, especially during the movement control order (MCO).

On Monday, Suhakam posted on its social media channels a call for researchers to study the feasibility of drafting legislation to recognise the third gender in Malaysia, prompting a response from Jakim the next day.

JAKIM telah memohon penjelasan rasmi SUHAKAM mengenai perkara ini.
pic.twitter.com/Zutfvsy8K0

— JAKIM (@MyJAKIM) [June 15, 2021](#)

In the study’s [terms of reference](#) document, the commission said legal gender recognition was essential for transgenders to thrive and live with dignity and to protect them from violations and degrading treatment.

It aims to produce a report that includes recommendations to the government for gender recognition laws to allow transgenders to change their name and gender markers on their identification documents, among others.

Speaking to *Free Malaysia Today* yesterday, Suhakam commissioner Hishamudin Yunus defended the study and said the commission should be given the space to conduct research on third gender matters.

Hishamudin said that being transgender was a “medical condition” that cannot be treated and would plague a person for life.

“The third sex comprises those who are born male or female but have a ‘soul’ that is contrary to their true nature,” he added.

Marzuk, however, claimed Hishamudin’s views on the matter deviated from Islamic teachings.

Meanwhile, in a *Harakah Daily* article, PAS information chief Kamaruzaman Mohamad also called on Suhakam to cancel the study.

Recognition exists

Responding to Kamaruzaman, a group of 130 civil society bodies and individuals accused PAS of being “extreme and anti-knowledge”.

Among them were the Agora Society, the All Women’s Action Society, the Federation of Reproductive Health Associations Malaysia, Justice for Sisters, social activist Marina Mahathir and trans activists Dorian Wilde and Nisha Ayub.

They said that third gender law research was in line with Suhakam’s statutory responsibilities.

This referred to Section 4 (1) (b) and Section 4 (2) (a) of the Human Rights Commission of Malaysia Act 1999 which empowers the commission to advise and assist the government in formulating legislation and to conduct, disseminate and distribute research in relation to human rights.

“PAS should respect the Federal Constitution as the supreme law of the land which has given rights and protections to all citizens including the transgender people.

“Articles 5, 8 and 10 of the Federal Constitution gives people the right to transgender life and be treated fairly and equitably without discrimination as well as the right to express themselves and their opinions,” the group said.

Moreover, the group claimed the existence and recognition of the transgender community have existed in the Malay archipelago since time immemorial.

They also cited a case in 1975 where the then deputy mufti of Johor, Syed Alwee Abdullah, officiated [the marriage](#) of Sari Kartina Binti Abdul Karim, a transgender woman, to a cisgender man.

“In [his statement](#), Syed Alwee said: ‘Only those who do not follow the development of science widely will not believe the things that have happened to Kartina will happen’,” the group said.

They added that Pakistan and Bangladesh - both of which possess a majority Muslim population - have recognised the third gender since 2009.

The study conducted by Suhakam is set to run for five months from the date of the researchers’ appointments with June 30 being the closing date for applications.

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